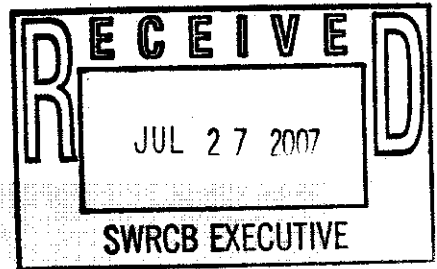


6/26/07 Scoping Mtg.
CA Ocean Plan Amend.
Deadline: 7/27/07 Noon



CITY OF DANA POINT



DEPARTMENT OF PUBLIC WORKS

July 27, 2007

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

Subject: Comment Letter: California Ocean Plan Amendment, June 2007

Dear Song Her:

Thank you for the opportunity to comment on the Scoping Document Amendment of the Water Quality Control Plan Ocean Waters of California, June 2007. The City of Dana Point has been a leader in promoting improved water quality with ozone treatment, catch basin inserts, media filters, diversions, trash collections units, etc. In general, the City agrees with the preliminary recommendations; however we have some concerns as to the implementation of some of the recommendations. Our comments/requests for clarification are as follows:

1. The City strongly supports the concept that regulations have to address non-human sources of bacteria for both recreation and shellfish beneficial uses; however, the document indicates that "states must apply the Escherichia coli and enterococci criteria to all coastal recreation waters, unless sanitary surveys and epidemiological studies show the source of the indicator bacteria to be non human and the indicator densities do not indicate a human health risk."

The City has aggressively and successfully pursued funding and partnering to conduct an epidemiology study at Doheny Beach, one of the many beaches in our small coastal City. This is one of a group of 3-4 studies, in concert with EPA, that will review non-point source bacteria impacts to beaches over the next three years. The study, being conducted by the Southern California Coastal Water Research Project (SCCWRP) and University of California Berkeley began this summer and we look forward to the data and conclusions that will result. It is desired that general consensus points can be used regionally and nationally, as it should be noted that these types of studies are very time consuming (three years plus) and costly (\$2M+) and it does not appear reasonable or practical for these studies to be conducted at each site. The study results, which will evaluate new testing protocols for bacteria and viruses that better identify both non-human sources and potential human health risks may be applicable to other locations. Please clarify the intent of the underlined text above -- what is required for an acceptable "sanitary survey" and does the State acknowledge that an epidemiological study cannot be conducted at every site and

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that results and data from other studies are applicable and useful? It appears that the wording " unless sanitary surveys or epidemiology studies show..." may be more appropriate.

We assume that the Basin Plan Amendment addressing non-human sources of bacteria will also apply to the Recreation standards, although it is not clear in the scoping document, as the item is listed under a specific Shellfish issue. Please clarify that the non-human sources will be addressed for Rec 1 & Rec 2 beneficial uses, as well as Shellfish.

2. A second and significant concern is the fact that the San Diego Region Ocean Plan identifies the entire Pacific Coast Shoreline with a Shellfish Beneficial Use. It does not appear that there is any data to support the historical or current use along the entire coastline. While it would be ideal to be able to meet shellfish criteria at all beaches, it is simply financially unrealistic. Given the relationship between indicator bacteria and non-point source bacteria relative to health risk, this policy sets unreasonable goals for dischargers. The City strongly urges an assessment of the Shellfish beneficial use prior to implementing additional regulations. Without proper designation of beneficial use, much taxpayer money will be spent without justifiable reasons. We would submit that sections of beaches adjacent to major creeks and outfalls from an urban environment, with large bird populations, will seldom meet bacteria total coliform numbers of 70/100ml and should be excluded from shellfish harvesting. Let's be smart about this! Since there appears to be no evidence or proof of collection and consumption of shellfish along south Orange County beaches, let's carefully choose certain sections of beaches where shellfishing can be reinstated and have a reasonable chance of regularly meeting this difficult to obtain standard.
3. Preliminary research by our City was unsuccessful in finding documentation of the commercial shellfish growing areas that were identified as threatened and the method of assessment (under Shellfish Protection Act of 1993). The document notes that there were no commercial shellfish growing areas identified in coastal ocean waters- was the entire coastline reviewed under this program? The data used to determine where commercial shellfish growing areas are located, could provide valuable information as to where historically and currently the Shellfish beneficial use could be appropriately applied.

Please direct the City as to where this information can be obtained.

4. Per Assembly Bill 459 - how were the areas of naturally occurring populations of shellfish selected? Of particular interest to the City of Dana Point, is the area along the south Orange County coast. There is no mention of this area, which leads us to believe, supported with our current knowledge, that there may be areas, especially areas with active beach/recreation activity, that historically and currently do not support shellfish. It would be prudent to conduct an assessment of the areas subject to the shellfish beneficial use to make certain that they are appropriately designated. The shellfish standard is very strict and will be extremely costly, if not possible, to

meet. We believe it is important to make sure that tax dollars are being spent appropriately and in the right locations.

In summary, the City believes that it is imperative that definitive locations for the shellfish beneficial use be better defined and selectively chosen in concert with this proposed Ocean Plan Amendment. We believe that it is best to select/identify different beaches for different uses and standards. For example, the high bird population at Doheny State Beach, and the fact that San Juan Creek is a flood control channel that drains a 133 square mile primarily urban watershed, leads to high bacteria counts and it is not a sensible choice for shellfish beneficial use. Much like the assessment of the 303(d) List of impaired waterbodies, we feel that there exists much more data now than when the beneficial uses were first designated in the Ocean and Basin Plans and a re-assessment is imperative.

Protection of beneficial uses is of utmost importance to the City; however in order to be fiduciary responsible to our taxpayers, we must ensure that the appropriate beneficial use has been designated so monies spent to protect and improve make sense. "Blanket" beneficial uses designated long ago in 1975 may or may not have been based on strong scientific data and the resulting connotations may have not been considered at that time (for example, did/does the entire pacific ocean shoreline in the San Diego Region from San Ysidro through Laguna Beach support habitat for shellfish, allow access for shellfishing and is shellfishing being conducted?). We know that shellfishing is not conducted at popular beaches, such as Doheny State Park Beach. Inappropriate designation of the shellfish use (even at the small subwatershed level) could force MS4s to spend millions and millions of dollars inappropriately (Some financial analysis is provided in the Technical Report for *Total Maximum Daily Loads for Indicator Bacteria Project I - Beaches and Creeks in the San Diego Region*, dated June 25, 2007, and based on the many, many comments provided during the public comment period of this document, do not truly represent actual costs for a variety of reasons - actually costs are anticipated to be much higher.)

Should you have any questions, please contact Lisa Zawaski, Senior Water Quality Engineer for the City at 949-248-3584.

Respectfully,



Brad Fowler, PE
Director of Public Works & Engineering Services
City of Dana Point

cc: P. Hammer, B. Tobler, SDRWQCB