



August 8, 2006

Mayor:  
DAN ALBERT

Councilmembers:  
CHUCK DELLA SALA  
LIBBY DOWNEY  
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Ms. Tam Doduc, Chair  
California State Water Resources Control Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

8/1 and 8/15 Meetings  
ASBS Special Protections  
Deadline: 8/15/06 5pm

Subject: Comments About the Working Draft of Special Protections-Areas of Special Biological Significance

Dear Chairperson Doduc:

Before I begin making my comments about the working draft of the "Special Protections-Areas of Biological Significance Storm Water and Nonpoint Source Discharges, June 14, 2006" (Working Draft), I'd like to provide you with some background about the City of Monterey and the surrounding area. I'm sure you are aware of the beautiful environment we have here. Our City leaders understand that we rely upon this environment to support our largest "industry", tourism. Moreover, the City's leaders have not merely paid lip service to their commitment to environmental quality.

Long before having a Phase II storm water permit, our City has implemented many of the elements of what will be required by that permit. We currently spend approximately \$1.5 million per year on storm water related matters.

As you know, the first designation of ASBSs occurred in 1974. At that time, there was a sewage treatment plant located in Pacific Grove with its discharge terminus adjacent to what was to become the Pacific Grove ASBS. There were hulks of canneries undoubtedly containing toxic materials. There was a lead slag site located along the shores of Monterey adjacent to Wharf I. There was a lumber yard located within the Pacific Grove ASBS drainage area. All of these sources of pollution have had remedial action taken by local government at local expense. The sewage treatment plant was decommissioned; the large cannery bordering the eastern boundary of the Pacific Grove ASBS is now the Monterey Bay Aquarium; the slag site cleaned up and the lumber yard has been replaced. In addition, the City of Pacific Grove has already begun to divert dry weather flows from the storm drain system to the sanitary sewer system. The diversion project is scheduled to include all outfalls within a year.

The Cities of Monterey and Pacific Grove have been leaders in our state when it comes to small community storm drain pollution prevention. We have had robust programs such as "First Flush" and "Urban Watch" to detect pollutants in our storm drains. Monterey has pursued polluters. We have been providing public education and outreach. In partnership with the City of Santa Cruz, we prepared the storm water manual used by the Coastal Commission. We have done all of this and more, long before we even had a Phase II storm water permit. This City has demonstrated a strong clean water ethic.

We recognize that there are areas such as the Pacific Grove ASBS that deserve additional "special" protections. We appreciate and welcome this idea. Although the quality of the waters within the Pacific Grove ASBS has undoubtedly improved since its formation, we believe that the waters in this area deserve to be further protected.

We have been following the ASBS issue ever since we received a draft cease and desist order in December of 2004. City staff attended a hearing at the Board's offices in April of 2005 when the Board directed their staff to hold a series of workshops to gather input and that the Board would consider making revisions to the way that the State approaches regulating ASBSs. We applaud this move, as we believe the road that the Board was going down is a wasteful and divisive one.

The waters off of Pacific Grove are amazingly beautiful and healthy. We have had conversations with numerous staff from Hopkins Marine Station and the Monterey Bay Aquarium about the health of the marine ecosystems in this area and about the impacts of storm water on the health of the biota. What we hear consistently is that, at the most, there is anecdotal evidence and no statistically significant data that shows that storm water and non-storm water flows are negatively impacting the beneficial uses of the ocean.

1) The regulatory system does not allow for local variables. For example, the City of Monterey is lumped together with other ASBS communities, as though we have outfalls to an ASBS; however, we do not. Our storm water reaches the Pacific Grove ASBS via the Pacific Grove storm drain system. We can not regulate what goes on in Pacific Grove; therefore, we should not be regulated in the same manner as Pacific Grove. Perhaps we could be required to monitor our water quality at our borders with Pacific Grove; it seems duplicative for all of us to be monitoring the same ocean area.

2) There is the presumption that all storm water is causing harm to the ASBS. This has become known as the "one molecule rule" since the current staff interpretation is that all runoff is "waste" since it contains anthropogenic materials. We believe that this definition of waste is undermining the credibility of the Board and the process. Nobody would claim that storm water runoff is gold just because there are a few stray molecules of gold in some storm water. Under the current regulatory approach and the Working Draft, we will be required to conduct very expensive testing and monitoring of storm water and ocean water. Locally, we are talking about an area that has obviously undergone numerous positive changes since the formation of the ASBS. Local experts are telling us that there is not anything indicating to them that there are negative impacts from storm water. Therefore, conducting more tests and studies will not help water quality. We would rather apply scarce local funds towards tangible projects that would really improve water quality.

3) We recognize that there are contaminants in the storm water of both Pacific Grove and Monterey that has the potential for causing harm to the ocean biota. Rather than spending scarce resources conducting science, we would rather concentrate on reducing or eliminating these contaminants by implementing accelerated BMPs. This approach would be in line with the recommendations that came from the report that your Board commissioned and recently received entitled "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities". This report basically concludes that, for municipal discharges, a rigorous BMP selection and maintenance program is the most effective approach; we would agree.

4) While I am not speaking for the City of Carmel, I would like to use their situation to illustrate another basic flaw in the current and the proposed approaches. The Carmel River discharges many orders of magnitude more water into the Carmel Bay ASBS than the City of Carmel-by-the-Sea. Yet under the proposed regulatory approach, Carmel would have to conduct the same ocean science as a community far away from the influence of a river. While I'm not a scientist, I think that the pollutant loading and signature from the river will far outweigh and make indistinguishable any impact from the City.

If the state is going to pursue an approach that exceeds the requirements of the federal government as we believe the current regulatory approach and the Working Draft do, then this is an unfunded state mandate. Therefore, the state needs to provide funding for the implementation of these regulations. Much has been said about the use of grant funds to finance this effort.

However, grants are not a reliable source of funding and they are especially problematic when one is facing a deadline.

Another irony is that, currently, we are investigating eliminating or severely curtailing storm water outflows to the Pacific Grove ASBS. The report has not been finalized; however, there is some possibility that ceasing most flows and reusing storm water may be economically feasible. The irony is that this study is being financed with state Proposition 50 funds. I think that a majority of people would recognize a huge waste of taxpayer money if we were to conduct storm and receiving water monitoring along with studies of the ocean biota using public funds, while at the same time using taxpayer money to divert and reuse the storm water, essentially negating the need to answer questions about the impact of storm water on the ASBS.

We will be making specific comments about the Working Draft in a future correspondence.

Sincerely,



Dan Albert  
Mayor

c: City Council  
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City Engineer  
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