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science, policy, education, and environmental law*

VIA ELECTRONIC MAIL: commentletters@waterboards.ca.gov

September 1, 2006

Tam Doduc, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



Re: Comment Letter – ASBS Special Protections – Storm Water and Nonpoint Source Discharges

The following comments are submitted on behalf of the Center for Biological Diversity (“the Center”) in response to the State Water Resources Control Board’s (“State Board’s”) public scoping notice for a draft policy to grant a statewide “exception” to waste discharges from storm water and nonpoint sources into Areas of Special Biological Significance (“ASBS”). Many of our overarching points of concern with this proposal are addressed in comments submitted separately by NRDC and a coalition of other conservation organizations (including the Center). But we would like to also take this opportunity to bring to your attention related concerns specific to one ASBS – the King Range – and to raise other issues that we believe the State Board should be considering.

The Center is a non-profit, public interest organization that is dedicated to protecting and restoring native species and their habitat. Founded 17 years ago, the Center has more than 25,000 members today, including thousands who live in California and rely on the beneficial uses of ASBSs and other coastal waters of this state.

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Because Life Is Good

I. GENERAL COMMENTS

A. An EIR Is Necessary

First, as a threshold matter, we believe a mitigated negative declaration may not be appropriate in this instance, and that this policy instead necessitates the preparation of an Environmental Impact Report (“EIR”)¹. There is a strong presumption in favor of preparing an EIR and a low threshold requirement for doing so². An agency must prepare an EIR whenever substantial evidence in the record supports a “fair argument” that a project may have a significant effect on the environment². A significant effect on the environment is defined as “a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. CEQA Guidelines § 15382. The agency may rely upon a negative declaration only when “there is no substantial evidence in light of the whole record before the agency, that the project may have a significant effect on the environment...”

For example, as the comments submitted by NRDC, et. al. point out, the State Board recognizes that stormwater runoff is the greatest source of pollution in coastal waters. Therefore, the State Board must also understand that its proposed action – granting a broad, statewide exception to the prohibition on such discharges, and doing so for the state’s most precious coastal areas – has great potential to cause significant adverse effects to our environment.

To give one other example, under the State Board’s draft policy, deleterious amounts of waste from storm water discharges would be allowed in ASBSs for five years⁴. This, on its face, would have serious adverse impacts on ASBSs and unquestionably may have a significant effect on the environment. Alternatives to this time schedule and measures to mitigate the resulting effects would be – and should be – evaluated and considered as part of an EIR.

B. Upstream Discharges

As also discussed in NRDC, et. al’s comments, many watersheds that flow into ASBSs are listed as impaired pursuant to § 303(d) of the Clean Water Act, and thus emit pollution and waste as they meet the ocean. On the North Coast, the primary concern is excessive sediment and/or temperature pollution, with the main source being logging operations conducted on both private

¹ CEQA Guidelines § 15070; Pub. Res. Code § 21080(c).

² Citizens Action to Serve All Students v. Thornley (1990) 222 Cal.App.3d 748.

³ Friends of “B” Street v. City of Hayward (1980) 106 Cal.App.3d 988, 1000-1003.

⁴ “Starting after one year of the effective date of these Special Protections, storm runoff waste discharges having concentrations of measured constituents in excess of Table B, and in excess of the applicable reference stream, must be controlled to achieve a 25% reduction in concentration each subsequent year, with a goal of achieving natural background levels (as measured at reference streams) within five years of the effective date of these Special Protections.” Draft Policy at Page 9.

and public land. Impaired watersheds that impact North Coast ASBSs include the Trinity River, Klamath River⁵ and Redwood Creek, which flow into the Redwood Park ASBS, and the Mattole River, which forms the northern boundary of the King Range ASBS⁶.

The draft policy states, “Upstream discharges to streams tributary to ASBS are not subject to these Special Protections but are instead regulated by Regional Water Boards under the Basin Plan or other applicable statewide water quality control plans...” While this may be the case, we believe it would be prudent to provide some sort of guidance to the Regional Boards to ensure they both are aware of and are meeting this obligation. Special protections are necessary in these watersheds to protect natural water quality conditions in ASBSs, and there may be instances when relevant Regional Board staff is simply unacquainted with these provisions and therefore unintentionally overlooking them when issuing permits or taking other actions.

For example, Maxxam/Pacific Lumber Company is currently conducting a “watershed analysis” of the Mattole River, and it is unlikely that ASBS protection has been identified as an issue of concern. In all other cases where the company has conducted a watershed analysis, it has been used to substantially weaken standards for logging in riparian areas and unstable slopes. After these analyses, logging has been opened in previous “no-cut” zones along both fish-bearing and steep, headwater streams, and in some cases, Maxxam/Pacific Lumber’s revised logging standards require much less protection than the California Forest Practice Rules ordinarily allow. Additionally, in the Trinity River, Klamath River and Redwood Creek, a large amount of herbicide spraying is being conducted in the Mattole River as part of these logging operations, bringing concerns related to toxic pollution as well.

We believe processes such as these must implement special protections that prevent degradation to downstream ASBSs, and that Regional Boards would greatly benefit from State Board guidance on this issue. The Center encourages the State Board to advise and provide direction to Regional Boards on their duty to “regulate these upstream discharges to ensure that downstream water quality standards are met...includ[ing] the Ocean Plan prohibition on wastes being discharged to ASBS.” Draft Policy.

⁶ The State Board acknowledges that sediment pollution from the Mattole River “may impact” the King Range ASBS. http://www.swrcb.ca.gov/plnspols/docs/asbs/swqpa_finalsurveyreport_wlayouts.pdf

⁵ The upper Klamath River is currently listed as impaired (also for nutrients) and the lower Klamath, which is severely impacted with excessive sediment loads, is proposed to be added to the State Board’s 2006 303(d) list.

C. Global Warming and Ocean Acidification

“The global oceans are the largest natural long-term reservoir for anthropogenic carbon dioxide, absorbing approximately one-third of the carbon dioxide added to the atmosphere by human activity each year. Over the next millennium, the global oceans are expected to absorb approximately 90 percent of all CO₂ emitted to the atmosphere.”

- Christopher Sabine, chief scientist and an oceanographer at NOAA, April 2006
<http://www.noaanews.noaa.gov/stories2006/s2606.htm>

Global warming is no longer a future threat that looms upon us, but one that is increasingly presenting itself by the day, emerging as one of the single largest environmental challenges we have ever confronted. Perhaps nowhere are these impacts more evident than in the world’s oceans, where greenhouse gas pollutants from the atmosphere are pouring into – and severely harming – this underwater world. There is growing information that shows this pollution is significantly adversely impacting water quality in the state’s ASBSs, and that they should be – but are not currently – considered and addressed by the State Board⁷.

After carbon dioxide is emitted into the atmosphere, a large and growing percent dissolves into the world’s oceans . This pollution causes a significant drop in its pH, making the ocean increasingly acidic and adversely modifying its chemistry and fundamental natural processes. Scientific studies show this has enormous implications for California’s ASBSs and a myriad of sea creatures that rely on them – from illustrious, giant whales to the obscure, tiny krill and many animals in between, including commercial fish species like salmon, mackerel, herring and cod.

For example, published literature shows that CO₂ depositions are adversely affecting the pteropod – a small snail that is a primary food source for whales, salmon and all of the other above aforementioned animals on the California coast. As with coral reefs and creatures like crabs, pteropods rely on calcium carbonate in the ocean, which they extract to form their shells and skeletons. When it dissolves in the ocean, CO₂ severely reduces carbonate minerals and the chemical “building blocks” these animals need to survive. Studies indicate that many other native creatures – such as mussels, clams and crabs – may also be adversely impacted by greenhouse gas pollution, and that natural water quality conditions in and beneficial uses of ASBSs could be significantly and adversely affected by such discharges.

⁷ For documentation of information cited in this section, please see the attachments to our comments (including Kleypas 2006). See also:

Feely, R.A., C.L. Sabine, K. Lee, W. Berelson, J. Kleypas, V.J. Fabry, and F.J. Millero (2004): Impact of anthropogenic CO₂ on the CaCO₃ system in the oceans. *Science*, 305(5682), 362-366.

Sabine, C.L., R.A. Feely, N. Gruber, R.M., Key, K. Lee, J.L. Bullister, R. Wanninkhof, C.S. Wong, D.W.R. Wallace, B. Tilbrook, F.J. Millero, T.H. Peng, A. Kozyr, T. Ono, and A.F. Rios (2004): The oceanic sink for anthropogenic CO₂. *Science*, 305(5682), 367-371.

Orr, James C., Victoria J. Fabry, Olivier Aumont, et al. (2005): Anthropogenic ocean acidification over the twenty-first century and its impact on calcifying organisms. *Nature*, 437, 681-686.

Though “untraditional,” this pollution represents one of the single largest growing threats confronting California’s coastal waters and ASBSs today. We urge the State Board to be at the forefront of this issue, as it is within your purview and statutory mandate to do so. ASBSs are recognized as California’s coastal gems that deserve and require special protections, including protections from emerging threats like these.

To this end, the Center strongly urges the State Board to consult with your sister agency – the California Air Resources Control Board – as well as NOAA and others that have relevant data and/or overlapping jurisdictions on this issue – to develop and implement a plan of action that averts the disastrous forecast projected if current global warming trends continue. This plan of action should include, at a minimum:

- (1) Monitoring for carbonic acid and related impacts to pH within ASBSs, including conducting or requiring biological surveys to determine population trends of affected, native aquatic creatures like the pteropod;
- (2) Identifying dischargers who are causing nonpoint sources of greenhouse gases into ASBSs and quantifying these discharges; and
- (3) Formulating and establishing regulations that effectively evaluate, avoid and mitigate impacts caused by this pollution.

II. KING RANGE ASBS/SHELTER COVE

“In terms of biological diversity, Pt. Delgada is the jewel of the King Range National Conservation Area intertidal zone. Almost every plant and animal species found elsewhere along the coast can be found at Pt. Delgada, along with many species found only in this rather small area.”

- State Water Board, Water Quality Monitoring Report No. 79-18, June 1979

Perched on Point Delgada, Shelter Cove has exploded with residential and commercial development in the last six years. When the King Range ASBS was surveyed in 1979, “few of the lots [were] developed” in the 2,600 Shelter Cove “Sea Park” development, and its sewage treatment plant served only “39 residences, the trailer park, and one motel.”⁸ Today, however, there are approximately 500 houses served by the Shelter Cove “Resort Improvement District,” along with five hotels, four bed and breakfasts, and four restaurants and delis (with another on the way). A real estate agent recently stated that he anticipates that “in the year 2015, if we continue at the same rate, we will be pushing 1,000 developed properties” in Shelter Cove⁹.

⁸ http://www.swrcb.ca.gov/general/publications/docs/asbs_kingrange.pdf

⁹ www.northcoastjournal.com/090403/news0904.html

Point Delgada is one of the most biologically rich areas of all found in the King Range, if not the North Coast as a whole. We are concerned that development and other problems are causing and will continue to cause adverse cumulative impacts to this critical section of the ASBS, and that the State Board’s draft policy would not alleviate these problems. These concerns are briefly discussed below.



A. Sediment Pollution

Rapid development is causing – within a short period of time – large amounts of vegetation/land clearing, grading and other activities that cause erosion and sediment pollution. This sediment pollution can have adverse impacts on the beneficial uses of the King Range ASBS, particularly given the sensitivity and biological characteristics of Point Delgada. For example, “excessively high erosion can cause sediment to smother aquatic vegetation, cover shellfish beds and tidal flats, fill in riffle pools, and contribute to increased turbidity and nutrients.”¹⁰

¹⁰ http://www.coastal.ca.gov/nps/Web/cca_mm_hydmmod.htm

¹¹ Also related, as mentioned above, many watersheds flowing into ASBSs are subjected to intensive herbicide spraying associated with commercial logging operations.



The draft policy does not include adequate measures to prevent sediment discharges into ASBSs. For example, although the monitoring provisions call for sampling sediments for Table B constituents, it does not require any monitoring for sediment itself. Since many watersheds that flow into the North Coast ASBSs carry excessive loads of sediment, there is a need for greater scrutiny on these issues throughout the region.



B. Nutrients and Pesticides

Contrary to comments submitted by the Humboldt County Department of Public Works, we see a need to require monitoring for pesticides and other chemicals in “non-agricultural” areas like Shelter Cove. Increased use of pesticides, fertilizers and other toxic chemicals unquestionably follows residential development. Additionally, we also question whether the Resort Improvement District uses chemical fertilizers, pesticides, herbicides and/or poisons for gophers on the golf course in Shelter Cove, and/or if it uses such chemicals in other areas (like roadways)¹¹. Aside from these considerations, there are also the potential for discharges of petrochemicals originating at the airstrip in Shelter Cove as well as the roads, parking lots and driveways pervading the area.



C. Impervious Surfaces and Hydromodifications

Development is also increasing the amount of impervious land within the Shelter Cove area and having other effects that alter surface water runoff and drainage patterns. We believe this has serious implications for water quality in the King Range ASBS. For example, impervious surfaces such as buildings, roads, parking lots and drive-ways prevent rain from soaking into the ground, and there is less vegetation to soak up, store and evaporate water. Consequently, stormwater runoff greatly increases even during small rainstorms, accelerating the delivery of pollutants such as petrochemicals, pesticides, fertilizers, fecal coliform and nutrients.



III. CONCLUSION

The Center appreciates this opportunity to provide comments on this issue and the State Board's efforts to protect our magnificent coastal areas. We look forward to continuing to be involved in this process as well as future ones that affect California's ASBSs. Thank you for considering our comments and concerns.

Sincerely,

Cynthia Elkins