

## California Stormwater Quality Association

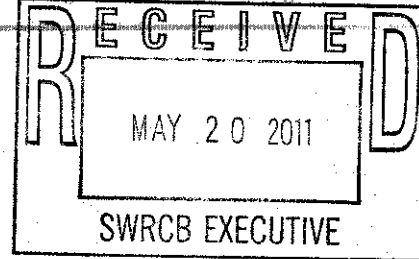
*Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation*

Public Hearing (5/18/11)  
ASBS Special Protections  
Deadline: 5/20/11 by 12 noon

May 20, 2011

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

By email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)



### **Subject: Comment Letter – ASBS Special Protections and General Exception**

The California Stormwater Quality Association (CASQA) appreciates this opportunity to provide comments on the proposed General Exception, including Special Protections, for discharges into Areas of Special Biological Significance (ASBS) and the draft Program Environmental Impact Report (PEIR). CASQA has already extensively commented over a number of years on this matter, convened a stakeholder workshop, and developed and proposed credible alternative management strategies<sup>1</sup>. We acknowledge that modifications have been made to the Special Protections that address many of the concerns of dischargers. However, the basic infeasibility of what is being asked of dischargers to ASBS is not being acknowledged and our fundamental concerns remain unresolved.

The policy as drafted will place municipalities with stormwater discharges to ASBS in non-compliance with:

- The requirement to attain “natural” water quality in the ASBS
- The end-of-pipe effluent limits based on Table B of the California Ocean Plan
- The immediate ban on dry weather flows

We believe that the treatment and control facilities necessary to move toward compliance will be prohibitively expensive and not within the means of most municipalities. For some parameters the technology to achieve compliance does not exist. We also believe the costs will far outweigh any potential benefits to the environment. The major issues are discussed below.

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<sup>1</sup> CASQA's latest comments were submitted March 15, 2010. Other CASQA comment letters and testimony are in the record.

## Major comments

### 1. *Prohibition of discharge*

As we have recommended in past comments,<sup>2</sup> we believe the Ocean Plan needs to be amended to remove the absolute prohibition on discharge. Amending the Ocean Plan would eliminate the administratively awkward approach of issuing exceptions for every discharge, subject to triennial review. The provisions necessary to protect ASBS would be included directly in discharge permits or waivers. We refer to the approach proposed by State Water Board staff in the *Information Document for the Proposed Amendment of the Water Quality Control Plan for Ocean Waters of California* (December 2003). This proposal would have removed the absolute ban on stormwater discharges and replaced it with a provision allowing continued discharges not adversely affecting the ASBS (Note: This approach is similar to Alternative S.5.2 in the *Program Draft Environmental Impact Report*). The adoption of a straightforward approach for permitting ASBS discharges would also facilitate preparation of the *Special Protections* and the issuance of these permits.

If not removed entirely, the prohibition should at least be clarified. Some have interpreted the prohibition as applying to every pipe or channel discharging to the ASBS, whether private or public. However, only public entities are currently being held to the prohibition. Individual homeowners that have pipes discharging to state beaches should be directly regulated by the State as these discharges do not enter a municipal separate storm sewer system (MS4), and therefore are beyond the regulatory control of MS4 agencies. The prohibition, if maintained, should be clarified to address how non-permitted entities would be addressed under this prohibition.

In addition, any modifications to the prohibition or exceptions that are granted should clearly state that these modifications/exceptions apply back to the date of the application for the exception. Such clarification will mitigate or prevent potential legal issues regarding coverage.

### 2. *Public Resource Code Section 36700(f) and Ocean Plan definition of natural water quality need to be accurately referenced throughout the PDEIR, Special Protections, and related documents*

Public Resources Code (PRC) section 36750 states that, as of January 1, 2003, all ASBS are now included in the Marine Managed Area category of SWQPAs. PRC section 36700(f) then defines a SWQPA as “a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality, including, but not limited to, areas of special biological significance that have been designated by the SWB through its water quality control planning process.” (emphasis added)

The Ocean Plan Appendix I Definition of Terms (p. 24) similarly defines an ASBS as “those areas designated by the State Water Board as ocean areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable.”

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<sup>2</sup> See for example, the CASQA August 24, 2005 workshop comments.

All Areas of Special Biological Significance are also classified as a subset of STATE WATER QUALITY PROTECTION AREAS.” (emphasis added)

The PDEIR cites the above PRC definition of the ASBS (p. 41) and cites the above Ocean Plan Appendix I definition of the ASBS (p. 38). Inclusion of the term “undesirable” relative to the definition of the degree of alteration of natural water quality incorporates the concept that some degree of water quality alteration may be able to occur while still reasonably protecting beneficial uses.

However, the PDEIR, first on p. 22 and continuing thereafter including in the Special Protections (Appendix 1), deletes the term “undesirable” from the PRC statutory definition and the Ocean Plan regulatory definition. The definition is changed from “*alteration of natural water quality is undesirable*” to “In order not to compromise beneficial uses, natural water quality must be **maintained** in an ASBS.” (emphasis added)

The PDEIR and Special Protections also uses slight variations on the above “natural water quality must be **maintained**” definition including “Discharges composed of stormwater shall not **alter** natural ocean water quality in an ASBS” (Appendix 1 p. B-2) or that “natural water quality conditions in the receiving water are **achieved and maintained**” (Appendix 1 p. B-4). (emphasis added)

The omission of the word “undesirable” relative to assessing changes in natural water quality is problematic. When evaluating the impact of stormwater discharges on an ASBS, this serves to shift the benchmark from a weight of evidence approach to an absolute, no change (i.e., non-degradation) compliance approach. This alternative and more stringent definition of natural water quality appears to be used at least in part as the basis for proposing in the Special Protections that stormwater discharges (at a minimum from 36-inch and larger diameter pipes) need to comply at the end-of-pipe with Ocean Plan Table B toxic pollutant Water Quality Objectives (WQO).

This is equivalent to establishing end-of-pipe water quality effluent limits for intermittent stormwater discharges. This approach is contrary to the Ocean Plan, which calculates and establishes Table B WQO (intended for continuous wastewater and industrial discharges) as the edge of the mixing zone (i.e. after initial dilution).

### 3. *Attainment of natural ocean water quality*

We have also previously recommended that the Ocean Plan be amended to remove the unconditional requirement for maintenance of “natural ocean water quality.” The unrealistic requirement of determining, maintaining, or reverting to “natural” water quality should be replaced by a goal of maintaining beneficial uses, supported by more intensive monitoring and requirements to aggressively address identified environmental problems.

As defined in the *Special Protections*, natural water quality is “without apparent human influence.” Urban runoff will inevitably fail this standard. Even with substantial treatment, some alterations in receiving water temperature, bacteria count, or chemistry may occur and will be detectable. We know of no urban stormwater dischargers that have been required or have been able to attain discharge characteristics statistically indistinguishable from the receiving water. It is not appropriate to apply such a requirement to municipal stormwater discharges that in most cases predate the designation of the ASBS. As discussed in the detailed comments, these urban dischargers were unaware and received no notice that Ocean

Plan modifications in the 1980s would effectively prohibit stormwater discharges from their towns and cities. Only when the State Water Board issued its decision in a petition for review on the Caltrans matter was this prohibition applied to municipal stormwater, and that also was absent full public participation and comment.

4. ***Parallel requirement for end-of-pipe compliance*** – Under the proposed program, stormwater dischargers will have end-of-pipe requirements in addition to providing for maintenance of natural ocean water quality in the receiving water. The discharge must comply with Ocean Plan Table B instantaneous maxima criteria or achieve a 90% reduction in these same parameters. In effect, the Special Protections create water quality-based effluent limitations (WQBELs) applied with no dilution factor or the alternative option of 90% reduction in pollutant mass. Both these alternatives present very challenging compliance hurdles.

Consistent attainment of Ocean Plan Table B objectives end-of-pipe requires capturing all runoff, directing these flows to treatment facilities, and providing relatively high-level treatment (filtration). For some discharges, advanced chemical treatment may be required because dissolved constituents (especially copper) are not completely removed by traditional filtration. These treatment facilities will be very costly and technically challenging in the coastal environment (i.e., siting facilities at the terminus of the drainage system or pumping to treatment elsewhere). Operation and maintenance will also be expensive and difficult to manage for intermittent flows.

The second option for addressing end-of-pipe flows is a 90% reduction in Table B parameters. Source control—education, enforcement—will likely help with some pollutants like trash, however, source control cannot address the problem pollutants in Table B.<sup>3</sup> Diversion around ASBS or infiltration facilities may work in some situations, but will not provide a general solution and will also be prohibitively expensive. Additionally, the discharge must still maintain natural water quality regardless of the success in addressing Table B parameters end-of-pipe.

As the State's own blue ribbon panel on stormwater pointed out, numeric end-of-pipe effluent limitations are not recommended and are not feasible for MS4s; they should not be imposed here. The federal directive of applying Best Management Practices (BMPs) providing maximum extent practicable (MEP) pollutant reduction should be the guiding principal along with an iterative process of increasingly rigorous BMPs if the early rounds are not adequate.<sup>4</sup>

5. ***Cessation of dry weather discharges on the effective date of the Exception*** – The Special Protections specify: “*On the effective date of the Exception, all non-authorized non-storm water discharges (e.g., dry weather flow) are effectively prohibited.*” [I.A.3(a)]

<sup>3</sup> Legislative and regulatory actions to reduce copper and lead will not likely have a major effect in the 4 years required to comply with these end-of-pipe objectives.

<sup>4</sup> By going beyond the federal program, and mandating total prohibitions or end-of-pipe effluent limitations on stormwater discharges, the State becomes subject to meeting the technically feasible/economically reasonable and other requirements set forth in Water Code section 13241; it could also be subject to claims for unfunded mandates under the State's Constitution. Note that the iterative approach is effective for non-structural BMPs but may not be appropriate for structural BMPs if it requires the replacement of previously constructed facilities.

We presume the effective date is when the State Water Board approves the General Exception. We are concerned that virtually all urban dischargers of dry weather flows will be in immediate non-compliance and subject to citizen suits similar to the ones currently being litigated against several MS4s in Los Angeles County. Because prohibitions can be enforced independently of more specific permit requirements designed to address their objectives, these dischargers will potentially be subject to Cease and Desist Orders<sup>5</sup> and mandatory minimum penalties in addition to third party lawsuits.

Non-authorized discharges consisting of yard over-watering, residential car washing, drinking water system flushing, etc. occur within municipalities despite municipalities' efforts to prevent them. Municipalities are required to have adequate legal authority to address such discharges when they are found. In general, these discharges have not been shown to be a significant source of pollutants. In a very practical sense municipalities will never be able to eliminate their occurrence entirely and therefore the highest regulatory expectation should be implementation of an effective enforcement program to address them when they are found and to reduce their frequency. An absolute prohibition on dry weather discharges is obviously not achievable immediately and in most locations is unlikely to be fully achieved even with extraordinary expenditures of public funds for diversion of all flows.

6. ***Limitations on allowable non-stormwater discharges*** – The Special Protections include a list of five allowable non-stormwater discharges.<sup>6</sup> We appreciate the inclusion on this list of hillside dewatering and groundwater seepage via a storm drain (infiltration). We request that certain natural water sources also be added to this list: diverted stream flows, springs, and flows from riparian habitats and wetlands. For many stormwater systems, these flows were engineered into the stormwater conveyances during construction and removing them would be exceptionally difficult. We also suggest the basic qualification in the Special Protections for these discharges be modified as follows: “(3) The discharges: (i) Are essential for emergency response purposes, structural stability, or slope stability or occur due to unavoidable hydraulic conditions. Other suggestions are included in the attachment to this letter.
7. ***Draft Program Environmental Impact Report (PEIR)*** – The PEIR addresses issues related to impacts in the ASBS of the continued discharges in compliance with the Special Protections. However, these discharges already exist. The only “projects” within the definition of CEQA are related to: 1) construction of additional treatment to meet the requirements; and, 2) construction in the coastal zone to divert the current discharges around the ASBS or to publicly owned treatment works. The PEIR concluded that there is no substantial evidence that approval of the exceptions will have a significant effect on the environment because the Special Protections will protect the ASBS. As stated in the draft resolution, the “Special Protections will not authorize a lowering of water quality, but rather will improve water quality conditions in the affected ASBS.” This may be true; however, the cumulative and substantial adverse impacts of diversion pipes, pump stations, holding ponds, and treatment facilities have not been addressed.

<sup>5</sup> See *Enforcement Policy*: Appendix A: C.7; p 35. Posted.

<sup>6</sup> The allowable discharges: discharges from emergency fire fighting operations; foundation and footing drains; water from crawl space or basement pumps; hillside dewatering; and, naturally occurring groundwater seepage via a storm drain.

PEIR Section 6, Environmental Analysis, focuses on just four BMPs in assessing categorical impacts (e.g., aesthetics, biological resources, hydrology and water quality).

- Catch basin inserts
- Vortex separation systems
- Road and parking lot street sweeping
- Public education

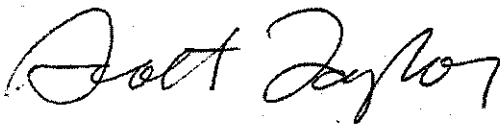
Other BMPs and controls are mentioned but the analysis is directed to the four BMPs above, even though none of the four is likely to provide compliance. The analysis should focus on those BMPs and implementation measures needed for compliance and likely to have major impacts such as pipelines and treatment facilities such as sand filters and disinfection systems.

The PEIR defers the assessment of specific impacts to the individual projects that will be needed to address the Special Protections. However, this is a programmatic EIR and is required to address the aggregate impacts of the projects required to implement this program.

In addition, the PEIR estimates the total costs of structural BMPs will range from \$43 to \$54 million statewide. We believe this is a small fraction of actual costs and does not include the technologies needed to bring discharges into compliance with the metal standards in Table B or to ensure that temperature, bacteria, etc. are not changing natural water quality in the ASBS.

In closing, CASQA appreciates the opportunity to comment on the General Exception and related documents. We strongly support the goal of protecting and improving water quality in ASBS but we believe the effort should be grounded in requirements that are focused on supporting meaningful and achievable environmental outcomes. Please contact me at (760) 603-6242 or Geoff Brosseau, our Executive Director at (650) 365-8620 if you have any questions or would like to discuss our comments further.

Sincerely,



Scott Taylor, Chair  
California Stormwater Quality Association

cc: Brian Ogg, State Water Board  
Charles Hoppin, Chair, State Water Board  
Tam Doduc, State Water Board member  
Tom Howard, Executive Director, State Water Board  
Jonathan Bishop, Chief Deputy Director, State Water Board  
Vicky Whitney, Deputy Director, State Water Board  
Bruce Fujimoto, Chief – Stormwater, State Water Board  
Constance Anderson, Environmental Scientist, State Water Board  
CASQA Executive Program Committee  
CASQA Board of Directors

Attachment: Detailed comments on General Exception and supporting documents

**Attachment** -- Detailed comments on the General Exception for discharges to ASBS and supporting documents

**Special Protections for discharges to ASBS (Attachment B to the State Board Resolution)**

***Point Source Discharges***

These comments follow the order of the requirements presented in the Special Protections.

**1. Page B-1&2. Continued prohibition on dry weather flows**

1. *General Provisions for Permitted Point Source Discharges of Storm Water*

a. *Existing storm water discharges into an ASBS are allowed only under the following conditions:...*

(3) *The discharges:*

- (i) *Are essential for flood control or slope stability, including roof, landscape, road, and parking lot drainage;*
- (ii) *Are designed to prevent soil erosion;*
- (iii) *Occur only during wet weather;*
- (iv) *Are composed of only storm water runoff.*

***Comments:***

a) The phrase "*Existing storm water discharges...*" should include the terms *conveyance system: "Existing storm water conveyance system discharges"* because the allowable non-stormwater discharges are not stormwater, however they are conveyed in stormwater systems. Otherwise, these authorized non-stormwater flows would appear to be precluded.

b) We presume that *flood control* is intended to mean stormwater conveyance. This should be stated directly to avoid confusion. In many coastal locations, flooding is not a concern, however, stormwater conveyance and discharge occurs. We suggest this clarification: (i) *Are essential for stormwater disposal, flood control, or slope stability.*

c) Provisions I.A.1.a.(3) (i), (iii), &(iv), shown above, appear to conflict with the list of allowable non-stormwater discharges at I.A.1.e. For example, disposing of "*Naturally occurring groundwater seepage via a storm drain*" may not be essential for flood control (i) and does not occur only during wet weather (iii), and is not composed of only stormwater runoff (iv). We suggest that the following phrase be added after I.A.1.a.(3) to avoid confusion: "*Exceptions (authorized non-storm water discharges) are identified in subsection I.A.1.e.*"

We are assuming that the intent is to allow dry weather flows if they consist of the authorized non-stormwater discharges listed in I.A.1.e. However, this intent is not clear in this draft. In several locations the Special Protections refer to the prohibition or elimination of "*all non-authorized non-storm water runoff (e.g., dry weather flows)*," which indicates that there shall be no discharges at all during dry weather.<sup>7</sup> A court will interpret the clear language of this provision independently of other parts of the Special Protections. Thus, requiring in I.A.1.a.(3) that discharges consist of only stormwater runoff negates the later discussion of allowable discharges.

<sup>7</sup> Most MS4s will find it infeasible to cease the discharge of infiltrating groundwater, if that is the intent of this provision.

## 2. Page B-2. **Prohibition on altering natural water quality**

*b. Discharges composed of storm water runoff shall not alter natural ocean water quality in an ASBS.*

**Comment:** As discussed in our cover letter, some detectable alteration will inevitably occur although these changes will generally be limited to a relatively small mixing zone. We appreciate the efforts by the Board staff in developing a definition of natural ocean water quality that takes into account area-wide impacts from human activities along the coast. However, stormwater runoff, in addition to being freshwater in a marine environment will not be identical in temperature, bacteria concentrations, or chemical quality to the receiving water in the ASBS. The differences may be inconsequential from a water quality standpoint but they will still be present and will be identifiable with directed sampling.

We believe the natural water quality standard is not consistently attainable without advanced treatment, including technologies not previously applied to stormwater (e.g., thermal adjustment, removal of dissolved substances, disinfection, etc.).<sup>8</sup> Even the relatively limited tasks of capturing all runoff and reducing only particulates and bacteria to natural levels would present an insurmountable barrier to most municipalities. Experience with stormwater disinfection, for example, is very limited, other than for dry weather flows. Can the State Board identify any examples in the US where an MS4 wet weather discharge has been consistently and effectively disinfected?

Stormwater runoff inevitably alters receiving water characteristics. This is the reason we have requested that the requirement in the Ocean Plan to maintain natural water quality be replaced by requirements to address identified problems. As we have proposed previously, new requirements should be added that focus corrective measures and available public funds on identified adverse impacts. We have proposed that the Ocean Plan require dischargers to work toward the goal that detectable human influence on the water quality not hinder the ability of marine life to respond to natural cycles and processes. In addition we proposed implementation of "early action" best management practices (including low impact development strategies) while ASBS are being characterized to determine if stormwater discharges are causing identifiable adverse effects. Corrective measures and additional BMPs should be directed in a prioritized manner toward ASBS and discharges where adverse effects are occurring.

## 3. Page B-2. **Ban on new outfalls**

*d. Only discharges from existing storm water outfalls are allowed. Any proposed or new storm water runoff discharge shall be routed to existing storm water discharge outfalls ...*

**Comment:** While we agree with the general provision that new or increased discharges should not occur, we disagree with the prohibition on moving them. It may be necessary for a municipality or other discharger to re-engineer the stormwater conveyance system such that moving the outfall is necessary. Examples:

- A roadway may be moved (e.g., major realignment at Devils Slide south of San Francisco)

<sup>8</sup> See Table 1, later in these comments. Most urban discharges exceed Table B instantaneous maximum objectives that will clearly result in elevated concentrations in the receiving water. This is confirmed by the data in Attachment II for the urban discharges.



- Moving an outfall may benefit the environment by preventing current adverse impacts. For example, a current discharge into tide pools with little mixing could be exchanged for a location with improved mixing or less sensitive species.
- Installation of dry weather diversion facilities may require siting of a new wet weather relief/overflow drain.
- Flows that are currently co-mingled may need to be separated requiring a new outfall.
- Engineering solutions to meeting the ASBS Special Protections may require modified or additional outfalls.
- New treatment facilities will be required to meet the performance requirements. Adequate space may not be available at the location of the original outfall to construct a sand filter or other treatment because the only available space may be some distance away. Returning the treated flow to the original outfall location wastes funds and provides no environmental benefit.

This provision should perhaps prohibit moving discharges to locations with less tidal movement that would place water quality at risk. However, a change that results in the same or improved exposure to tidal and wave action should not be prohibited—in fact, it should be encouraged. We request that this provision (I.A.1.d) be modified to allow moving discharges to locations with the same or less risk of adverse impacts:

*Any proposed or new storm water runoff discharge shall be routed to existing storm water discharge outfalls unless the new outfall results in the same or less risk to water quality. ~~and The new outfall shall not result in any increased contribution of waste to an ASBS (i.e., no additional pollutant loading).~~*

4. Page B-2. **Authorized non-storm water discharges** – The current list includes:

*(2) The following non-storm water discharges are allowed, provided that the discharges are essential for emergency response purposes, structural stability, or slope stability:*

- (i) Discharges associated with emergency fire fighting operations.*
- (ii) Foundation and footing drains.*
- (iii) Water from crawl space or basement pumps.*
- (iv) Hillside dewatering.*
- (v) Naturally occurring groundwater seepage via a storm drain.*

The standard list in MS4 permits of conditionally exempted discharges includes these discharges (sources listed above are stricken out on the list below):

1. water line flushing;
2. landscape irrigation;
3. diverted stream flows;
4. rising ground waters;
5. ~~uncontaminated ground water infiltration~~ (as defined at 40 CFR §35.2005(20)) to separate storm sewers; [*we presume these terms are the same as "Naturally occurring groundwater seepage via a storm drain"?*]
6. uncontaminated pumped ground water;
7. discharges from potable water sources;
8. ~~foundation drains;~~
9. air conditioning condensation;

10. irrigation water;
11. springs;
- ~~12. water from crawl space pumps;~~
- ~~13. footing drains;~~
14. lawn watering;
15. individual residential car washing;
16. flows from riparian habitats and wetlands; and
17. dechlorinated swimming pool discharges.

**Comments:**

a) Provision I.A.1.e(2) appears to preclude groundwater seepage, which is normally not “essential for emergency response purposes, structural stability, or slope stability.” We suggest this list of qualifications be modified as follows: *“essential for emergency response purposes, structural stability, or slope stability or which occur due to groundwater hydraulic conditions.”*

b) Another concern is that some of these normally conditionally exempt discharges may present limited or no risk of introducing contaminants into ASBS and will be very difficult and sometimes impossible to terminate. These include:

- diverted stream flows
- rising ground waters (unless this is the same as *naturally occurring groundwater seepage*)
- springs
- flows from riparian habitats and wetlands

We request that the Board add these four discharges to the list of authorized non-stormwater discharges in subsection I.A.1.e. We found no justification in the EIR or Special Protections to support their exclusion.

c) We believe the conditionally exempt discharges not allowed in ASBS (e.g., lawn watering, residential car washing, etc.) cannot be terminated immediately and a phase-in period is needed for municipalities to implement the necessary education and enforcement programs. In addition, the ban on these discharges cannot be absolute. MS4s do not have the enforcement capability to ensure that no one ever washes their car and that yard watering never runs off.

d) Drinking water suppliers may have difficulty terminating discharges from *“discharges from potable water sources.”* Currently, these discharges are dechlorinated and drained to the storm sewers. We strongly recommend the State Board confirm the feasibility of terminating these discharges with the affected water supply agencies.

**8. Page B-2. Authorized non-storm water discharges – violation of WQS**

*(3) Authorized non-storm water discharges shall not cause or contribute to a violation of the water quality objectives in Chapter II of the Ocean Plan nor alter natural ocean water quality in an ASBS.*

**Comment:** As noted in earlier comments, the requirement of no alteration of natural ocean water quality cannot be achieved and should be replaced with a requirement to address identified problems.

**9. Page B-3. SWMP and SWPPP maps**

a. The SWMP or SWPPP shall include a map of surface drainage of storm water runoff, showing areas of sheet runoff,

**Comment:** Why do areas of *sheet runoff* need to be shown? Nearly every road, roof, field, etc. will have sheet runoff at some point. Sheet runoff is also not a point source discharge subject to NPDES permitting. This request is impractical and provides no evident benefit for stormwater control programs. We proposed it be deleted or at least limited to specific situations where this information would help implement controls.

**10. Page B-3. Non-authorized non-storm water runoff**

b. The SWMP or SWPPP shall describe the measures by which all non-authorized non-storm water runoff (e.g., dry weather flows) ~~has been~~ will be eliminated or substantially controlled.

**Comment:** We suggest the changes as shown: obviously these discharges cannot be terminated immediately, and it may take years before the public, drinking water suppliers, businesses, etc. are fully educated on their role in preventing these discharges. As discussed previously, MS4s can possibly *substantially control* these discharges, however attaining an absolute prohibition is impossible.

**11. Page B-3. Inspections**

c. For MS4s, the SWMP shall require minimum inspection frequencies as follows:

(1) The minimum inspection frequency for construction sites shall be weekly during rainy season;

(2) The minimum inspection frequency for industrial facilities shall be monthly during the rainy season;

(3) The minimum inspection frequency for commercial facilities (e.g., restaurants) shall be twice during the rainy season; and

**Comment:** For many municipalities, this frequency will not be possible – personnel are simply not available and cannot be hired given the current constrains on municipal budgets. Also, the proposed frequency of inspection may not be needed in all cases. For example, an industrial facility with no outside storage and no runoff sources other than parking lots may require only an annual inspection. Similarly, a construction site that prevents all runoff or has no land disturbance does not need to be inspected weekly. We propose that the inspection frequencies be developed by the MS4 based on their case-by-case assessment of the need, or based on guidance provided by the SWRCB that takes into account different exposure situations.

**12. Page B-3&4. SWMP and SWPPP pollutant reductions**

d. The SWMP or SWPPP shall address storm water discharges (wet weather flows) and, in particular, describe how pollutant reductions in storm water runoff, that are necessary to comply with these special conditions, will be achieved through BMPs. 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:

(1) Table B Instantaneous Maximum Water Quality Objectives in Chapter II of the Ocean Plan; or

(2) A 90% reduction in pollutant loading for the Table B parameters during storm events, for the applicant's total discharges. The baseline for the reduction is the effective date of the

*Exception. 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.*

**Comments:** We have the following concerns:

a) **Compliance by treatment** - As can be seen from Table 1 (following pages), most urban discharges show exceedances of the instantaneous maximum water quality objective for copper (Cu).<sup>9</sup> Several also show exceedances for lead (Pb) and zinc (Zn). We believe that infiltration, standard filtration (e.g., sand), or a comparable control potentially will be necessary for all urban discharges. Infiltration will be an option for relatively few discharges because of the difficulty of finding suitable soils and space, as well as the expense of providing holding facilities. Filtration facilities will also be difficult to site in many constrained localities such as steep coastal roads and fully built-out urban areas.

Some urban discharges may require treatment more advanced than filtration to ensure compliance with the copper objective. Typically, 45% or more of the copper is dissolved.<sup>10</sup> Only the particulate fraction of the total copper will be addressed by filtration. Even if the filtration is highly effective in removing the particulate fraction, the dissolved portion will pass through untreated and will contribute to exceedances of the objective for total copper. Thus, an influent concentration of 100 ug/L total copper will typically contain a dissolved fraction that will pass through a sand filter at a concentration that will exceed the objective of 30 ug/L. Chemical addition and precipitation or ion exchange will be necessary to reduce the dissolved component. While these advanced treatment technologies have been applied to industrial wastes, we are not aware of any circumstances of where they have been used to address stormwater. Regardless, they will be extraordinarily expensive to operate on a standby basis to treat urban stormwater runoff.

Even capturing all the flow at the end of a storm drain system and providing filtration would constitute a substantial financial and engineering challenge. The feasibility of providing sufficient treatment to consistently comply with these objectives is unknown. In Table 1, monitoring results that exceed the Ocean Plan Table B criteria are highlighted. The upper range for many of these MS4s is substantially above the criteria. We request the State Board provide examples of MS4s that have been able to construct and operate treatment facilities providing end-of-pipe compliance with Table B criteria when the influent concentrations are similar to those reported in PEIR Appendix II. In particular, we recommend the Board assess the feasibility of addressing dissolved copper to bring the high range runoff concentrations compliance.

In Chapter 6, Environmental Analysis, the PEIR focuses on a limited set of BMPs:

- Catch basin inserts
- Vortex separation systems
- Road and parking lot street sweeping
- Public education

We believe it very unlikely that these BMPs will provide compliance with the criteria for metals in Table 1 and that more intensive treatment will be needed.

<sup>9</sup> The Table 1 data is taken from Appendix II to the Draft Program Environmental Impact Report (PEIR).

<sup>10</sup> See *Discharge Characterization Study Report*. CTSW-RT-03-065.51.42. p. 27. Posted.

**Table 1 - Range of Concentrations for Several Key Pollutants in Discharges to ASBS**  
(Extracted from data in PEIR Appendix II; highlights indicate exceedance of objective)

| Sampling Agency              | ASBS                 | Waterbody                | Cu          | Pb           | Zn          |
|------------------------------|----------------------|--------------------------|-------------|--------------|-------------|
|                              |                      | <b>Instant. max obj</b>  | <b>30</b>   | <b>20</b>    | <b>200</b>  |
| Carmel-By-The-Sea            | Carmel Bay           | discharge                | 137-217     | 8-111        | 123-389     |
| Sea Ranch Assoc.             | Del Mar Landing      | Storm drain or discharge | <50-50      | <5 - 5       | <5-50       |
| Laguna Beach                 | Heisler Park         | discharge                | 36          | 6.6          | 130         |
| Vandenberg AFB               | James. V. Fitzgerald | discharge                | 21          | 16           | 297         |
| San Mateo Co.                | James. V. Fitzgerald | discharge                | 2.5 - 211   | 1.7 - 5      | 12.5 - 145  |
| Malibu                       | Laguna/Latigo        | discharge                | 31.4 - 31.5 | 6.2 - 6.4    | 87-88       |
| Monterey                     | Pacific Grove        | discharge                | 4 - 10.5    | 0.77 - 5.5   | 53 - 65     |
| Newport Beach                | Robert Badham        | discharge                | 3.4 - 11.4  | na           | na          |
| Pacific Grove                | Pacific Grove        | discharge                | 19 - 45     | 18.1 - 31.5  | 129 - 201   |
| San Diego                    | La Jolla             | discharge                | 31 - 81     | 3.6 - 14.4   | 11.3 - 188  |
| Trinidad                     | Trinidad Head        | Storm drain or discharge | 13.6 - 20.8 | 1 - 3        | 21 - 35     |
| Trinidad Rancheria           | Trinidad Head        | discharge                | 41.2        | 2            | 206         |
| Connolly Pac/Catalina Is Co. | SE Catalina Is       | discharge                | 18.7 - 40.5 | 6.5 - 15.1   | 39.8 - 141  |
| Los Angeles Co               | Laguna/Latigo        | discharge                | 3.4         | 0.9          | 4.1         |
| Marin Co                     | Duxbury Reef         | discharge                | 3.9 - 3.9   | 0.22 - 0.23  | 15.1 - 15.4 |
| MBAQ                         | Pacific Grove        | discharge                | 0.17 - 59.7 | 0.005 - 15.3 | 2 - 209.5   |
| Pebble Beach Co.             | Carmel Bay           | discharge                | 68.7        | 10.3         | 113.8       |
| Scripps Institute            | SD-Scripps           | discharge                | 0.12 - 6.4  | na           | na          |
| Stanford Hopkins MS          | Pacific Grove        | discharge                | 4.5 - 69.2  | 0.69 - 9.6   | 19 - 115    |
| SWRCB                        | Laguna/Latigo        | discharge                | 59.1 - 60.6 | 3.2 - 3.3    | 146 - 148   |
| Navy                         | San Clemente         | Storm drain or discharge | 10.7 - 309  | ND - 169     | 11 - 1,150  |
| Navy                         | San Nicholas         | discharge                | 0.01 - 0.31 | <0.01 - 0.69 | <0.05 - 0.9 |
| Caltrans                     | various              | discharge                | 1.2 - 100   | <0.05 - 7.5  | 14 - 110    |

Some numbers rounded; Not included: Humboldt Co (all data 0.01ug/L), LA Co MUG 011 (data: 1, 1, 5)

**b) Compliance by diversion (90% reduction)** – The second compliance option presented by the proposed Special Protections is achieving a 90% reduction in pollutant loading for the Ocean Plan Table B parameters. For some dischargers this option may be feasible. They may be able to divert flows to infiltration facilities or possibly to holding ponds for extended infiltration or diversion to POTWs after the storm has subsided. (POTWs normally will not accept diverted storm flows during wet weather because the wastewater treatment facilities are often operating at maximum capacity). However, in the coastal zone, it is often difficult to infiltrate because of

poorly drained soils, high groundwater, or unstable slopes. Storage facilities require space that may not be available and post-storm diversion to POTWs requires that sanitary sewer systems with adequate capacity are available. POTWs also charge for the service.

An additional approach for achieving 90% reduction would be to capture most of the flows discharging to the ASBS and divert these flows around the ASBS. This approach may be viable in a few locations where discharges are near an ASBS boundary. However, we believe it would generally be infeasible because the new discharge—a consolidation of multiple ASBS flows—may present an environmental risk in the new discharge location. The anti-degradation requirements in federal and state law as well as the CEQA and coastal zone construction hurdles could potentially be insurmountable. It would be difficult to document in the CEQA document an environmental benefit of moving a discharge with the attendant coastal disruption impacts.

c) **Parallel and separate requirement for natural water quality** - Another significant problem with these two options is that the discharge must still provide for attainment of natural water quality. For example, if a municipality were to divert 90% of the stormwater, the remaining 10% of the original flows would still need to meet this separate requirement and ensure that chemicals, temperature, bacteria, etc. are not elevated due to the discharge. We note that even if a discharge complies with Table B, the discharge could still be adversely impacting natural water quality since the Table B instantaneous maxima objectives are approximately an order of magnitude above background. Exceedances of the lower 6-month median values are described in the draft EIR.<sup>11</sup>

CASQA appreciates the inclusion of two options in the Special Protections for end-of-pipe compliance: Table B instantaneous maxima and 90% reduction. Compliance with one of these options will be difficult, as discussed above. However, the parallel requirement of providing for attainment of natural water quality remains.

d) **Sequential implementation of structural BMPs** – The improvement of source control BMPs over time as part of MEP pollutant control is appropriate and has worked well for non-structural BMPs. We are concerned; however, that sequential application of structural BMPs may waste funds. For example, a sand filter may be built to control metals and other pollutants in the discharge. If the sand filter proves inadequate then more advanced treatment or diversion (perhaps to inland infiltration) may be necessary. This higher level of control may not be compatible with the original control and the investment may be wasted. We believe this issue has not been adequately assessed during program development.

### 13. Page B-4. Effective date for compliance

Provision d(2) [90% reduction] ends with: “...and the reductions must be achieved and documented within four (4) years of the effective date.” We presume this also applies to d(1) [Table B instant. max.]. Please clarify.

**Comment:** It is not feasible for municipalities to plan, permit, design, construct, and trouble-shoot a project and achieve compliance within 4 years. Diversion facilities or large treatment units in the coastal zone will present significant construction and permitting challenges. Compliance with CEQA requirements for construction in the coastal zone could easily take

<sup>11</sup> “However, some measured sites did not meet objectives when sampled; for example, approximately 25% of ASBS waters had measured concentrations of copper above the six-month median objective.” (p. 57 of 331)

years. In addition, the technology needed to meet the requirements is not currently available, or if it is available, has not been applied to stormwater. This technology potentially includes:

- Storm flow capture and storage for later treatment
- Possible diversion to storage, inland treatment, or around the ASBS
- Screening and initial filtration
- Possible pH adjustment, chemical addition, flocculation/precipitation, settling or final filtration to address dissolved constituents for runoff exhibiting high levels of copper
- Disinfection (when bacteria concentrations exceed natural water quality), including dechlorination if chlorine is used
- Temperature adjustment (when required)

In addition, municipalities will need to fund design and construction of these projects plus provide ongoing funding for operation and maintenance. Even if it is possible, securing funding in the current economic conditions will take time. Constructing facilities in the coastal zone will require a coastal development permit which are often controversial and which typically include special conditions. In cases requiring extensive pipelines to reach treatment or infiltration facilities, permitting may be very difficult or impossible due to the extensive impacts in the coastal zone. For all these reasons, we request that the compliance period be lengthened to 12 years.

#### 14. Page B-4. Iterative approach

*h. If the results of the receiving water monitoring described in IV.B. of these Special Conditions indicate that the storm water runoff is causing or contributing to an alteration of natural water quality in the ASBS, the discharger shall submit a report to the Regional Water Board within 30 days of receiving the results. [this text is followed by the standard iterative approach]*

**Comment:** We request that this iterative approach also be applied to exceedances of the Table B instantaneous maxima or the 90% removal requirement, whichever option is chosen.

#### 15. Page B-5. Compliance Schedule

##### 3. Compliance Schedule

- a. *On the effective date of the Exception, all non-authorized non-storm water discharges (e.g., dry weather flow) are effectively prohibited.*

**Comment:** As discussed earlier, immediate cessation is impossible and this requirement will mean that all MS4s are in noncompliance and subject to enforcement upon approval of the Special Protections. In addition, complete prohibition of these flows is not reasonably achievable.

#### 16. Page B-5. Compliance Schedule – Non-Structural

- c. *Within 18 months of the effective date of the Exception, any non-structural controls that are necessary to comply with these Special Protections shall be implemented.*

**Comment:** 18 mos. may not be enough time. Public education, negotiation with other agencies (e.g., water suppliers), creating and staffing enforcement programs, and enhancing public works programs will take longer. In addition, MS4s will need to secure funding to implement these non-structural programs. We propose 3 years.

**17. Page B-5. Compliance Schedule – Structural**

d. Within four (4) years of the effective date of the Exception, any structural controls identified in the Pollution Prevention Plan that are necessary to comply with these special conditions shall be operational.

*Comment:* As discussed previously, this deadline is not realistic; we propose 12 years. Provision 3.f allows the Regional Boards to authorize additional time; however, there is no obligation for them to do so.

**Nonpoint Sources (p B-6)**

[No comments at this time]

**Additional Requirements for Parks and Recreation Facilities**

[No comments at this time]

**Additional Requirements for Waterfront and Marine operations**

[No comments at this time]

**IV. Monitoring requirements (p B-12)**

**18. Page B-13. A. Core Discharge Monitoring Program**

**2. Runoff flow measurements**

a. ... runoff flows must be measured or calculated, using a method acceptable to and approved by the Regional Water Board.

*Comment:* Is this referring to flow rate or total volume?

**19. Page B-13. Runoff samples – storm events**

(1) samples shall be analyzed annually for all Ocean Plan Table A constituents and indicator bacteria, and

*Comment:* Why Table A? This table was developed for use for POTW discharges. The same comment applies to 3.b(1) (outfalls > 36in.)

**20. Page B-13&14. Runoff samples – Chronic Toxicity - 3.a.(2) and 3.b(3)**

(2) samples of storm water runoff shall be analyzed to assess compliance with the chronic toxicity (one invertebrate or algal species) objective in Table B of the Ocean Plan at least once every five (5) years. The chronic toxicity sampling may be performed on a rotating basis to ensure that each outfall is measured once per five-year period.

*Comment:* Chronic toxicity is not appropriate for a short term, intermittent discharge. The toxicity test should be tailored to the nature of the discharges. (See CASQA comments on the draft SWRCB Policy for Toxicity Assessment and Control).

**21. Page B-13. Runoff samples – Pollutant sampling - 3.b(2) (outfalls > 36in.)**

(2) samples shall be further analyzed at least once annually during wet weather (storm events) for those pollutants with chemical water quality objectives for the protection of marine aquatic life in Table B of the Ocean Plan, and for PAHs, pyrethroids, OP pesticides, nitrates, and phosphates; and...

*Comment:*



a) The Core Discharge Sampling Program is intended to assess end-of-pipe compliance with Table B. Why are these other constituents included in the effluent monitoring effort (pyrethroids, OP pesticides, nitrates, and phosphates)? These tests will be expensive and we do not see the purpose.

b) Some of the Table B constituents do not seem relevant for stormwater: chlorine residual, phenolic compounds, chlorinated phenolics, endosulfan, Endrin, HCN, and radioactivity. What is the purpose for measuring these constituents? Some are long-banned pesticides and it is not clear why they should be monitored. This same comment applies to subsequent requirements that specify Table B in its entirety.

**22. Page B-14. Extra requirements of dischargers not in a regional ocean monitoring program**

*c. For a applicant not participating in a regional monitoring program [see below in Section IV (B)] in addition to (a.) and (b.) above, a minimum of the two largest outfalls or 20 percent of the larger outfalls, whichever is greater, shall be sampled (flow weighted composite samples) at least three times during the wet weather and analyzed for all Ocean Plan Table A constituents, Table B constituents for marine aquatic life protection (except for toxicity, only chronic toxicity for three species shall be required), DDT, PCBs, PAHs, OP pesticides, pyrethroids, nitrates, phosphates, and Ocean Plan indicator bacteria...*

**Comment:** What is the purpose for this extra monitoring for those dischargers not in a regional program? Similar requirements do not seem to apply to dischargers in the regional programs. This requirement for those not in a program appears punitive. In addition, as noted in comments above, many of these constituents are not relevant for monitoring intended to show compliance with Table B (Ocean Plan Table A, DDT, PCBs, PAHs, OP pesticides pyrethroids, nitrates, phosphates, and Ocean Plan indicator bacteria).

**23. Page B-14. B. Ocean Receiving Water Monitoring Program**

**Comment:** It is not clear why the *individual monitoring program* is described in extensive detail while the *regional integrated monitoring programs* are only described in general terms. The Regional Program references the individual monitoring approach (B.2) which we presume means they should both collect comparable data—is that correct?

**24. Page B-14. 1. Individual Monitoring Program**

**Comment:** We have the same comments as for the core program: why monitor for constituents unlikely to be present or which are generally not of concern in the marine environment or which are not appropriate: Ocean Plan Table A constituents, several of the Table B constituents such as radiation as noted above, nitrates, phosphates, chronic toxicity.

**25. Page B-14. 1. Individual Monitoring Program - bioaccumulation study - B.1.d**

**Comment:** Because stormwater discharges are short-term and intermittent, it is unlikely that significant bioaccumulation will occur compared with permanent POTW or industrial discharges. We are concerned that random fluctuations or differences due to changed substrates or oceanic conditions will show increases or decreases that are not statistically significant and not related to the discharges. Bioaccumulation sampling at a few locations with large stormwater discharges in confined waters may be appropriate but we do not believe this requirement is useful for all discharges, particularly those in well-mixed

receiving waters. Does the Board have information that all stormwater discharges present a risk for bioaccumulation?

26. Page B-15. **1. Individual Monitoring Program – marine debris - B.1.e**

*Comment:* We are not convinced that trash counts along the shoreline can be tied to any individual discharge or discharger.

**Glossary**

27. Page B-17 (not numbered). **At the point of discharge(s)**

*Means in the surf zone immediately where runoff from an outfall meets the ocean water (a.k.a., at point zero).*

*Comment:* You may want to also specify: "...on the incoming wave" to be consistent with other monitoring programs.<sup>12</sup>

28. Page B-18 (not numbered). **Natural Ocean Water Quality – Reference sites**

*...Discharges "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(s).*

*Comment:* Those discharges implementing individual programs will use the same reference stations as the regional programs?

29. Page B-18 (not numbered). **Natural Ocean Water Quality – information indicating exceedance: sufficient information**

*If monitoring information indicates that natural ocean water quality is not maintained, but there is sufficient evidence that a discharge is not contributing to the alteration of natural water quality, then the Regional Water Board may make that determination. In this case, sufficient information must include runoff sample data that has equal or lower concentrations for the range of constituents at the applicable reference area(s).*

*Comment:* The discharge will typically have many constituents that exceed ambient concentrations. This threshold sets a very difficult standard for demonstrating that the discharge is not the cause of the alteration. Additionally, "equal or lower" may not be appropriate for temperature and pH.

30. Page B-18 (not numbered). **Non-storm water discharge**

*Any runoff that is not the result of a precipitation event. This is often referred to as "dry weather flow."*

*Comment:* Non-storm water discharge is not synonymous with "dry weather flow" because these non-stormwater flows also occur in wet weather. The Special Protections and the resolution are confusing because they state that dry weather flows are prohibited yet the non-prohibited, non-stormwater flows are apparently allowed in dry weather (we assume this is the case, if not, compliance is even more infeasible). Please clarify.

31. Page B-19 (not numbered). **Sheet flow**

<sup>12</sup> For example, see *Shoreline Microbiology Workplan*, Southern California Bight 1998 Regional Marine Monitoring Survey. Posted.

*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.*

**Comment:** If sheet flow does not enter a MS4 or other conveyance then it is not a point source and we presume it is not subject to an NPDES permit. Please clarify.

**Draft EIR (posted here)**

**32. Page 56, Section 4.3.1. Alternative A**

**Comment:** The PDEIR Alternatives Analysis provides no technical basis or rationale for rejecting Alternative A, the sole alternative presented to the Special Protections approach for permitted stormwater and nonpoint source discharges (Alternative A: Allow Permitted Storm Water and Nonpoint Source Discharges with No Additional Conditions Beyond those in Existing Permits). In the very abbreviated discussion presented, the PDEIR states that "The storm water NPDES permits require the discharger to develop and implement a SWMP or SWPPP with the goal of reducing the discharge of pollutants to the maximum extent practicable (MEP)." However, there is no further analysis or technical information presented to support the following conclusory statement dismissing this Alternative from further consideration:

*"However, reduction of pollutants to MEP is not adequately protective of natural water quality in ASBS." (PDEIR p. 57 of 331)*

This rejection of all the activities conducted by stormwater management programs throughout the State is inadequate and contrary to CEQA requirements to conduct a thorough and reasoned analysis of reasonable alternatives to the proposed project (i.e., Special Provisions) subject to CEQA.

The PDEIR Alternative A under section 4.3.1 should be extensively modified to provide a complete analysis and technical rationale for the conclusory statement that stormwater programs' implementation of control measures to achieve reduction of pollutants to MEP is not adequately protective of natural water quality in ASBS.

This analysis should also address the discussion regarding the full legal definition of ASBS where alteration of natural water quality is undesirable.

**33. Page 57/331. Alternative B**

*As discussed in Section 5.8.1, many of the current storm water runoff discharges tend to meet Ocean Plan objectives in the receiving water at least some of the time.*

**Comment: a)** Is meeting objectives some of the time adequate? What frequency of exceedance requires corrective measures?

*...for example, approximately 25% of ASBS waters had measured concentrations of copper above the six-month median objective. Therefore, focused efforts will be required to control certain*

discharges to meet natural water quality in ASBS receiving waters within the proposed implementation schedule. These focused efforts may involve the installation of structural BMPs at the mouth of these discharges

**Comment:** b) This would be more meaningful if it showed what percentage of these exceedances involved urban discharges. In addition, what is meant by "focused efforts." Does the Board have evidence than options other than structural controls would provide assured compliance with the metal and other parameters (temperature, pH, etc.)

**34. 5.0 Environmental Baseline**

**Comment:** This section did not appear to identify any problems caused by the stormwater discharges in ASBS. Since the intent of the project/program is to remove or treat these discharges, the EIR should identify the adverse impacts being addressed. Some of the data (e.g., p 133) identified statistical differences between discharge locations and reference sites, however, as noted, it is difficult to separate out sampling artifacts and natural variability in most cases. Does the Board have evidence of problems in the ASBS caused by the stormwater discharges? As summary identifying stormwater impacted ASBS is needed.

These adverse impacts (if any) need to be compared and balanced with the clear adverse impacts of constructing structural controls in coastal areas.

**35. Page 197. 5.8.1 – Exception Application Water Chemistry Data**

**Comment:** We have several concerns regarding the assessment of this data.

a) **Data aggregations.** For example:

*The median copper concentration for discharges was 10.6 µg/L and the maximum concentration was 309 µg/L. Seventy-five percent (75%) of the discharge results for copper were below 44.7 µg/L.*

*Ocean receiving water had a median value of 0.57 µg/L and the maximum concentration was 122 µg/L. Seventy-five percent (75%) of the copper results in the samples were below 3.1 µg/L and 90% are below 26.81 µg/L. The Ocean Plan six-month median is 3.0 µg/L for copper, and the instantaneous maximum is 30 µg/L.*

Please provide more description of the data that was used to provide the results above. About 49 of the discharge samples were from San Nicholas Island (Navy) and had exceptionally low concentrations. Were these used in the data assessment above? We request that the data be assessed by subcategories so that we have a better idea of which types of discharges will have compliance problems. Appropriate categories might be: urban, highway/rural residential or could be based on percent impervious land in the watershed.

b) **Data quality control**

Some data seem potentially erroneous:

| Arsenic ug/L | Cadmium ug/L | Chromium ug/L | Copper ug/L | Lead ug/L | Mercury ug/L | Nickel ug/L | Selenium ug/L | Silver ug/L | Zinc ug/L |
|--------------|--------------|---------------|-------------|-----------|--------------|-------------|---------------|-------------|-----------|
| 5            | 1            | 5             | 5           | 5         | ND           | 10          | 2.5           | 2.5         | 25        |

It is rather extraordinary that As, Cr, Cu, and Pb all have the same concentration of 5 ug/L and that Ni, Se, and Ag are all at 2.5. Were the data reviewed to identify anomalies and re-checked to verify accuracy? Were these questionable results included in the analysis?

c) **Data variability**

We also have concerns regarding the extreme variability of the data. For example, we question whether it is realistic to expect background values for metals along the California coast to vary as much as shown in Table 2 (follows). The background samples showed extraordinary variability: 3 orders of magnitude variation in background concentrations of copper. These results are simply not credible.

Selenium in ocean background varies from 0.088 to 302 ug/L in two locations not that far apart. Is the Board confident regarding the accuracy of this dataset?

We believe the dataset is not adequately robust to draw any conclusions regarding the potential compliance or non-compliance of the urban dischargers with requirements to comply with Table B and to not cause changes in natural water quality.

**Table 2 - Samples labeled "Ocean background water" or "Reference Point"**

| ASBS                         | 80<br>As<br>ug/L | 10<br>Cd<br>ug/L | 20<br>Cr<br>ug/L | 30<br>Cu<br>ug/L | 20<br>Pb<br>ug/L | 0.4<br>Hg<br>ug/L | 50<br>Ni<br>ug/L | 150<br>Se<br>ug/L | 7<br>Ag<br>ug/L | -<br>Tl<br>ug/L | 200<br>Zn<br>ug/L |
|------------------------------|------------------|------------------|------------------|------------------|------------------|-------------------|------------------|-------------------|-----------------|-----------------|-------------------|
| Año Nuevo Point              | 25               | <0.2             | 45               | 16               | 0.8              | <0.2              | 8.5              | 120               | 0.2             |                 | 42                |
| Duxbury Reef                 | 1.37             | 1.09             | 1.09             | 1.43             | 0.607            |                   | 4.22             | 0.088             | ND              | 0.007           | 2.64              |
| Irvine Coast                 | 63               | <1               | <5               | 20               | <5               | <0.2              | 14               | <2.5              | <2.5            | <2.5            | <25               |
| James. F. Fitzgerald         | 23               | <0.2             | 41               | 14               | <0.5             | <0.2              | 6.2              | 110               | 0.2             | <1              | 37                |
| James. V. Fitzgerald         | 77.4             | ND               | 3.3              | 106              | 0.49             | 0.16              | 15.9             | 302               | ND              |                 | 20.1              |
| La Jolla                     | 1.22             | ND               | ND               | 10.1             | ND               | ND                | 2.13             | ND                | 0.17            | 5.3             | 5.39              |
| Laguna Point to Latigo Point | 60               | <1               | <5               | 21               | <5               | <0.2              | 14               | <2.5              | <2.5            | <2.5            | 27                |
| San Clemente Island          | 1.19             | ND               | 0.36             | 0.142            | 3.87             | ND                | 0.25             | ND                | ND              |                 | 2.65              |
| Southeast Catalina Island    | 1.69             | 0.04             | 0.31             | 0.16             | 0.03             | 0.012             | 0.19             | ND                | ND              |                 | 0.05              |

**36. p. 231/331. Impacts of controls are not assessed but are all put off to the individual compliance projects**

For example:

*It is anticipated that each applicant will assess sensitive visual resources on a project by-project basis as part of compliance with the terms and conditions of the General Exception.*

This programmatic EIR is required under CEQA to assess the aggregate impacts of the program but does not.

**37. p. 302/331. Costs:**

*Still, an estimate of \$147,000 to 185,000 per discharge is reasonable to assume as a general estimate, with some discharges being more or less expensive. There are about 294 total discharges greater than 18 inches in width or diameter.[and why just these?] If all these*

*discharges are controlled with structural BMPs, the total cost would range from \$43 to \$54 million statewide.*

We believe the costs are significantly greater – in several cases a single urban MS4 could spend this amount or more to come into compliance. The estimates for urban (and rural/highway) facilities should be based on actual constructed costs of facilities that meet Ocean Plan Table B and ambient receiving water requirements as specified by the Special Protections. It is wholly inappropriate to proceed to implement program without a single example of a coastal control facility that can reliably comply with the proposed program. .

### **Draft Resolution**

This resolution authorizes the General Exception.<sup>13</sup>

#### **38. Title: Mitigated Negative Declaration**

We understand that this action is based on a Programmatic EIR. Then why is this Resolution adopting a Mitigated Negative Declaration, which is used when an EIR is not completed.

#### **39. Statement # 5**

*“In state water quality protection areas, waste discharges must be prohibited or limited by special conditions, in accordance with the Porter-Cologne Water Quality Control Act, Water Code §13000 et seq., and implementing regulations, including the Ocean Plan and Thermal Plan.”*

*Comment:* As we have asserted in previous comments, CASQA’s position is that the Ocean Plan should be amended to include the required “special conditions,” rather than proceeding with General Exception procedure which leaves the impression of illegality and is more difficult to implement. This option, originally proposed by Board staff in 2003, should be mentioned as an alternative approach.

#### **40. Statement # 13**

This statement indicates that based on the Initial Study and Mitigated Negative Declaration, *“that there is no substantial evidence that approval of the exceptions will have a significant effect on the environment because of the terms, special conditions, and prohibitions that comprise the Special Protections in this resolution.”*

*Comment:* Since the environmental document identified few or no impacts resulting from the existing discharges it is not surprising that no impacts will result in the receiving water because of the Special Protections. The actual projects that should have been assessed, but were not, are the projects and programs to build additional treatment and conveyance facilities to treat the runoff or divert it either around the ASBS or to sewage treatment plants.

#### **41. Statements #s 11, 12, & 13**

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<sup>13</sup>The draft Resolution is posted

Each of these refers to CEQA scoping or the Initial Study and Mitigated Negative Declaration for the proposed exceptions.

*Comment:* The resolution should also reference the PEIR.

**42. Resolution #2.c**

*Only storm water and nonpoint source waste discharges by the applicants listed in Attachment A to this resolution are covered by this resolution. All other waste discharges to ASBS are prohibited, unless they are covered by a separate, applicable Ocean Plan exception.*

*Comment:* This provision appears to conflict with the Special Protections, which do identify a list of, authorized (non-prohibited) discharges that presumably will occur in dry weather. This resolution appears to prohibit all dry weather flows regardless of source. Some non-stormwater discharges transported in stormwater conveyance systems are inevitable and should not be excluded from this Resolution and General Exception. For example, groundwater seepage is probably present in most stormwater conveyance systems. During dry weather, rerouting these flows to POTWs or around the ASBS may not be feasible and is often prohibitively expensive. Resolution 2.c is not feasible as currently stated and should explicitly acknowledge the authorized discharges

**Appendix 4: Systat Results – Chemical v. Waterbody**

**43. Data used in Systat**

*Comment:* It is not clear which data were used in this assessment. For example, were the 49 discharge samples from San Nicholas used or was a single data point assumed for San Nicholas. Some discussion of the approach and results would be useful.

**Appendix 6: Evaluation of ASBS assessments in rocky intertidal communities for the State Water Board**

[No comments at this time]

**Appendix 7 – Toxicity Data from Exception Applications**

[No comments at this time]

**Appendix 8 – Summation of Findings Natural Water Quality Committee 2006-2009**

[No comments at this time]

**Appendix 9 – Environmental Greenhouse Gas Emissions Impacts**

[No comments]

**Appendix 10 – PORTER-COLOGNE WATER QUALITY CONTROL ACT**

[No comments]