



TEL: 619.758.7743
FAX: 619.224.4638

Address: 2825 DEWEY ROAD, SUITE # 200
SAN DIEGO, CALIFORNIA 92106

www.sdcoastkeeper.org

IMPACT

July 2, 2010

Ms. Christina Arias
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, California 92123

Re: Tentative Resolution No. R9-2010 0066 – Approval of the Hydromodification Plan Under San Diego Regional Water Quality Control Board Order No. R9-2007-0001

Dear Ms. Arias:

On behalf of San Diego Coastkeeper (“Coastkeeper”) and the Natural Resources Defense Council (“NRDC”), we are writing with regard to Tentative Resolution No. R9-2010-0066, Approval of the Hydromodification Management Plan for the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority, transmitted on April 7, 2010 (“HMP”). Coastkeeper is San Diego’s largest environmental nonprofit organization dedicated to coastal water quality protection. NRDC, on behalf of its over 100,000 California members, many of whom live in San Diego County, is dedicated to protecting public health and the environment, including the well being of San Diego’s coastal and inland surface waters.

As longstanding members of the Technical Advisory Committee (“TAC”) we have followed the HMP process closely and commented often. As many of our concerns remain unaddressed, we incorporate all previous comments here by reference. Our comments below focus specifically on the monitoring plan as proposed on June 25 by the Copermittees.

Monitoring Plan’s Continuous Monitoring Represents Significant Improvement

While far from perfect, the monitoring plan as proposed by the Copermittees has some significant improvements. Generally speaking, the overall design at the sites where sampling will occur is more thoughtful and better organized. Most importantly, the inclusion of continuous monitoring, as opposed to grab sampling from two storm events, is a major advance and will provide more rigorous data and capture more of the environmental variability for those areas where sampling occurs. However, the plan is still unacceptably weak in terms of its single focus on headwater areas and low number of sampling sites.¹

Downstream Areas Must Be Represented in the Monitoring Plan

We recognize that monitoring downstream areas of channels presents monitoring and statistical challenges. We also understand and appreciate that Copermittees relied on some of the best professional expertise on this issue in Southern California in deciding not to monitor these areas. However, the statement that downstream areas are too variable and have too many confounding variables to effectively detect changes in flow regimes remains an assumption until

¹ As a preliminary matter, it seems the definition of “an effective HMP” in and of itself has misinterpreted the Regional Board’s directive in the MS4 permit. The co-permittees’ introduction defines an effective HMP as, among other things, a program that “results in no significant stream degradation as a result of increased erosive force caused by new development.” (HMP Monitoring Plan, Executive Summary, p. 1). However, the MS4 permit requires no “significant adverse impacts to beneficial uses”. (Order No. R9-2007-001, section D.1.g.). The difference is of great import, as impacts may occur to beneficial uses due to erosive force without reaching the higher threshold imposed by the co-permittees of “stream degradation”.

there is data to validate that point. The lack of monitoring in downstream areas will constrain the Regional Boards ability to effectively protect our natural resources in multiple ways.

First, the Regional Board will not have information to understand the **cumulative impacts within a watershed** that result from development.² While the proposed design will provide information on cumulative site specific changes over time, it cannot speak to how changes accumulate within a watershed because it wholly neglects to assess any area other than the headwaters.³

Second, the focus on headwater areas will necessarily result in a gap in our ability to understand and ultimately manage the current impacts from urbanized areas and the future impacts of their redevelopment. Generally speaking, watersheds are more built out in downstream areas and less developed in the upstream/headwaters regions. Therefore, any development in headwaters areas will almost certainly be new development. Conversely, it has been recognized that much of the future growth in San Diego will be infill development of our already built out areas.⁴ Therefore, if the Copermittee draft summary were to be accepted wholesale, it would not answer whether the HMP is managing the impacts of that growth at all.

Indeed, the MS4 permit requires HMP post-project runoff discharge rates and durations not only to protect watersheds from erosive force, but from “other significant adverse impacts to beneficial uses”.⁵ Thus, whether downstream monitoring can be attributed to a specific project or set of projects, it is nonetheless important to monitor the impacts to beneficial uses from runoff discharge rates and durations.

While the assumption that downstream areas will be too challenging to monitor meaningfully in two years may be true, **if we never start monitoring downstream areas we will never understand the variability in those area.** We will thus be perpetually unable to appropriately manage the impacts of urbanization on those areas. We are not ready to throw in the towel on the ecosystems at the lower end of our watersheds and we do not believe the Regional Board should either.

Site Design Must Include Additional Sampling Sites

We recognize that the Copermittees felt too constrained by budgetary issues to develop a broader monitoring program. As the Regional Board has pointed out in many instances, the financial concerns can be resolved (e.g. developer fees, dedicated stormwater funding). More importantly, the financial concerns are not legally relevant to developing a scientifically sound and defensible monitoring plan.

² The NPDES Permit requires “mechanisms for addressing cumulative impacts within a watershed on channel morphology” and “pre-and post-project monitoring and other program evaluations to be conducted to assess the effectiveness of implementation of the HMP”. (Order No. R9-2007-001, section D.1.g.(1)(l) and (k)(emphasis added)).

³ Note that during previous stakeholder meetings Regional Board staff have previously expressed concern about the lack of cumulative impacts analysis to the watershed in the HMP and a desire for an analysis that is restricted to the cumulative impacts from one development.

⁴ The Final Programmatic Environmental Impact Report for the San Diego General Plan states that “Because less than four percent of the City’s land remains vacant and available for new development, The City of Villages strategy and Draft General Plan policies largely direct housing growth to already developed areas of the City through infill and redevelopment.” 4-1, Final Programmatic Environmental Impact Report for San Diego General Plan, September, 2007.

⁵ Order No. R9-2007-001, section D.1.g.

Unfortunately, by optimizing the plan based on cost, the Copermittees have developed a plan with an inadequate number of sites to capture the variability and impacts in the region as a whole. We question whether this proposed plan, even with its improvements, meets the Regional Board's request that "substantially more data are needed to better quantify flow based sediment concentrations ... in receiving waters throughout San Diego County".⁶ While this proposed plan may address the Board's concerns regarding improved monitoring of rainy seasons, it does not address its request for increased spatial coverage⁷. While the Monitoring Summary states that the plan will attempt to distribute sampling throughout the Permit coverage area's Hydrologic Units (pg 4), it is quite possible that with this proposed plan that only a few watersheds will actually be monitored.

Recommendations for Ameliorating the Draft Tentative Order

Despite its improvements, the Copermittees' monitoring plan is still lacking in too many details to be considered for wholesale insertion into a draft Tentative Order. The monitoring summary submitted by Copermittees is just a summary, not a developed monitoring plan. Regional Board staff has the opportunity and responsibility to provide the structure necessary to make this proposal into a monitoring plan.

To address all of the above mentioned concerns, we suggest the following four requirements/additions be inserted under Item 6 of the Draft Tentative Order⁸:

1. Clarify that approval of current monitoring proposal does not affect or limit future decisions by inserting the following language: "The Regional Board and staff are not restricted from changing, augmenting, or improving any or all parts of the HMP, including but not limited to, its monitoring provisions in the next and future rounds of MS4 permitting". The Regional Board can and should use the baseline data gathered over the next two years to inform and require improvements to the monitoring program.
2. Copermittees shall add one downstream monitoring site with three replicates. These sites shall be additional to those currently proposed and in no way to be seen as a replacement for all or part of what has been proposed by the Copermittees. We believe that the Copermittees can and should begin a limited downstream monitoring program. We suggest that the Regional Board require Copermittees commit to monitoring downstream areas as a pilot to accumulate the data necessary to appropriately manage the impacts to the whole watershed. This downstream pilot will then help inform the most effective downstream monitoring structure for future permit iterations.

⁶ Tentative Resolution R9-2010-0066 section 6 pg 3

⁷ Tentative_Resolution_R9-2010-0066_v2 pg 3 section 6.e. requested that "In addition to increased spatial coverage, monitoring is needed over several rainy seasons for increased temporal coverage because Copermittees will need to distinguish erosion caused by anthropogenic activities from naturally occurring erosion in order to assess the effectiveness of the HMP."

⁸ Tentative Resolution R9-2010-0066 section 6 pg 3

3. Mandate that statistically valid monitoring will occur in headwaters that represent a majority of the region's watersheds. As noted above, the current proposed plan does not provide sufficient spatial coverage to represent all of our region's watersheds.
4. Copermittees must provide information in their baseline report (pg 5 Draft Monitoring Summary) on what other monitoring data is available through other sources (e.g. USGS stream gauges, other Copermittee monitoring, other scientific studies) that speaks to sediment movement, flow changes, and alterations in hydrology.

In short, we believe the proposed plan to be a minimal baseline monitoring plan that will adequately answer whether the HMP is effectively managing new development in headwater areas. However, it is clearly only a baseline plan, one that is incapable of assessing the effectiveness of HMP at watershed scale, as was intended by the Regional Board in the MS4 permit. The specific inclusions and clarifications will make it possible to build on this skeletal baseline in future permit cycles. It is our hope that a truly meaningful and robust HMP can be so realized.

Sincerely,



Gabriel Solmer, Legal Director
San Diego Coastkeeper