



Reply to:

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August 30, 2012

Charles R. Hoppin, Chair, and Members of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
Attn: Jeanine Townsend, Clerk to the Board
commentletters@waterboard.ca.gov

Dear Chair Hoppin and Members of the Board:

SUBJECT: Comments on the Proposed California Ocean Plan Amendments Regarding Designating State Water Quality Protection Areas To Protect Marine Protected Areas and the Draft Substitute Environmental Documentation for the Proposed Amendment (July 25, 2012 version)

On behalf of Tri-TAC, the California Association of Sanitation Agencies (CASA), and the Southern California Alliance of POTWs (SCAP) (hereinafter referred to as “the Associations”), thank you for the opportunity to submit comments regarding the July 25, 2012 version of the proposed amendment (revised Draft Amendment) to the California Ocean Plan (Ocean Plan), regarding designation of State Water Quality Protection Areas (SWQPAs) to protect Marine Protected Areas (MPAs). Our comments focus on the provisions of the revised Draft Amendment related to municipal wastewater outfalls. We greatly appreciate staff’s efforts to date to develop the revised Draft Amendment, and the continued recognition by the State Water Resources Control Board (State Water Board) and in the staff report of the important public service and substantial infrastructure provided to the public by the municipal wastewater community. Existing wastewater infrastructure represents billions of dollars of public investment, and as such, is a valuable asset for California’s communities and economy. Furthermore, this essential public infrastructure plays a critical role in protecting water quality and public health. As such, we continue to support the adoption of the revised Draft Amendment, with modifications described below, in accordance with the provisions related to municipal wastewater outfalls and the timeline specified in State Water Board Resolution No. 2010-0057 (“the Resolution”). In the Resolution, the State Water Board provided policy direction to staff regarding the provisions to be included in the Ocean Plan amendment.

The revised Draft Amendment was prepared to establish criteria for designating new SWQPAs, including conditions and prohibitions applicable to point source and nonpoint source discharges, recognizing the existence of important public wastewater infrastructure as well as the need to protect water quality in these areas. Among other things, the revised Draft Amendment is intended to outline requirements pertaining to existing municipal wastewater outfall discharges located in the vicinity of MPAs and/or SWQPAs.

The Associations appreciate the State Water Board staff's efforts to date in continuing to develop the Amendment, and we have identified several key issues in the July 25, 2012 revised version that we urge you to address prior to adoption as specified. These issues are explained below.

1. Provision E.2 in the Draft Amendment Must Be Revised to Conform to the Provisions of Resolution 2010-0057

In the revised Draft Amendment, a seemingly small but critical change was made that was inconsistent with the adopted Resolution and unnecessary for continued protection of aquatic life within MPAs. Specifically, the language of section 7.1.E.2, now states in part "*The designation of State Marine Parks and State Marine Conservation Areas may not serve as the sole basis for ~~no~~ new or modified limitations, substantive conditions, or prohibitions (beyond those in existing law, regulations and water quality control plans) will be imposed upon municipal point source wastewater discharge outfalls based on any MPAs designated as State Marine Parks and State Marine Conservation Areas*" (emphasis added). The addition of the word "sole" now allows for the presence of a State Marine Park (SMP) or State Marine Conservation Area (SMCA) to be a driver for new regulations of existing outfalls.

This new language is inconsistent with the State Water Board's Resolution, which directed staff to propose an amendment to the Ocean Plan "*clarifying that no new or modified limitations, substantive conditions, or prohibitions will be imposed upon existing municipal wastewater discharge outfalls based on the designation of MPAs other than State Marine Reserves.*" (Resolved 4). The inconsistency must be corrected by omitting the word "sole" from the final text of the Amendment or by returning the sentence to the original wording used in the February 23, 2012 version of the Draft Amendment.

Removal of the word "sole" would not limit the Water Boards' authority to amend or modify a permit for a wastewater discharge based on any reason other than the presence of an MPA. Additionally, it will always remain the obligation of ocean-discharging wastewater treatment plants to implement any new and more stringent Ocean Plan standards adopted to better protect aquatic life and habitat. However, based on the acknowledged or explicit intent of the MLPA, State Water Board Resolution 2010-0057, and the draft Staff Report for these Ocean Plan Amendments, MPAs that are not SMRs should not drive new requirements for existing wastewater outfalls. The Wastewater community believes that if it is desired to maintain a higher level of water quality protection in a SMP or SMCA than that afforded by the Ocean Plan, the SMP or SMCA simply should not be sited over or in the vicinity of an existing wastewater outfall.

Given that the MLPA process did not provide adequate means for preventing MPA placement over or in the vicinity of existing outfalls, and some MPAs were placed over and near the point of discharge of outfalls, it is extremely troubling that this newly added language in the Draft Amendment is contrary to the clearly stated intent of the Resolution. Further, it was not, and should not be, the intention of the State Water Board to regulate outfalls in proximity to MPAs beyond the requirements of the Ocean Plan. For this reason, the addition of the word "sole" makes the COP internally inconsistent. We ask that you strike the word "sole" from the revised text, or alternatively, that the text be restored to the prior version of the Draft Amendment for this provision. The Associations request that the definition be changed as follows prior to adoption (requested change shown in strikeout):

As revised, Provision E.2 would read:

"The designation of State Marine Parks and State Marine Conservation Areas may not serve as the ~~sole~~ basis for new or modified limitations, substantive conditions, or prohibitions upon existing municipal point source wastewater discharge outfalls. This provision does not apply to State Marine Reserves."

2. The Draft Amendment Should Be Revised to use Clear and Consistent Terminology when Referring to Outfalls

For clarity and in order to be consistent with the Resolution, in all instances where Provision 5.a.1 of the Draft Amendment refers to wastewater discharge, the use of “discharge” should be changed to “outfalls”. This revision is needed in order to reduce regulatory ambiguity and confusion due to the use of inconsistent terminology in these provisions. Although Resolution 2010-0057 contained some of the same inconsistencies in the use of terminology, because the Ocean Plan is a regulation, those interpreting it later must attribute meaning to each word and phrase, and the implication is that each term or phrase means something different. However, it appears that these terms are being used synonymously and are not actually intended to refer to different things. Furthermore, wastewater outfalls occasionally may have multiple sources and/or types of discharge, such as brine from water recycling or groundwater desalting and treated municipal wastewater. Allowing use of existing municipal wastewater outfalls for brine has many advantages, including promoting water recycling in support of the State Water Board’s goals set forth in the Recycled Water Policy (State Board Resolution 2009-0011) and avoiding adding new outfalls and causing seafloor disturbance. Thus, we believe that the best term to use throughout this section of the revised Draft Amendment is “existing wastewater outfalls.” The Associations request that the definition be changed as shown under item 3 below prior to adoption (requested changes shown in underline/strikeout):

3. The Draft Amendment Should Be Revised to Include All Existing Wastewater Outfalls

The Associations appreciate the SWRCB’s efforts to recognize the significant public investment in wastewater infrastructure and the relatively low level threat to water quality posed by existing wastewater discharges as stated in the Resolution. As such, there is no basis for designating SWQPA-GPs over wastewater outfalls that discharge less than one million gallons per day, as is stated in Provision 5.a.1. The same reasoning that applies to not designating SWQPA-GPs over larger discharges should also apply to smaller discharges. In order to be consistent with the Resolution, which makes no distinction based on the quantity of an outfall’s discharge, the portion of Provision 5.a.1 which states that “***This requirement does not apply to discharges less than one million gallons per day.***” should be stricken from the Draft Amendment.

As revised, Provision 5.a.1 would read:

“An SWQPA-GP shall not be designated over ~~existing permitted point source wastewater discharges~~ outfalls or encroach upon the zone of initial dilution associated with an existing ~~discharge~~ outfall. ~~This requirement does not apply to discharges less than one million gallons per day.~~”

4. The Revised Draft Amendment Should Be Revised to Further Clarify the Definition of a State Water Quality Protection Area (SWQPA)-General Protection (SWQPA-GP)

The Associations appreciate the initial efforts of the SWRCB to align the definition of a SWQPA-GP in Appendix I to be consistent with the definition of State Water Quality Protection Area contained in the Marine Managed Areas Improvement Act (MMAIA). The MMAIA states “A state water quality protection area is a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality...” The Appendix I definition of a SWQPA-GP still includes a small difference in wording from the statute, which gives a completely different and additive meaning to the definition. The Associations request that the definition be changed as follows prior to adoption (requested changes shown in underline/strikeout) to ensure that this definition is consistent with the MMAIA:

Appendix I

DEFINITION OF TERMS

STATE WATER QUALITY PROTECTION AREAS – GENERAL PROTECTION (SWQPA-GP) designated by the State Water Board to protect marine species or biological communities ~~protect or conserve marine life and habitat~~ from an undesirable alteration in natural water quality within State Marine Parks and State Marine Conservation Areas.

5. A Typographic Error Should Be Corrected

The revised Draft Amendment contains a typographic error that should be corrected prior to finalizing the document. This error can be found in Section 4.4, in which publicly-owned treatment works are referred to as “POWTs”. The correct acronym is “POTWs”.

In closing, the Associations thank you for the opportunity to comment on the draft SED and request that the proposed modifications to the revised Draft Amendment be incorporated into the final version that is proposed for adoption by the State Water Board.

Sincerely,



Roberta L. Larson
Director, Legal & Regulatory Affairs, CASA



Jacqueline Kepke
Vice-Chair, Tri-TAC



John Pastore
Executive Director, SCAP