



January 24, 2005

Mayor:
DAN ALBERT

Councilmembers:
CHUCK DELLA SALA
LIBBY DOWNEY
JEFF HAFFERMAN
CLYDE ROBERSON

City Manager:
FRED MEURER

Roger W. Briggs
Executive Officer
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Re: Draft Cease and Desist Order and Staff Report for Discharge to Area of Special Biological Significance, Draft Order R3-2005-0020

Dear Mr. Briggs:

Thank you for the opportunity to comment on the above-entitled matter. Before commenting on specific items within the draft cease and desist order (CDO), I would first have to state that the application of CDO's has at best been inconsistent and at worst is arbitrary. The draft CDO cites the reason for the City of Monterey being issued the draft CDO is that Monterey discharges into the City of Pacific Grove's storm drain system. The fact that we discharge into Pacific Grove's system is indisputable. However, indirect discharges have at times not been issued CDO's. A recent example of this would be with Scripps Oceanographic Institute. Even though Scripps is surrounded by City streets and we've been told that the San Diego storm drain system does discharge into ASBS No. 31, the City of San Diego was not included in the Scripps CDO. The California Department of Transportation owns and operates Highways 1 and 68 and it appears that there is drainage from these highways that discharge into the Carmel Bay ASBS, yet they aren't named in the draft CDO issued to the Pebble Beach Co. and the City of Carmel. Similarly, the U.S. Army, owner of the Presidio of Monterey, was not named in the draft CDO to the Pebble Beach Co. and the City of Carmel, yet they too discharge indirectly into the Carmel Bay ASBS. By analogy, we don't believe that the City of Monterey should be subjected to a CDO based upon indirect discharge. Having said this though, we are subject to NPDES stormwater permitting requirements and we will commit to take all reasonable steps to improve the quality of stormwater discharges into the Pacific Grove system.

If the reason behind issuing the draft CDO to Monterey is that Monterey is answerable to the RWQCB, but is not answerable to Pacific Grove; then the Pacific Grove Unified School District should also be issued a CDO because the Cities of Pacific Grove and Monterey have no jurisdiction over school districts on these matters.

It makes no sense to issue identical CDO's to both the Cities of Monterey and Pacific Grove. We have no police power over Pacific Grove nor do they have such powers over Monterey. Let's explore the improbable possibility that Pacific Grove doesn't comply in part or in toto with their CDO. What would be the point of Monterey (assuming we receive

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an exception) performing all the long-term monitoring, when the vast majority of the water which comes from Pacific Grove is of the same quality as it is today? It also doesn't make sense that both Pacific Grove and Monterey are being required to submit the same documents and reports.

At a recent meeting held in La Jolla, I asked Mr. Gregorio of the Division of Water Quality about the circumstances under which we were issued the draft CDO. He said that in addition to the indirect discharges, the City of Monterey has an ocean outfall located under the Monterey Bay Aquarium and that this discharge has an influence on ASBS No. 19 (however, there's no mention of this discharge in the draft CDO). The discharge point in question is approximately 450 feet outside of the boundary of the ASBS. This discharge drains an area of approximately 3 acres. The predominant currents run from Pacific Grove towards Monterey. Given the size of this area; the considerable distance from the ASBS and the ocean currents, we would dispute the assertion that this outfall has an influence on ASBS No. 19 and submit that this outfall should not be included in any redraft or final CDO's if a CDO is ultimately issued.

If, under the above-stated protest, the RWQCB continues to issue the City of Monterey a CDO, we have the following comments and concerns:

Throughout the draft CDO and the staff report, references are made to the Carmel Bay ASBS. Pacific Grove does not border the Carmel ASBS.

Page 7, Condition 9:

There has already been considerable study of the benthic marine life in and around ASBS 19. Has the RWQCB staff coordinated with the Monterey Bay Marine Sanctuary, Hopkins Marine Station, and the Monterey Bay Aquarium to see if studies have been done, or if the universe of benthic marine organisms to be studied can be narrowed down?

Page 7, Conditions 9 and 10:

The Board's authority is to stop the discharge of substances into an ASBS that would harm the marine environment. Testing the ocean water quality or the diversity and health of organisms in the ocean would appear to be stating that the Board recognizes that harmful contamination is occurring. Rather than spending untold sums of money studying the receiving waters, the reasonable action would be to sample the effluent quality and set reasonable effluent standards. Currently, nobody can tell us if there are ocean water quality problems that need to be solved.

Page 7, Condition 11:

This condition appears to reinforce our comments regarding conditions 9 and 10. If the limits in Tables A and C are designed to protect the receiving water, it would appear that Conditions 9 and 10 would be unduly burdening us with redundancies.

We understand the predicament that the RWQCB is facing as a regulator. You want all parties to cooperate and work together equitably. If ultimately we are subject to a CDO and we continue discharging through the Pacific Grove system, we as staff would certainly agree with this approach. Therefore, we believe that a more creative and applicable CDO

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should be developed for indirect dischargers if indirect dischargers are going to receive CDO's.

Sincerely,



Dan Albert
Mayor

c: City Manager
Interim City Attorney
City Engineer
Associate Engineer, Gonzalez
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