

05/15/06 BMTg Item
Tomales Bay
Deadline: May 4, 2006

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Song Her, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

May 4, 2006

By Fax to (916) 341 5620

Re: Comment Letter – Pathogens in Tomales Bay

Dear Members of the California State Water Resources Control Board,

I am a private citizen resident in Marshall, California, on the shores of Tomales Bay. I care about the quality of the Bay I live on, and I also care deeply about the survival of ranching in this area. I have looked at the issue before you from my perspective as a lawyer, as a committed environmentalist and as a proponent of farming around the Bay. I have the following thoughts.

The Regional Board is proposing to you TMDL targets that could create severe economic hardships for ranchers within the Tomales Bay watershed, hardships that might, in fact, drive some of them out of their marginally profitable business. This would be a serious loss to our community and to the entire San Francisco Bay area. We need family farms, and we need the wholesome local food they provide.

To justify imposing those hardships, there must be a clear connection between the government regulation and amelioration of the harm to be addressed by the regulation. I fear that in the case before you that clear connection is missing. I have read the comments provided to you by highly qualified individuals, including at least one world-class scientist thoroughly knowledgeable about the issues you are dealing with. Those comments are compelling. If, as the Regional Board's own data shows, wildlife is contributing over 200 MPN to the Bay and if available MST technology would answer the critical questions at reasonable cost, you must reject the Regional Board's proposal.

I note that approval of any TMDL for this area will ultimately require approval by the Environmental Protection Agency. I hope you will be sure that your staff looks closely at the EPA requirements for TMDLs. From my reading of the 2002 EPA Guidelines and related regulations and the scientific comments to you, the Regional Board has not met the burden imposed on it by those guidelines and regulations.

Accordingly, I urge you to reject the Regional Board's proposal as to TMDLs, to require use of MST technology to identify the sources of any dangerous pathogens, and to base any

ultimate TMDL on a proper application of science and technology to a problem ready-made for that.

However, if you decide against my position, I would further urge you that the time is right now, without further delay, to require that testing for pathogens using MST technology be implemented immediately. If you do that, then the essential information that can come from that testing will be available when in the future you need to deal with justifications for the TMDL selected. That future need could come when the EPA looks at the issue or if and when disputes arise as to the legal justifications for the TMDL or later when the contemplated periodic evaluations occur. But whenever the time comes, you would then have the benefit of having taken the necessary steps in a timely way to collect good data.

Very truly yours,



Anthony C. Gilbert