THE CITY OF SAN DIEGO

August 15, 2006

VIA: UNITED STATES MAIL
FACSIMILE TO (916) 341-5620
EMAIL commentletters@waterboards.ca.gov

Song Her
Clerk to the Board, Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: "California Ocean Plan, Areas of Special Biological Significance (ASBS): Special Protections to Address Storm Water and Nonpoint Source Discharges"

Thank you for the opportunity to comment on the proposed ASBS Special Protections. The following is attached for your consideration:

1. Emphasis on Water Quality Instead of Marine Life Habitat Quality

ASBS represent 'those areas containing biological communities of such extraordinary value that no risk of change in their environment as the result of man's activities can be entertained'. The City of San Diego supports ASBS protection and the concept of an exception process to the ASBS waste discharge prohibition into and believes that a legitimate goal of exceptions should be to ensure that no change to the ASBS biological environment occurs. The City is concerned that the proposed Special Protections emphasize water quality as opposed to marine life habitat quality objectives. While the City recognizes that the ASBS designation is a water-quality designation, the proposed special protections should reflect a greater focus on protection of biological communities and ecosystem integrity.

For example, under the heading "General", the City believes that the emphasis in basic requirements 2 and 3 could be switched, such that the special protections require "monitoring of natural water quality" and "maintenance of marine aquatic life…[and]…beneficial uses" rather than "maintenance of natural water quality" and "monitoring of marine aquatic life…[and]…beneficial uses.

DIVERSITY

Storm Water Pollution Prevention Program
1970 B Street, MS 27A • San Diego, CA 92102
Hotline (619) 235-1000 Fax (619) 525-8641

While this may require revisions to regulations, such as the Ocean Plan, it better achieves the original goals of the ASBS designations. Conversely, while defining and not altering natural water quality could and perhaps should be one component in protecting ASBS, defining natural water quality, determining where to measure it, and when to measure it are quite problematic. By developing appropriate measurements of biological indicators (e.g. incorporating existing regional integrated monitoring programs, reaching consensus on technically defensible and measurable site specific endpoints a more complete and implementable policy that is protective of marine aquatic life and beneficial uses will be achieved. As leaders in ASBS protection efforts, SIO, The City of San Diego, and Coastkeeper are currently working towards developing management tools to monitor and assess impacts on ASBS ecosystems.

2. Monitoring Requirements

Monitoring requirements should be revised to reflect a scientific method to achieve regulatory goals. While it might be appropriate to require some level of baseline 'characterization' monitoring throughout the exception period (if the State believes that adequate baseline characterization did not occur as part of the exception application), additional flexibility should be built into the special protections to allow dischargers to shift focus to other monitoring needs (e.g. BMP effectiveness monitoring for identified pollutants of concern, generation of pollutographs to evaluate diminishing returns) to ensure limited resources are properly allocated. The SWRCB should develop guidelines that detail when an ASBS has been adequately characterized and what other types of monitoring should be allowed to augment the initial characterization.

In order to fully comment on the proposed monitoring requirements, we request that the state provide the explicit monitoring goals that have been used as the rationale for the requirements.

A dilution factor should be utilized when comparing outfall data to Ocean Plan numeric targets. Similarly, consideration should be given for the residence time in the ASBS of pollutants in storm water. The characteristics of storm water are quite different from the characteristics of sewage in this regard.

The Special Provisions should not refer to the "lowest minimum detection limits". If SWAMP reporting and detection limits are to be the guide, then those limits should be utilized.

As noted in the City's exception application, the City suggests that the State Board not move forward with establishing exception conditions associated with monitoring until the Bight '08 protocols are discussed.

3. Natural Water Quality and the Reference Stream Concepts

The requirements to determine natural water quality are insufficient. The draft policy requires sampling from only one reference stream per Region to establish natural water quality.

Such a small sample size gives no assurance that the reference points will actually represent natural water quality in any given ASBS. In comparison, SIO uses at least four reference monitoring locations in order to determine natural water quality. In addition, while it is clear that the proposed special protections are not designed to address impacts on natural water quality from sources other than storm water in the immediate vicinity (recreationalists, current-transported pollutants from off-site sources), it may be unrealistic to think that eliminating storm water impacts from outfalls in the immediate vicinity could result in attainment of natural water quality.

Decisions regarding impacts to natural water quality must be based on the scientific consensus established by the Natural Water Quality Committee, not a comparison of discharge results to a reference station that may not be scientifically comparable. The State should "stay-the-course" on their natural water quality initiative and not attempt to use a separate process to define natural water quality. If the Committee can not develop a definition, then a better metric may need to be developed (such as biological indicators as discussed in the first point above).

4. Implementation Schedule

The implementation schedule should be extended to consider sound scientific and engineering practices to ensure resources are spent on effective BMPs that will meet the overall objective of ASBS protection. The Time Schedule Order requirement should be based on the percent removal of pollutants of concern by BMP (identified through effectiveness monitoring), not the proposed overall concentration reduction schedule that does not consider available and/or feasible technology. A five-year schedule does not allow for an iterative approach to reducing pollutant loading.

With regard to the Time Schedule Order in terms of low flows, while the City of San Diego currently diverts approximately 80% of low flows from the La Jolla ASBS watershed; it is estimated that four years are needed to design and build an additional five diversions that would result in the diversion of over 98% of the low flows in the ASBS watershed.

In view of the reasonably foreseeable possibility that dischargers will need to construct structural Best Management Practices ("BMPs", see G. Fred Lee and Anne Jones-Lee, "*Stormwater Runoff Water Quality Newsletter Devoted to*

Urban/Rural Stormwater Runoff Water Quality Management Issues", Volume 9, Number 6, June 27, 2006) in order to reduce pollutants to the levels required by the Special Protections, the Special Protections should specify a design storm in order to assist the dischargers in designing the BMPs. An appropriate standard could be the 85th percentile storm established in the City's Standard Urban Storm Water Mitigation Program (SUSMP).

5. Storm Water Management Plans/Storm Water Pollution Prevention Plans

The paragraph at the bottom of page 10 seems out of place as it is in the middle of the discussion regarding requirements for Storm Water Management Plans.

The Special Provisions should include a statement as to whether a Regional Board's decision to deny, or approve only with modifications, the items identified as being subject to its approval (e.g., reference stream designation, Storm Water Management Plans, etc.) can be appealed to the State Board.

The Special Provisions should include an alternative inspection strategy which could provide dischargers the opportunity to inspect construction sites and businesses prior to rather than during the rainy season.

Please clarify the requirements, if any, for dischargers and Regional Boards to enforce the prohibition of small storm water discharges from private properties (e.g., adoption of ordinances, issuances of citations, etc.). Discussion at the Los Angeles workshop indicated that education was satisfactory; however, the expected level of effort associated with "work[ing] with individual dischargers" should be clarified along with a description of what entity is responsible for ensuring compliance with this provision. In particular, there may be individual, small, storm water dischargers within the land use jurisdiction of the City of San Diego but who discharge into ASBS 31, where Scripps Institution of Oceanography holds the discharger exception.

6. California Environmental Quality Act Compliance

Notwithstanding the possibility that the adoption of the Special Provisions may be a "Certified Regulatory Program", but believing the adoption to constitute a "Rule" or "Regulation", the City believes that it is incumbent upon the State to include, in a CEQA document, the following:

- an analysis of the reasonably foreseeable environmental impacts of the methods of compliance,
- an analysis of reasonably foreseeable feasible mitigation measures, and
- an analysis of reasonably foreseeable alternative means of compliance with the rule or regulation

and other requirements in accordance with Section 21159 of the State Public Resources Code. In accordance with case law, the baseline for any environmental analysis should be the conditions on the ground (and in the water) as they exist today.

The City submitted alternative means of compliance with its exception application and suggests that the State use those, along with alternative means suggested by other dischargers, as a starting point for evaluating the environmental impacts associated with implementing the Special Provisions.

Thank you once again for the opportunity to comment. If you have any questions about these comments, please contact me at (619) 525-8644.

Sincerely,

Chris Zirkle
Deputy Director, City of San Diego
Storm Water Pollution Prevention Program