8/1 and 8/15 Meetings
ASBS Special Protections
Deadline: 8/15/06 5pm

Date: August 15, 2006

To: Song Her, Clerk to the Board
Executive Office
SWRCB
PO Box 100
Sacramento, CA 95812-0100

Via email: commentletters@waterboards.ca.gov

From: Wil Bruhns, Acting AEO
Chief, North Bay Watershed Management Division
RWQCB – San Francisco Bay Region

Subject: Comment Letter – ASBS Special Protections

Thank you for the opportunity to comment on the **Working Draft – Staff Proposal, *Special Protections for Areas of Special Biological Significance (ASBS) - Storm Water and Nonpoint Source Discharges***, dated June 14, 2006. Region 2 Water Board staff reviewed the draft document, attended the August 1, 2006 public scoping meeting, and have the following comments.

General Comments:

Region 2 staff fully support the intent of this draft document to ensure that discharges will be controlled to protect the ASBS. We also appreciate the challenges associated with developing statewide special conditions for the ASBS, given the wide range of pollutants, sources of discharges, and number of responsible parties along the coast. However, the Working Draft does not provide a practical framework or focus on controls for higher threat discharges, as discussed on page 2. We believe that applying the *individual exception* model (as discussed in the Introduction) to all of the discharges in the State that drain into ASBS may create an unwieldy process for responsible parties who do not have the capability or resources of carrying out the rigorous level of monitoring required in this working draft, and to State and Regional Boards' staff that will be reviewing the adequacy of the efforts.

We believe that some flexibility is needed to attain the goals of the Special Protections, and that the goals can be achieved with an emphasis on pollutant source control combined with monitoring to fit the characteristics of the given discharge. Due to the number and types of discharges, we suggest that State Board staff triage or prioritize the identified discharges to first address those of significant impact to beneficial uses. The draft document does not distinguish the higher threat discharges (urban, suburban, transportation, etc) from the lower threat discharges (e.g., rural residential, nurseries, managed grazing). Granted that level of pollution cannot always be equated to land use, but the priorities can be developed and goals

can be accomplished via the responsible parties' ability to demonstrate source control measures have been put in place. The focus of the Special Protections should be on controlling the discharge and monitoring the effectiveness of the controls, rather than expending resources on extensive receiving water monitoring at the outset. This model suits the types of land uses in Region 2 and can still accomplish the goals of Special Protections.

Depending upon what is known about the discharge and the responsible party's ability to evaluate the problem, set priorities based upon criteria such as, whether the tributary flowing into ASBS is listed as impaired via CWA 303(d); the type of pollutant (i.e., a bioaccumulating or chronically toxic substance); the concentration of pollutant and frequency of detection in the discharge; the type of discharge; etc.

In terms of the role of Region 2 staff in evaluating compliance with the Special Protections, it is important for us to see the State Board's timeline for the process of adopting the resolution for Special Protections. For budget and work planning purposes, this will also help us determine whether we will have adequate resources to devote to the program.

Specific Comments:

1. Coverage under Special Protections; justification (page 3): Please add to the first paragraph, "The staff of Division of Water Quality (DWQ) will consider the specific circumstances of the discharge, threat to water quality, and responsible party's responsiveness to the intent of the Special Protections."

2. Upstream Discharges; discharges to streams tributary to ASBS are regulated by the Regional Water Boards: Please include a narrative description of the boundary between the area discharging to the ASBS that is regulated under these Special Protections versus that of the streams tributary to the ASBS.

3. We suggest the 2nd sentence, 3rd paragraph, page 3, be modified to read: "The Regional Water Boards ~~must~~ regulate these discharges to ensure that downstream water quality standards are met...".

4. NPDES-Permitted Storm Water Point Sources: As DWQ staff know, staff in Region 2 are currently developing a Municipal Regional Permit for Phase 1 MS4s in our Region, which includes San Mateo County. Although the requirements for the Special Protections will likely need to be part of the SWMP for the San Mateo Storm Water Program, the development of these two regulatory actions are running concurrently, and may not be in synch with the Time Schedule outlined on page 9. Therefore, we request flexibility in coordinating these two regulatory programs.

5. The "minimum" level of required monitoring is unwieldy and does not follow the stepwise approach typically used in other programs when staff require a discharger to characterize any linkage between pollution and impact to water quality or beneficial uses.

For example, we anticipate difficulties with establishing appropriate ocean and stream reference sites; agreement on "natural water quality" for a given area; linking the sediment chemistry to acute toxicity; and sampling for the full suite of chemicals in response to discharges for lower threat land uses. Therefore, we recommend that the Regional Water Boards be allowed to adopt alternative monitoring programs, in public hearings, that reflect existing and potential site-specific threats to water quality in ASBS.

Cc: Susan Gladstone
Shin-Roei Lee
Keith Lichten
Bill Hurley
Carmen Fewless
Marla Lafer
Habte Kifle