

**BAY PLANNING COALITION
BUILDING INDUSTRY ASSOCIATION OF SAN DIEGO
BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA
CALIFORNIA BUILDING INDUSTRY ASSOCIATION
CALIFORNIA BUSINESS PROPERTIES ASSOCIATION
CALIFORNIA CATTLEMEN'S ASSOCIATION
CALIFORNIA COUNCIL ON ENVIRONMENTAL AND ECONOMIC BALANCE
CALIFORNIA CHAMBER OF COMMERCE
CALIFORNIA FARM BUREAU FEDERATION
CALIFORNIA FORESTRY ASSOCIATION
CALIFORNIA GROCERS ASSOCIATION
CALIFORNIA LEAGUE OF FOOD PROCESSORS
CALIFORNIA MANUFACTURERS AND TECHNOLOGY ASSOCIATION
CALIFORNIA STATE ASSOCIATION OF COUNTIES
COALITION FOR PRACTICAL REGULATION
CONSTRUCTION MATERIALS ASSOCIATION OF CALIFORNIA
CONSULTING ENGINEERS AND LAND SURVEYORS OF CALIFORNIA
HOME BUILDERS ASSOCIATION OF NORTHERN CALIFORNIA
INDUSTRIAL ENVIRONMENTAL ASSOCIATION
LEAGUE OF CALIFORNIA CITIES
NATIONAL ASSOCIATION OF INDUSTRIAL AND OFFICE PROPERTIES –
CALIFORNIA CHAPTERS
INTERNATIONAL COUNCIL OF SHOPPING CENTERS
REGIONAL COUNCIL OF RURAL COUNTIES
RESOURCE LANDOWNERS COALITION
ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA**

October 3, 2006

Tam Doduc
Chair
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814

Re: Coalition Comments Regarding Stormwater Discharges Into Coastal Areas of Special Biological Significance

Dear Ms. Doduc:

The above-listed organizations are pleased to present you with a copy of an important analysis of the State Water Resources Control Board's proposal to ban virtually any stormwater discharge into coastal Areas of Special Biological Significance ("ASBS"). The proposed new policy prohibits storm flow releases that contain any detectable levels of farm, residential or other municipal-related constituents into an ASBS, even if these constituents generate no adverse biological or ecological effects.

Over one-third of the California coastline is subject to an ASBS designation, including La Jolla, Malibu and Laguna Beach. If implemented, the proposed “detection-based” stormwater policy will severely disrupt the state’s economy, generate few if any environmental benefits, and could foster adverse water quality in ASBS regions of concern.

Key findings and conclusions include the following:

- *There is no legal requirement for adopting a “detection-based” discharge ban.* Nothing in California’s ASBS legislation, the Porter-Cologne Act, the Ocean Plan, the Public Resources Code, or in the history of State Board practice and precedent mandates that stormwater discharges containing any detectable constituents irrespective of biological effects must be absolutely prohibited. All of the applicable precedents, laws and regulations more properly focus on controlling ASBS discharges with constituent concentration that demonstrably could harm the environment.
- *State Board precedents recognize regulatory options other than a “detection-based” discharge ban.* The State Board’s history and practice clearly demonstrates a commitment to maintaining overall receiving water quality objectives by implementing best management practices and similar feasible regulatory requirements. The State Board has never attempted to intercept each and every molecule before discharge to the ocean without reference to a water quality goal that protects a specific, applicable beneficial use.
- *The proposed policy will not produce demonstrable environmental benefits.* A detection-based approach imposes a blanket discharge ban irrespective of whether the affected flows in fact impair any water quality goals or beneficial uses. No reasonable correlation between the proposed policy and an environmental benefit can be demonstrated as required by state law.
- *An absolute ban on stormwater discharges that do not cause adverse environmental consequences will likely harm ASBS regions.* The natural biology of California’s ASBS regions depends on periodic freshwater storm flows that intermix with saline ocean waters. Interrupting these flows to prevent discharges that do not otherwise harm receiving waters would profoundly disrupt the natural ecology of an ASBS.
- *Banning stormwater discharges that do not cause biological harm needlessly wastes scarce public resources.* Impounding coastal runoff that causes no biological harm will cost California hundreds of millions, if not billions of dollars. The City of San Diego has estimated that capturing all storm flows into a single ASBS would cost approximately \$322 million. Similar controls implemented throughout California will require many times this level of expenditure.

- *A detection-based approach is not technically feasible.* Studies of the proposed new policy indicate it is not feasible to intercept all flows into an ASBS that may contain minutely detectable constituent levels. If the detection-based approach is adopted, any coastal community near an ASBS may be in perpetual non-compliance with legal requirements.

Based on the analysis reflected in the enclosed legal memo by Latham & Watkins and the enclosed peer review of it by Barton H. “Buzz” Thompson, a professor at Stanford Law School, we respectfully urge that the State Board reject the implementation of the proposed detection-based regulation of ASBS stormwater discharges in favor of feasible, legally defensible methods that prevent actual harm to the environment. We share California’s commitment to protecting ASBS regions from storm flows that contain harmful constituent levels. The proposed policy, however, needlessly wastes public resources to control flows that do not adversely affect the environment, generate no tangible benefits, and would likely disrupt critical ASBS biological functions. No legal mandate requires that the State Board adopt a regulation that results in such undesirable consequences of this magnitude.

We hope that you will consider and concur with our analysis of the ecological, legal and practical problems associated with the proposed detection-based ASBS discharge regulations.

Sincerely,

Ellen Johnck
Bay Planning Coalition

Jerry Livingston
Building Industry Association of San Diego

Mark Grey
Building Industry Association of Southern California

Tim Coyle
California Building Industry Association

Rex S. Hime
California Business Properties Association

Susan LaGrande
California Cattlemen’s Association

Bob Lucas
California Council on Environmental and Economic Balance

Valerie Nera
California Chamber of Commerce

Anthony Francois
California Farm Bureau Federation

David Bischel
California Forestry Association

Kristin Power
California Grocers Association

Bill Grigg
California League of Food Processors

Mike Rogge
California Manufacturers and Technology Association

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California State Association of Counties

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Bill Geyer
Resource Landowners Coalition

Jamie Kahn
Associated General Contractors of California

cc: Mr. Gerald Secundy, Vice Chair
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Mr. Arthur G. Baggett, Jr., Member
State Water Resources Control Board

Mr. Charles Hoppin, Member
State Water Resources Control Board

Mr. Gary Wolff, Member
State Water Resources Control Board

Ms. Linda Adams, Secretary
California Environmental Protection Agency

Ms. Celeste Cantu, Executive Director
State Water Resources Control Board

Mr. Dan Skopec, Undersecretary
California Environmental Protection Agency