UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

March 11, 2010

Naomi Feger
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street
Oakland, CA 94612

Dear Ms. Feger:

Thank you for the opportunity to review and comment on the San Francisco Bay Regional Water Quality Control Board's (Regional Board's) Staff Report entitled, "Addition of Water Bodies and Beneficial Uses to the San Francisco Bay Basin Plan" and associated proposed Basin Plan Amendment (BPA). We appreciate the hard work to develop this proposed water quality standards BPA, and your effort to add water bodies and associated designated uses. This proposed amendment, when completed, will result in a more comprehensive, accurate, and protective Basin Plan. We have one comment concerning the proposed BPA.

On page 7 of the proposed BPA, at Section 2.2.1, Surface Waters, proposed new paragraph 6 states, "Designated beneficial uses are often, but not always, present along the entire water body. Specific beneficial uses near or downgradient of discharges will be evaluated by the Water Board during the development of waste discharge requirements, or enforcement orders." At the end of this section, on page 8 of the proposed BPA, it further proposes, "In Table 2.1, beneficial uses are indicated as follows: E- indicates the beneficial use exists throughout, or on a portion of, the water body."

Designated uses (in California, beneficial uses) for Clean Water Act (CWA) 101(a) 2, which you have indicated in your Staff Report as the WILD, REC-1, REC-2, and in some cases WARM uses, are presumptively existing uses for all water bodies. If the State believes that a use is not an existing use on the water body or on a portion of the water body, the State must complete a Use Attainability Analysis or UAA and amend its water quality management plan, or in this case, the Regional Board Basin Plan. UAAs are detailed analyses, and are described at EPA regulations 40 CFR 131.10(g). The second sentence in proposed paragraph 6 included above conflicts with this CWA requirement by appearing to give the Water Board discretion during the development of a waste discharge requirement to find that a use does not exist at certain parts of water bodies near or downgradient of discharge points. Similarly, the proposed

new definition of "E" for Table 2.1 included above states that a use may only exist "on a portion of" a water body. Both of these proposed provisions appear to allow the de-designation of a use on a part of a water body without the requisite UAA analyses and associated water quality standards change to the Regional Board's Basin Plan under CWA 303(c). We suggest you remove or clarify these proposed provisions. For the second sentence of proposed paragraph 6, we suggest "uses near or downgradient of discharges may be evaluated through a Use Attainability Analysis as required by 40 CFR 131.10(g), and if appropriate, amendments to the Basin Plan will be made for these parts of the water bodies." Similarly, for the definition of "E" in Table 2.1, we suggest "E – indicates the beneficial use exists throughout, or on a portion of the water body consistent with an approved water quality standards change pursuant to a Use Attainability Analyses."

Our comments above do not constitute an approval, disapproval or determination by EPA under CWA section 303(c). We will act upon any water quality standards submittal following State adoption and submittal to EPA.

In closing, we are pleased to see the proposed water quality standards Basin Plan Amendment, and believe it will enhance the Board's ability to protect human health and the environment. If you have any questions, please call me at (415) 972-3452 or Diane Fleck at (415) 972-3480.

Sincerely,

Janet Hashimoto

Janet Hashimoto
Manager, Standards and TMDL Office