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March 15, 2010

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State Water Resources Control Board
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RE: Comment Letter – Scope of Program Environmental Impact Report for Areas of Special Biological Significance Discharge General Exception

Dear Ms. Anderson:

The California Department of Transportation (Caltrans) appreciates the opportunity to comment on the Notice of Preparation (NOP) for the Program Environmental Impact Report (EIR) for exceptions to the California Ocean Plan to address discharges into Areas of Special Biological Significance (ASBS). Presented herein are our comments, based upon our review of NOP, Initial Study (IS), and the attached Draft Special Protections. Our comments outline Caltrans' major concerns with the scope of the environmental documentation, implementation of the Draft Special Protection requirements, and the reasonably foreseeable environmental effects of that implementation.

Notice of Preparation and Initial Study Checklist Comments

Caltrans believes the EIR should be more fully evaluate the potential for significant environmental impacts.

Environmental Permits

The NOP and IS do not appear to address environmental permitting. The EIR should identify potential permit jurisdictions and consider any potential regulatory overlaps and the process for compliance. For example, potential regulatory overlaps in the coastal zone can and will present many challenges, but ultimately, no construction will take place without a Coastal Development Permit issued by the Locally Certified Coastal Program or the California Coastal Commission. The Draft Special Protection requirements will trigger construction projects in the coastal zone that will need Coastal Development Permits. As a part of the Coastal Development Permit process, environmental impacts are fully assessed prior to permit approval. As the NOP and IS are currently written, it is not clear that these coastal zone environmental impacts have been fully considered.

Aesthetics

Aesthetic considerations are ubiquitous in the coastal zone. Projects to implement the stormwater treatment controls required to comply with the Special Protections will have a substantial footprint, which includes ground and vegetation disturbance, trenching, grading, and the construction of physical structures, including pipelines, and other Best Management Practices (BMPs). Some Caltrans ASBS locations are quite remote and adjacent to parklands, forests, and open-space, where it is likely these activities could lead to potentially significant and unmitigatable aesthetic impacts. The Program EIR should address direct, indirect and the cumulative aesthetic affects of dischargers implementation of the Special Protections.

Biological Resources

The IS specifically discusses Caltrans reports for multiple ASBS locations under Biological Resources (page 11). The IS states "there is some question whether the differences are due to discharges or sample design... While certain ASBS sites within Caltrans area of impact differed from reference sites, there was no strong support that this was due to discharges." The EIR should fully investigate and consider this question on the differences. The State Board may be moving ahead with standards more stringent than the Ocean Plan on the basis of an unfounded or not fully verified assumption that the differences in the biological monitoring report are due to discharges.

Cultural Resources

The IS fails to recognize the extent to which Native American cultures occupied and utilized the coastal zone and the potential when implementing measures to comply with the Special Protection to impact historic and prehistoric resources. Considering the extent of California's coastline bordering ASBS, Caltrans experience suggests that it is highly probable that projects implementing the Special Protections could disturb historic settings, or impact archaeological resources, potentially significantly. Historic property and archaeological surveys will need to be preformed before the risk of triggering a potentially significant impact to these resources can be determined.

Geology and Soils

The Special Protections are promoting a Low Impact Development (LID) approach, in which stormwater runoff is diverted through infiltration to groundwater. In sufficient quantities, infiltrated stormwater could alter existing groundwater levels, leading to destabilization of slopes and ocean bluffs. Local geologic and groundwater conditions will control where it is feasible to employ LID type stormwater treatment. However, geotechnical studies to determine site-suitability will have to be conducted before the risk of triggering a potentially significant impact to these resources can be determined.

Hydrology and Water Quality

The Hydrology and Water Quality Impacts Section of the NOP discusses project types that would satisfy Special Protections, such as Low Impact Development (LID), and BMPs. These types of projects underscore the feasibility question regarding Caltrans'

implementation of the Draft Special Protections. We believe it is highly probable that wet weather flow diversions to alternative discharge locations will also be necessary to comply with the Table B/90% reduction options as well as the requirement for preservation of natural water quality. The EIR will need to assess the consequences of the discharge of these flows re-routed around ASBS.

Utilities and Service Systems

All "No Impact" boxes are checked in this section. It is explained that utilities and service systems were considered, but "no potential for adverse impacts to these resources were identified and . . . mitigation is available to reduce any potential impacts". Item "c" specifically identifies construction of new stormwater drainage facilities or expansion of existing facilities. If Caltrans is to comply with the Special Protections, it is very possible that new construction or expansion of existing facilities to treat and/or dispose of stormwater may trigger potentially significant impacts to sensitive coastal resources, thereby requiring mitigation, which may or may not reduce significant impact to below the threshold of significance.

Draft Special Protections

Caltrans previously communicated key issues of concern to the State Board in a September 1, 2006 letter regarding the ASBS Special Protections. Many of our concerns have not been adequately addressed, including discrepancies in established procedures for promulgating water quality standards, and the feasibility of implementation and full compliance by Caltrans of the Draft Special Protections.

Feasibility Improvements to Draft Special Protections

Caltrans appreciates the introduction into the Draft Special Protections of exemptions for hillside dewatering and groundwater seepage into the storm drain system, and a design storm for stormwater discharges. Adding a load reduction option is also an improvement, however the 90% reduction will still present technological feasibility challenges. Caltrans requests that the Special Protection clearly states how the State Board expects the 90% reduction to be achieved and what are the consequences if 90% pollutant load reduction is not achieved.

New Water Quality Standards

The Ocean Plan contains water quality objectives applicable to ocean waters including ASBS. The ASBS have an additional beneficial use to preserve natural water quality, which is not reflected in narrative or numeric objectives. The Draft Special Protections effectively establish water quality objectives that are currently not in the Ocean Plan. Before the Special Protections are adopted, the basis for new water quality standards and/or natural water quality will need to be clearly defined.

The Ocean Plan applies Table B objectives to the receiving water upon completion of initial dilution (Ocean Plan III.C.3). The Draft Special Protections (I.A.2.d) apply Table B directly to the undiluted stormwater runoff at the end-of-pipe, thus establishing a new type of water quality objective. At a minimum, the Table B

end-of-pipe objectives are effluent limits derived contrary to the procedures in the Ocean Plan III.C.2. The State Board should clarify how compliance is determined.

The Draft Special Protections in I.A.2.h and in IV.B.2 in the Regional Integrated Monitoring Program describes the establishment of a completely new water quality objective of Natural Ocean Water Quality through monitoring of an ocean reference area. In the Glossary, under Natural Ocean Water Quality, when natural ocean water quality is not maintained, the discharge is presumed to not affect natural ocean water quality, only if the stormwater runoff constituent concentrations are equal to or less than those found in the ocean reference area. This is a comparison between undiluted stormwater runoff to constituent concentrations found in the ocean reference area. This also establishes a new water quality objective not found in the Ocean Plan.

USEPA Regulation (40 CFR 131) implementing the Clean Water Act specifies specific minimum State requirements for the establishment of water quality standards, including a description of the methods used, the analyses conducted to support the standards revisions, and a certification that the changes were adopted according to state law. Porter-Cologne Water Quality Control Act in §13241 also requires an assessment of economic considerations when establishing water quality objectives.

Caltrans believes the validity of the new water quality objectives contained in the Draft Special Protection requires the State Board to perform an evaluation of economic considerations including costs of complying with Table B in the discharge (or reducing loading by 90%) and the separate requirement of ensuring discharges comply with requirements for preservation of natural water quality. An assessment of the economic considerations should be issued prior to the adoption of the Special Protections

We understand from your reference to permit cycles (IV.B.1.c) that, when promulgated the Special Protections will be incorporated into our MS4 permit. It is not clear how these proposed special protections conform with the Clean Water Act requirements that MS4s achieve pollutant removal to the maximum extent practicable (MEP). The proposed protections appear to go significantly beyond MEP. Compliance with water quality standards is discretionary with the states, and in California, water quality standards are implemented in an iterative manner. However, in this case the Table B-90% reduction requirement is not applied in an iterative manner. Please clarify how the proposed approach for regulating discharges to ASBS conforms to Clean Water Act and California's policy for regulating MS4s.

Feasibility of Compliance

The Draft Special Protections use Table B and ocean reference areas as the basis for compliance. As mentioned earlier, these are receiving water quality standards being compared in both cases with undiluted stormwater runoff. Considering the implications of "causing or contributing to an alteration of natural water quality" under I.A.2.h, Caltrans intends to implement structural controls, which will achieve the required load reduction,

without further iterations. Caltrans also intends to submit a Stormwater Management Plan (SWMP) to address ASBS requirements with a clear definition of target reductions. However, this is not possible if the target constituent concentrations in the ocean are to be determined after regional monitoring has been completed. This subjects public agencies to a great deal of uncertainty. Caltrans believes that the public interest would best be served if the water quality compliance standards are clear before structural treatment controls are planned and documented in the SWMP. Otherwise, public monies may be misdirected.

As a State Agency with a large ASBS exposure (10 of the 34 ASBS and approximately 70 miles of coastline discharges) the implementation of stormwater controls necessary to comply with the requirements enumerated at I.A.2, SWMPs and Stormwater Pollution Prevention Plans, will require considerable time to implement, i.e. plan, fund, coordinate, permit, design and construct stormwater treatment controls. The inclusion of an absolute prohibition of trash, and compliance with new water quality standards will undoubtedly require treatment controls at every discharge location. Caltrans has considerable experience implementing projects in the coastal zone. Physical alterations within the coastal zone require Coastal Development Permits, which generally require extraordinary mitigation measures and compliance with special conditions. Ten years or more could be needed to implement required controls rather than the 4 years specified in the Special Protections. Caltrans requests that a tiered approach for implementation be considered for prioritization of implementation of measures (non-structural and structural treatment) and prioritized by ASBS location. Caltrans has consulted in the past, with Dr. Pete Raimondi of the Institute of Marine Sciences at UC Santa Cruz, regarding the health of ASBS sites and correlation to Caltrans discharges, these findings could be the basis for prioritization.

Controlling discharges to protect natural water quality and meet Table B or reduce loading by 90% are the regulatory challenge. However, stormwater discharges typically exceed Table B, and may exceed the constituent concentrations found in ocean reference areas. Is 100% compliance with the Special Protections required? What if Caltrans can only implement something less due to, physical constraints, environmental challenges, and technical feasibility? Will the exception be rescinded? State Board staff will need to provide sufficient information in order for Caltrans to clearly understand the limitations and compliance requirements. In addition, extensive pre-engineering will be needed to identify the needed controls for a variety of discharge locations in order to provide an adequate basis for the description of impacts in the EIR.

Prohibition on New Outfalls

Caltrans in a non-traditional MS4, and unlike other ASBS discharges, Caltrans facilities are uniquely linear with limited rights-of-way. This linearity poses substantial challenges for implementation of the Draft Special Protections. There will be circumstances that will require establishment of new discharge locations, such as roadway improvement projects to improve safety, or to re-establish the highway facilities after landslides, or improve highway drainage while not disrupting the flow of traffic. Exceptions will need to be allowed for emergency events, safety improvements or in other circumstances where public safety and the mobility of the traveling public are at stake.

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Public Education and Outreach

The Public Education and Outreach requirement at I.2.f should be centralized for cost effectiveness and clarity of message. The State Board will need to establish a statewide program for 28 ASBS dischargers to jointly participate rather than independently advancing a public education and outreach effort.

If you have any questions, please contact me at (916) 653-4446, or Keith Jones at (916) 653-4947.

Sincerely,



G. SCOTT MCGOWEN
Chief Environmental Engineer

c: Charles Hoppin, Chair SWRCB
Board Members
Bruce Fujimoto, DWQ, SWRCB

DKJ:rk