



## THE CITY OF SAN DIEGO

March 15, 2010

Electronic Delivery: [csanderson@waterboards.ca.gov](mailto:csanderson@waterboards.ca.gov)

Constance Anderson, Environmental Scientist  
State Water Quality Control Board,  
Division of Water Quality, Ocean Unit  
P.O. Box 100  
Sacramento, CA 95812-0100

Dear Ms. Anderson:

**Subject:** Review and Comment - Notice of Preparation of a Statewide Environmental Impact Report (EIR) for a General Exception to the California Ocean Plan Waste Discharge Prohibition for Selected Discharges into Areas of Special Biological Significance (ASBS) - February 4, 2010

The City of San Diego (City) Storm Water Department appreciates the opportunity to provide comments on this regionally important referenced document. The City is committed to protecting the beneficial uses of our creek, bays, and beaches using sound science and cost-effective approaches. Resources to protect these vital assets need to be directed prudently toward addressing the ecological health of the coastal ecosystem protected in the ASBS.

The City has been actively participating in workshops/meetings since 2005 and has funded efforts through Bight '08 program in order to develop an approach based on sound science to protect the ASBS. The City conducted numerous studies to better understand the specific conditions of our ASBS. Based on the results of these studies, we have developed the Proposition-50 funded ASBS watershed management plan (WMP) in collaboration with Scripps Institute of Oceanography (SIO). The City has initiated projects in accordance with this state approved WMP which uses a "weight of evidence" approach to identify and prioritize ASBS protection projects.

This weight of evidence approach is based on key findings from studies conducted by the City and SIO, the preliminary findings of the Bight '08 program and special studies conducted by the cities of Newport Beach and Laguna Beach. All these scientific studies indicate that a weight of evidence approach, focusing on impacts to the biological community, uses available resources most effectively to protect and preserve ASBS. This approach is consistent with State Board policies, empirical results of state-funded studies and the Bight '08 program, and with



### Storm Water Department

9370 Chesapeake Drive, Suite 100, MS 1900 • San Diego, CA 92123  
Hotline (619) 235-1000 Fax (858) 541-4350

discussions documented in State Board workshops over the last several years. The Draft Special Protections, however, does not take this approach.

The City and other ASBS dischargers have provided substantial resources to fund these special studies, and yet none of the results have been included in the Draft Special Protections. These studies have focused primarily on monitoring conducted in the receiving waters that include chemical, toxicological, and biological measures. However, the language in this Draft Special Protections regarding receiving water monitoring (page 15) was not changed from the March 2008 draft. The disregard for this high quality, focused, regional data that was designed specifically to address ASBS regulatory compliance is unacceptable. The data collected in these studies is currently being analyzed and reports are scheduled to be presented by June 2010. The City insists the State Board wait until the results have been thoroughly assessed before going forward with the Special Protections. Approving the document in its current form wastes financial resources, and undermines a regional commitment to protecting coastal resources.

The Draft Special Protections is not consistent with the scientific studies and spirit of the Bight '08 Regional Monitoring Workgroup, California Ocean Plan, and the La Jolla Shores Coastal Watershed Management Plan. In addition, these inconsistencies are in conflict with the State Board's own Strategic Plan Update 2008-2012 (September 2, 2008). Specifically, in order to advance Organizational Performance (page 30), the Strategic Plan states what the Water Boards can do in the next five years:

“Water Boards will target areas where consistency has been raised as a concern, initiate actions to achieve warranted consistency, and ensure that these improvements are implemented.”

It further states the goal of the Water Boards:

“Enhance consistency on an ongoing basis, to ensure our processes are effective, efficient and predictable and to promote fair and equitable application of laws, regulations, policies, and procedures.”

The City is requesting the following inconsistencies in the Draft Special Protections be addressed to meet the State Board's goals as presented in the Strategic Plan:

1. The basis for the Draft Special Protections does not consider scientific studies conducted under Bight '08 and State Grant-funded projects.
2. The document does not use a weight of evidence approach that was developed and approved by the State Board for Estuaries and Embayment's Bay Protection and Toxic Cleanup Program which requires toxicological and biological assessments of potential impacts in addition to water and sediment quality.

3. The requirement to meet Ocean Plan (Table B) water quality objectives at the end of pipe (prior to mixing with the ocean receiving water) is in conflict with the Ocean Plan, which requires compliance in the mixing zone where "initial dilution is completed".
4. The four year timeline defined in the Draft Special Protections to meet reduction goals conflicts with the Watershed Management Plans (prepared using State Grant Funds and Approved by the State Board) which have set out Implementation Schedules. 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.
5. The four year timeline is not achievable or consistent with current environmental permitting regulations and physical constraints in our coastal areas particularly in Southern California. Additionally, the 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 stated water quality goals. Furthermore, the EIR does not address the potential impacts from the installation of structural BMPs to meet the reduction goals.
6. The document is inconsistent with recent TMDLs which include exemptions for sources that are not controllable by municipalities that include aerial deposition, naturally occurring groundwater, and approved regulated pesticides (e.g., synthetic pyrethroids, which are regulated by the California Department of Pesticide Regulation).
7. The exemption of dry weather non-point sources is inconsistent with the recent NPDES Permit and TMDL 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.

The City is insistent that the findings of the State-supported scientific studies compiled over the past five years be the foundation for the Special Protection. These findings are the basis for ASBS watershed management plans that present specific projects to address the high priority impacts to the ASBS that are often site-specific. The steps required to achieve the ultimate goal of protection and preservation of the biological resources are currently underway in accordance with the State-approved La Jolla Shores Coastal WMP. These include source control studies, aggressive street sweeping, low impact development, infiltration and filtration BMPs, dry weather diversions, and targeted commercial inspections and education programs.

The City cannot support the numerous inconsistencies of the draft regulations that impose end of the 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 and 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. Justification of ASBS protection

projects require consistency in requirements with success based on defined measurements. These measurements need to be based on a weight of evidence approach that links to the Ocean Plan's goal of the protection and preservation of the biological resources in the ASBS. A program that is based on the end of pipe treatment solutions does not achieve this goal in the interest of effective use of public funds.

The four year timeline defined in the Draft Special Protections to meet reduction goals conflicts with the State-approved WMP and the State-wide integrated multi-pollutant TMDL implementation schedule requirements. Consistency with these approved plans and TMDL implementation timelines will require modification to a 20-year timeline, which have set implementation schedules. 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. Effectiveness of these BMPs is measured against specific metrics tied to reductions in the impacts to the ASBS be prioritized using a weight of evidence approach. The City has been working with SIO and the cities of Newport Beach and Laguna Beach in further developing these assessment tools on non-structural and structural projects that are underway. The State should support these collaborative efforts to develop a metric for ecological assessment to demonstrate to the public that their monies are being used cost effectively in achieving the goal of the Ocean Plan.

The City insists that the Draft Special Protections regulations must address the inconsistencies outlined in this letter to meet the requirements of the Strategic Plan. Specifically, the requirements to meet Ocean Plan Table B criteria at the end of pipe, and not in the receiving water mixing zone, is inconsistent with the State's own program approach and needs to be modified. Furthermore, the timeline of four (4) years to meet the end of point requirement needs to be modified to a 20-year period consistent with integrated TMDL requirements throughout the state.

Furthermore, the proposed Draft Special Protections regulations meet the requirements of an unfunded mandate by the State of California. The federal Clean Water Act (CWA) requires the development of an Ocean Plan; however, there are no requirements regarding the development of Area of Special Biological Significance. The Draft Special Protections beyond the federal requirements constitute an unfunded mandate that would require the State to reimburse the City and other municipalities to comply with these requirements.

Based on numerous policy inconsistencies, proposed time lines, exclusion of studies and CEQA concerns, the City has referred the Draft Special Protections regulations to our City Attorney for a legal opinion.

The City is not advocating in-action as is well demonstrated by the multiple projects underway in accordance with the approved Watershed Management Plan. The City is asking for consistency in regulation and reasonable time to assure we are truly providing the public with a return on their investment through sound science and prioritization to those stressors that are impacting our ASBS.

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Constance Anderson, Environmental Scientist  
March 15, 2010

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

Enclosure: City San Diego Comments on Special Protections for ASBS

cc: Ruth Kolb, Program Manager  
Edith Gutierrez, City Associate Planner  
Drew Kleis, City Program Manager  
Fritz Ortlieb, Deputy City Attorney  
Charles R. Hoppin, SWQCB Chair  
Frances Spivy-Weber, SWQCB Vice Chair  
Dorothy R. Rice, SWQCB Executive Director  
Arthur G. Baggett, Jr., SWQCB member  
Tam M. Doduc, SWQCB member  
Walter G. Pettit, SWQCB member

CITY OF SAN DIEGO COMMENTS ON SPECIAL PROTECTIONS FOR AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE			
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<b>Statewide Program Environmental Impact Report</b>			
			<p>General Comment.</p> <p>Full compliance with the Draft Special Protections (Attachment A of the Program EIR) will likely require construction of substantial BMPs. In many coastal locations, infiltration or reuse will not be viable. The remaining options are storage and treatment or diversion around the ASBS to new discharge locations or pumping to inland disposal locations. The environmental impacts of full compliance will be substantial, including cumulative impacts along the entire coast. We request that the EIR examine these impacts to the coastal environment that will likely be required to achieve full compliance with the Draft Special Protections.</p>
<b>I. Provisions for Point Source Discharges of Storm Water and Nonpoint Source Waste Discharges</b>			

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A	B-2	Section A.1.b.	<p>“Discharges composed of storm water runoff shall not alter natural ocean water quality in the ASBS.” In the Glossary for Attachment A, “natural water quality” is defined as the water quality that is required to sustain marine ecosystems, and which is without apparent human interference. Dischargers “shall not alter natural ocean water quality” as determined by a comparison to the range of constituent concentrations in reference areas agreed upon via the regional monitoring program.</p>	<p>The City of San Diego (City), along with numerous municipalities in southern California and the State Water Resources Control Board (State Board), has been an active participant in the Bight '08 Regional Monitoring Workgroup since 2005 and has committed substantial resources in helping to define natural water quality. The range of constituent concentrations in reference areas, based on monitoring conducted by the Bight '08 Regional Monitoring Workgroup, has not yet been thoroughly analyzed, and the natural water quality committee, established by the State Board, has not yet defined “natural water quality”. It is premature for the State Board to regulate discharges based on standards that have not yet been defined. In addition, Sub-section A.2.d of Section A requires that storm water discharges a the end of pipe meet Ocean Plan Standards in addition to the natural water quality requirement in Section A.1.b. These provisions require that dischargers meet two different standards (ocean plan and natural water quality), one of which has not yet been defined. The City of San Diego strongly recommends that the State Board postpones publication of the Draft Special Protections until the empirical data collected by the Bight '08 workgroup has been analyzed and natural water quality has been clearly defined.</p>

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A	B-2	Section A.2.v	"naturally occurring groundwater seepage via a storm drain" are allowed.	The City supports naturally occurring seepage via storm drains as an allowable non-storm water discharge. Please include natural seepage from hillsides as an additional allowable discharge. In addition, Sheet flow – This term is defined as: "Runoff that flows across land surfaces at a shallow depth relative to the cross-sectional width of the flow. These types of flow may or may not enter a storm drain system before discharge to receiving waters." Our understanding is that sheet flow that enters a MS4 becomes a point source discharge. "Uncollected" sheet flow is a nonpoint source discharge and does not require an NPDES permit. The definition should be clarified.
A	B-3	Section A.2.d	"BMPs to control storm water runoff discharges (at the end-of-pipe) during a design storm shall be designed to achieve the following target levels: Table B Instantaneous maximum water quality Objectives in Chapter II of the Ocean Plan; or a 90% reduction in pollutant loading for the Table B parameters during storm events."	The City of San Diego disagrees with installing BMPs to control storm water runoff discharge (at the end of pipe) to achieve Ocean Plan Water Quality Objectives (or 90% load reductions), based on the following: The proposed regulation does not take the accepted "weight of evidence" approach that is used for existing NPDES Storm Water Discharge permits, bay and estuaries protection programs and the current Bight '08 program. This approach considers not only water chemistry, but also toxicity and benthic impacts to determine actions. The current draft document focuses solely on the end of pipe water chemistry to determine compliance. The focus of the Bight '08 studies conducted over the last three years has been to assess the potential impacts to the ASBS by comparing ocean receiving waters at the discharge to ocean receiving waters at reference sites. The focus in the Draft Special Protections on meeting Ocean Plan standards at the end of pipe effectively



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				<p>negates these efforts.</p> <p>The exclusive focus on water chemistry at the end of pipe is inappropriate, since the Bight '08 studies, designed by the State Board, SCCWRP, and funding partners have focused on receiving water biology and toxicity, as well as water chemistry. The draft document has not taken this approach, nor considered the results of these studies, which were funded by substantial resources from the dischargers.</p> <p>The proposed regulations need to be consistent with the original intent of the regulations and significant scientific data that has been assembled over the past 5-years. In addition, requiring storm water discharges at the end of pipe to meet Ocean Plan Table B objectives is inconsistent with the California Ocean Plan and the state-approved QAPP for regional monitoring of the ASBS.</p> <p>The City recommends that the State Board be consistent with its own policies regarding sample location, initial dilution, and mixing zones, and establish the point of compliance within the ocean receiving waters as required by the Ocean Plan and other state-approved documents.</p> <p>The California Ocean Plan states that compliance with Table B water quality objectives shall be determined from samples collected where initial dilution is complete (page 4, Section II.A.3), when discharge water mixes with ocean water to a point where significant mixing ceases. The state-approved QAPP for the ASBS regional monitoring program also states that samples will be collected from the ocean at the point of discharge (page 16, Section 10).</p>

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				<p>Finally, the Draft Special Protections document lacks the Consistency as well as the Transparency and Accountability identified as integral components to Advancing Organizational Performance in the State Board's Strategic Plan (Strategic Plan Update 2008-2012, Adopted September, 2, 2008).</p>
A	B-3	Section A.2.d(2)	<p>Last paragraph states: "The baseline for these determinations is the effective date of the exception, and the reductions must be achieved and documented within four (4) years of the effective date."</p>	<p>Four years is an insufficient amount of time to reduce constituent concentrations in storm water effluent at the end of pipe to Ocean Plan Table B levels. Permitting and building the needed treatment/diversion facilities in constrained coastal zones in 4 years may be impossible due to CEQA requirements, Coastal Commission permitting, and the need to secure funding. New (non-ASBS) discharge locations may be difficult to permit because of non-degradation requirements.</p> <p>The City recommends consistency with the La Jolla Shores Coastal Watershed Management Plan, which was supported through voter-approved Proposition 50 funding and approved by the State Board in January, 2008. The Management Plan details a phased and tiered approach to BMP implementation in the ASBS over a twenty-year timeframe that was approved by the State Board and is currently underway.</p>

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A	B-4	Section A.2.e	The following language regarding sediment is unclear: "The SWMP of SWPPP shall address erosion control and the prevention of anthropogenic sedimentation to ASBS."	Please define "anthropogenic sedimentation" to include sources of sediment derived from human sources that would not otherwise enter the ASBS. Natural sources of sediment (e.g., from canyon erosion near the tops of sub-drainages) should be allowable as they are important for beach sand replenishment, even when conveyed to the ASBS via the MS4.
A	B-4	Section A.2.f	The use of natural water quality is unclear.	As stated above, natural water quality has not yet been defined by the natural water quality committee established by the State Board. The City recommends that approval of the draft special protections be postponed until the State Board has defined natural water quality.
A	B-4	Section A.2.f	A newly added requirement is: The SWMP or SWPPP shall include non-structural BMPs that address public education and outreach. Education and outreach make it a recommendation that the public is adequately informed that direct waste discharges from private property not entering an MS4 are prohibited.	It is unclear what the scope of this education and outreach program should be. In addition, we disagree that dischargers should have the responsibility to educate private property owners that discharge direct into ASBS.
A	B-4	Section A.2.h(1) and (2)	The reporting of natural water quality is unclear.	The text requires the discharger to identify the constituents in storm water runoff that alter natural water quality. Natural water quality has not yet been defined, precluding the identification of specific constituents in the discharge that may differ from it. The City supports the identification of constituents that alter natural water quality in the ASBS, but will be unable to do so until specific constituent concentrations characterizing natural water quality have been defined by the State Board and the Bight '08 regional monitoring workgroup.

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A	B-5	Section A.3.a	Prohibition of dry weather flows by the date of the exception is unreasonable.	The City supports the prohibition of dry weather flows to the ASBS, but eliminating all dry weather sources by the date of the exception is unreasonable in some cases. The Special Protections should be consistent with the recent NPDES Urban Runoff Permits in southern California, which include an exception for dry weather flow originating from natural groundwater seepage that is conveyed via the MS4. Determining the extent to which MS4 flows originate from natural ground groundwater seepage requires a source investigation and appropriate elimination of non-natural flows. Please revise the text to allow two years following the date of exception for eliminating dry weather flows to allow for this process to take place.
A	B-5	Section A.3.(e)	The text states that, "within four years of the effective date of the exception, all dischargers must comply with the requirement that their discharges into the affected ASBS maintain natural water quality."	As stated above, the City feels that four years is an insufficient amount of time to implement the necessary BMPs. In addition, as stated above, natural water quality has not yet been defined and the specific standards for comparison have not yet been identified. The City also requests that the Special Protections include a statement that dischargers are not responsible for sources that are out of their jurisdictional control (which include aerial deposition from brake pads, state-regulated pesticides, and natural groundwater seepage). These exemptions are consistent with the other NPDES permits in the region (e.g., the Riverside NPDES Permit).

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B	B-7	Section B.1.e.(2)(v)	The text indicates that naturally occurring groundwater seepage via a storm drain is allowable.
<p style="text-align: center;"><b>Comments/Proposed Changes</b></p> The City agrees that groundwater seepage should be allowable via storm drains. Appropriate groundwater flows are crucial for proper drainage, hillside stability, and environmental equilibrium. Based on this reasoning, an additional exception should be explicitly granted for groundwater that enters the ASBS directly from natural seeps (i.e., not conveyed via storm drains). Please add an additional bullet for this important exception.			
<b>II. Additional Requirements for Parks and Recreation Facilities – No Comments</b>			
<b>III. Additional Requirements for Waterfront and Marine Operations – No Comments</b>			
<b>IV. Monitoring Requirements</b>			

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			General comment.	The City of San Diego along with numerous other dischargers to ASBS throughout southern California, and regional and State Water Resources Control Board representatives have committed substantial time and financial resources in monitoring the ASBS and reference sites over the past five years. These monitoring studies were designed to help establish clear benchmarks for ASBS discharges based on empirical studies conducted by the dischargers and approved by the State Board and environmental NGOs. The data collected from the monitoring are critical in defining "natural water quality", and assessing the impacts to ASBS based on chemical, toxicological, and biological endpoints. The empirical data collected from these studies is currently being analyzed, but has not yet been thoroughly assessed (see attached presentation from the latest workgroup meeting on February 23, 2010).  It is unacceptable that none of the information collected in these studies has been incorporated into the Draft Special Protections. The City insists that the State Board to incorporate the information from the studies, which the State Board staff designed and approved, into the Draft Special Protections.
Introduction	B-12	Last paragraph	The text indicates that all constituents must be analyzed using the lowest minimum detection limits comparable to the Ocean Plan water quality objectives.	The City supports the use of low detection limits described in the SWAMP protocols, however, in some cases the low detection limits cannot be achieved by any local commercial laboratories. The City recommends inserting the words "available from local laboratories" after "...the lowest minimum detection limits..." in the last paragraph of the page.
A	B-13	Section A.2.a.	The text states that runoff flows must be measured or calculated, using a method acceptable to and approved by the board.	Please provide examples of flow calculations acceptable to the State Board.

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A	B-13	Section A.2.b.	Runoff will be reported annually.	The City supports annually reporting, as stated in the text, rather than quarterly reporting identified in the previous draft.
A	B-13	Section A.3.a.(1) and A.3.b.(1)	Indicator bacteria are identified to be monitored, but the specific bacteria are not identified.	Please identify the specific indicator bacteria to be monitored.
A	B-13	Section A.3.b.(2)	In addition to Table B constituents, monitoring of PAHs, OP pesticides, pyrethroids, nitrates, and phosphates is required. Since water quality objectives for these constituents are not identified in the Ocean Plan, it is unclear what levels of these constituents will be used for compliance.	Please indicate how the constituents not listed in the Ocean Plan will be used for compliance of the Special Protections.  In addition, the regulation of legal pesticides, such as synthetic pyrethroids, is under the jurisdiction of the California Department of Pesticide Regulation. Although the City can implement education efforts to better manage their application, the City has no jurisdiction in the banning of these chemicals to ultimately meet the requirements of the Special Protections as currently written.
B	B-15	Section B.2.	General comment.	The text for Section B.2 (Regional Integrated Monitoring Program) is identical to the Draft Special Protections of March 3, 2008. Since at least 2006, the Bight '08 Regional Monitoring Workgroup (composed of representatives from municipal dischargers, SCCWRP, Regional and State Boards, and environmental NGOs) have participated in monitoring exercises to gather data from ASBS and reference sites throughout southern California. The data include chemical, biological, and toxicological measures of receiving water conditions, designed to provide multiple lines of evidence of the potential impacts to the ASBS and to assist the Natural Water Quality Committee in defining natural water quality, which is a crucial regulatory feature of the new Draft Special Protections. The data from multiple years of studies is currently being analyzed and expected to be reported to the State Board by June, 2010 as in the Regional Monitoring Workgroup meeting on February 26,

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				<p>2010.</p> <p>Unfortunately, the new Draft Special Protections currently under public review is nearly identical to the draft version presented in March, 2008 and does not include any of the important studies conducted by the workgroup over the last several years. The omission of this data from the Draft Special Protections prohibits an accurate depiction of the potential impacts to the ASBS receiving waters, eliminates the crucial biological and toxicological lines of evidence gathered in these studies, and leaves the critically important definition of natural water quality open to broad interpretation. The City strongly recommends that the data collected by the workgroup over the last several years be included in the new Draft Special Protections.</p> <p>In addition, the language Section B.2, as written, is directed at gathering general information on Ocean water, sediment, and biota, and not for compliance purposes. It is not appropriate to require MS4s to implement extensive monitoring which is essentially research-oriented and not needed to determine implementation of permit limitations.</p>