

California Regional Water Quality Control Board, San Diego Region

March 21, 2014

Via email only

Mr. Kris McFadden
Director
City of San Diego
Transportation and Storm Water Department
9370 Chesapeake Drive, Suite 100, MS 1900
San Diego, CA 92123

In reply refer to / attn:
Place ID 255222:wchiu

Subject: Comments on Draft Compliance Plan for the La Jolla Area of Special Biological Significance (ASBS), Dated September 20, 2013

Mr. McFadden:

By letter dated September 20, 2013, you submitted for review and comment the City of San Diego's (City) *Draft Compliance Plan, La Jolla Area of Special Biological Significance (ASBS)* (Compliance Plan). The City's submittal of the Compliance Plan was required under section I.A.3.b of Attachment B to the State Water Resources Control Board's Resolution No. 2012-0012, *Approving Exceptions to the California Ocean Plan for Selected Discharges into Areas of Special Biological Significance, Including Special Protections for Beneficial Uses, and Certifying a Program Environmental Impact Report* (Exception). Attachment B to the Exception contains Special Protections intended to ensure that storm water and nonpoint source discharges are controlled to protect the beneficial uses of the affected ASBS, including marine aquatic life and habitat, and to maintain natural water quality within the ASBS. The City's draft Compliance Plan describes its strategies to comply with the Special Protections for municipal separate storm sewer system (MS4) discharges of storm water and non-point source waste into the La Jolla ASBS. These discharges are regulated under Order No. R9-2013-0001, *National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements For Discharges From The Municipal Separate Storm Sewer Systems (MS4s) Draining The Watersheds Within The San Diego Region* (Regional MS4 Permit), and the San Diego Water Board will be serving as the lead agency for review and approval of the Compliance Plan.

The San Diego Water Board has reviewed the Draft Compliance Plan for compliance with the requirements in Attachment B to the Exception and offers the following comments:

1. **Non-Structural Controls:** Sections I.A.2.f and I.B.3.a of the Special Protections require the Compliance Plan to describe the non-structural controls currently employed and planned in the future, and include an implementation schedule. Sections I.A.3.c and

I.B.3.c of the Special Protections require any non-structural controls that are necessary to comply with the Special Protections to be implemented within 18 months of the effective date of the Exception, or by September 20, 2013.

The draft Compliance Plan provides conflicting information on whether the City is meeting the September 20, 2013 compliance date. Section 8.3 of the draft Compliance Plan states that the non-structural controls necessary to comply with the Special Protections, shall be implemented by September 20, 2013. Section 6.2.1 of the draft Compliance Plan, however, indicates that the City plans to phase in several non-structural controls beginning in Fiscal Year (FY) 2015 and ending FY 2018. .

Please clarify the implementation schedule for the non-structural controls to ensure the City has met the September 20, 2013 compliance date.

- 2. Structural Controls:** Sections I.A.2.f and I.B.3.a of the Special Protections require that the Compliance Plan describe the structural controls currently employed and planned in the future, and include an implementation schedule. Sections I.A.3.d and I.B.3.d of the Special Protections require any structural controls identified in the Compliance Plan that are necessary to comply with the Special Protections to be operational within 6 years of the effective date of the Exception, or by March 20, 2018. Sections I.A.3.f and I.B.3.f of the Special Protections allow the Executive Director of the State Water Board or the Executive Officer of the San Diego Water Board to authorize additional time to comply with the implementation and operation of the structural controls for the Special Protections if good cause exists to do so. Good cause means physical impossibility or lack of funding.

The draft Compliance Plan provides conflicting information on whether the City will meet the March 20, 2018 compliance date. Section 8.3 of the draft Compliance Plan states that the structural controls to make outfall discharges meet the requirements of the Special Protections shall be operational by March 20, 2018. Section 6.2.2 of the draft Compliance Plan, however, indicates that the City plans to phase in several structural controls beginning in 2019 and ending 2027. The reason given for the phased implementation for the structural control is not clearly described in section 6.2.2, but the draft Compliance Plan appears to indicate that the additional time is needed to secure the necessary resources and funding to implement the planned structural controls.

Please clarify the implementation schedule for structural controls to ensure the City will meet the March 20, 2018 compliance date. If the City cannot meet this compliance date, additional information is needed to support that good cause exists for an extension.

- 3. Time Extension Request:** Sections I.A.3.f and I.B.3.f of the Special Protections requires the City to submit a request for an extension of time if the implementation and operation of the planned structural controls cannot meet the compliance date of March 20, 2018 due to physical impossibility or lack of funding. Sections I.A.3.f and I.B.3.f of the Special Protections describe the information that must be provided to request an extension. The

draft Compliance Plan does not include a request for an extension, or the information necessary to determine if an extension should be authorized.

4. **Incorporation of ASBS Compliance Plan into Water Quality Improvement Plan:** According to Section I.A.2 of the Special Protections, the Compliance Plan is to be included in the discharger's Storm Water Management Plan (SWMP) or Storm Water Pollution Prevention Plan (SWPPP), as appropriate to the permit type. The Compliance Plan is subject to approval by the Executive Officer of the San Diego Water Board (for permits issued by the San Diego Water Board).

The Regional MS4 Permit requires the City to develop a Water Quality Improvement Plan for the Mission Bay Watershed Management Area, including the La Jolla ASBS. The Water Quality Improvement Plan is equivalent to a SWMP or SWPPP. The Regional MS4 Permit requires submittal of the Water Quality Improvement Plan for approval by the San Diego Water Board by June 27, 2015.

The final Compliance Plan is an essential part of the Water Quality Improvement Plan for the Mission Bay Watershed Management Area. However, Section I.A.3.b of the Special Protections requires the final Compliance Plan to be submitted within 30 months from the effective date of the Exception, or September 20, 2014. The City must incorporate the final Compliance Plan into the Water Quality Improvement Plan for the Mission Bay Watershed Management Area that is required to be submitted by June 27, 2015.

By September 20, 2014, please submit the final Compliance Plan for approval by the San Diego Water Board Executive Officer and provide a written response that addresses the above comments. An absence of comments on other areas of the draft Compliance Plan does not necessarily mean that those areas fully meet the requirements of the Special Protections. It is possible the San Diego Water Board may identify additional inconsistencies or areas of potential non-compliance during its review of the final Compliance Plan.

The San Diego Water Board appreciates the City's efforts on the draft Compliance Plan and anticipates working with the City as needed to resolve the above-mentioned comments. In the subject line of any response, please include the requested "In reply refer to:" information located in the heading of this letter. For questions pertaining to the subject matter, please contact Wayne Chiu at (858) 637-5558 or wchiu@waterboards.ca.gov.

Respectfully,



David Gibson
Executive Officer
San Diego Water Board

DWG:dtb:esb:wc

cc (via email only): Drew Kleis, City of San Diego
Clem Brown, City of San Diego
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David Barker, San Diego Water Board
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Tech Staff Info & Use	
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