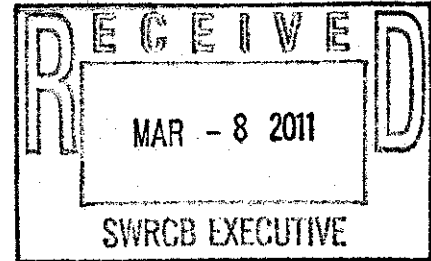




THE CITY OF SAN DIEGO

March 14, 2011



Electronic Delivery to commentletters@waterboards.ca.gov

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board,
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: **Comment Letter – Areas of Special Biological Significance (ASBS) Special Protections**

Dear Ms. Townsend:

The City of San Diego, Transportation & Storm Water Department (City) appreciates the opportunity to provide comments on this important issue. The City is committed to protecting the beneficial uses of our waters using the best available science and cost-effective approaches.

Since 2005, the City has been actively participating in ASBS workshops and meetings, and has funded efforts through the Bight '08 program and other initiatives to develop an approach based on best available science to protect the ASBS. We continue to conduct studies to better understand the specific conditions of the La Jolla ASBS. Based on these studies, we developed the Proposition 50 ASBS Watershed Management Plan (WMP) in collaboration with Scripps Institute of Oceanography (SIO), University of California San Diego. We initiated projects in accordance with the State Water Regional Control Board State Board (SWRCB) approved WMP, which uses a "weight of evidence" approach to identify and prioritize Water Quality projects.

This weight of evidence approach was based on key findings from studies conducted by SIO and the City, and findings and special studies conducted by the cities of Newport Beach and Laguna Beach. All of these scientific studies indicated that a weight of evidence approach utilizes the most cost effective resources available to protect and preserve the ASBS' beneficial uses. This approach is consistent with SWRCB policies, empirical results of state-funded studies, the Bight '08 program, and with discussions documented in SWRCB workshops over the last several years.



Transportation & Storm Water Department

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We would like to point out that the Draft ASBS Special Protections does not take this approach. The Special Protections focuses on meeting California Ocean Plan objectives prior to mixing with the receiving waters without an initial dilution zone as allowed in the Ocean Plan on Page 26. In addition, the City submitted comments to the SWRCB on March 15, 2010, in response to the Notice of Preparation of the Statewide Draft Environmental Impact Report (DEIR) regarding ASBS, which have not been addressed or incorporated into the DEIR (Section S.5.3) nor the ASBS Special Protections (Appendix 1 of the DEIR). Our comments appear to have been completely disregarded, and approving this document as written will cause the City to expend funds in the ASBS without consideration of other water quality concerns in our jurisdiction.

The City is requesting the following inconsistencies in the Draft ASBS Special Protections (Appendix 1 of the DEIR) be addressed to meet the SWRCB goals:

1. The basis for the compliance targets in the Special Protections does not reflect the results of the recent monitoring studies conducted by ASBS responsible parties and the SWRCB, and is not based on the best available science. The two regulatory thresholds described in the Special Protections (i.e., end of pipe water quality must meet Ocean Plan (Table B) water quality objectives, and receiving water quality must be less than the 85th percentile of reference conditions) are not supported by the studies conducted to date. Additional studies are needed to properly define natural water quality, and the potential impacts to the ASBS from storm drain effluent. The requirement to meet Ocean Plan water quality objectives in end of pipe effluent prior to the mixing zone is completely unsubstantiated by the studies conducted to date. Site-specific studies are needed to properly define natural water quality and to understand the potential impacts of storm water runoff on the beneficial uses of the ASBS.
2. The requirement to meet Ocean Plan (Table B) water quality objectives at the end of the pipe prior to mixing with the ocean receiving water (Section 2.d of the Special Protections) is in conflict with the Ocean Plan. Under Implementation Provisions for Table B (Section III.C.2 of the California Ocean Plan), it states that "*effluent limitations shall be imposed in a manner prescribed by the SWRCB such that the concentrations set forth below as water quality objectives shall not be exceeded in the receiving water upon completion of initial dilution...*", where initial dilution is defined as "*the rapid and irreversible turbulent mixing of wastewater with ocean water around the point of discharge.*" Applying Ocean Plan standards to end of pipe effluent from storm drains is inconsistent with the California Ocean Plan, does not address the beneficial uses of the receiving waters, and will impose a significant financial burden on the responsible parties without a clear benefit to the biota in the ASBS.
3. Monitoring and Best Management Practices (BMP) Implementation guidelines proposed in the Draft ASBS Special Protections represent an unfunded mandate for responsible parties, and will impose a significant financial burden on municipalities and other entities in the region.

4. Special Protections Provision A.1.b. states, "*discharges composed of storm water runoff shall not alter natural ocean water quality in the ASBS.*" However, authors of the Summary of Findings of the State Board approved Natural Water Quality Committee (Appendix 8 of the DEIR) state in their conclusions that "*it is too early to tell if there are impacts of waste discharge to marine species and communities.*" Furthermore, they acknowledge that "*In order to avoid significant expenditures that do little to protect ASBS, an assessment of existing and potential anthropogenic influences on each ASBS should be conducted.*" In addition, they state that "*Further work needs to occur for quantitatively defining natural water quality.*" The City agrees with the findings of the SWRCB's appointed Natural Water Quality Committee, and recommends conducting further studies to identify controllable anthropogenic impacts to the ASBS before compliance targets are established.
5. The four-year timeline to meet reduction goals as defined in the Draft ASBS Special Protections conflicts with the Proposition 13 grants' authorized Watershed Management Plans, which have implementation schedules. These approved plans set a timeline for a phased and tiered approach that addresses sources and implements cost effective pilot projects to reduce impacts. Additionally, the four-year timeline is not consistent with the time required to site, design, permit (CEQA, Coastal Commission permitting, etc.), and implement structural treatment solutions to ultimately meet the Ocean Plan's water quality goals. The EIR does not address the potential impacts from the installation of structural BMPs that would be required to meet the reduction goals.
6. The immediate exemption of dry weather non-point sources is inconsistent with the recent NPDES Permit requirements. For example, dry weather flow prohibition shall be addressed through a program that can cost effectively identify the sources of these flows, and prioritize actions to practically achieve this goal over the long-term. Other uncontrollable sources include aerial deposition, naturally occurring groundwater, and US Environmental Protection Agency and the California Department of Pesticide Regulation authorized pesticides. The immediate exemption of dry weather flows (even if treated) is also unreasonable since potential impacts of dry weather flows have not been determined.
7. The majority of discharges to the La Jolla ASBS identified by the SWRCB were from private properties, such as weep holes in structural foundations that are not connected to the City's storm drain system. These pipes discharge directly onto the beach and are not under the authority of the City.
8. The monitoring and regulatory compliance targets for ASBS are inconsistent with other regulatory requirements that affect the ASBS, such as the Marine Life Protection Act (MLPA). Duplicative monitoring and BMP implementation to support multi-agency regulations is an inefficient use of our limited resources. The City supports coordination of monitoring and efforts among the agencies responsible for maintaining the health of the ASBS to ensure that the beneficial uses are protected with a cost effective and coordinated approach.

9. The ecological analysis comment (Page 302) was based only on grassy swales; therefore, is underestimated. It is unacceptable to base compliance conditions on the review of a grant application cost, and not all requirements to meet water quality objectives. We recommend performing a complete analysis, considering at a minimum the WMPs components approved by the SWRCB.
10. The City recognizes the importance of protecting the ASBS beneficial uses and supports collecting additional data to comply with the recommendations in Appendix 8 to further define water quality.

We do not support the numerous inconsistencies in these draft regulations that impose end of pipe treatment solutions that are not substantiated by the weight of evidence from the scientific studies to date. This proposed approach will require high capital costs with maintenance solutions that will result in the expenditure of limited public funds on efforts that will likely result in a low return on investments in meeting the ASBS protection goal when applied to all outfalls. Continued public support for these programs will require demonstration that public monies are being used cost-effectively with proven benefits.

The four-year timeline to meet reduction goals defined in the Draft ASBS Special Protections conflicts with the State approved WMP. These approved plans set a timeline for a phased and tiered approach that addresses sources and implements pilot projects in the initial phase to reduce impacts cost effectively using a weight of evidence approach. Based on numerous policy inconsistencies, proposed time lines, exclusion of studies, and CEQA concerns, the City recommends that timelines be extended, which will also allow for integration with the Marine Life Protection Act requirements, and the completion of natural water quality studies.

The Federal Clean Water Act (CWA) requires the development of an Ocean Plan; however, there are no requirements regarding the development of Areas of Special Biological Significance. Therefore, the Draft ASBS Special Protections regulations may constitute an unfunded mandate that will require the State to reimburse the City and other municipalities to comply with these requirements.

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The City is not advocating inaction, but is instead asking for consistency in regulations and a reasonable timeline through the best available science and prioritization to improve water quality of our ASBS. If you have additional questions, please contact Ruth Kolb at (858) 541-4328 or Edith Gutierrez at (858) 541-4361.

Sincerely,



Kris McFadden
Deputy Director

KM/rk

cc: Ruth Kolb, Program Manager
Edith Gutierrez, City Associate Planner
Drew Kleis, City Program Manager
Fritz Ortlieb, Deputy City Attorney
Brent Eidson, Water Policy Advisor