

RESPONSE TO COMMENTS

DATE: July 08, 2008

TO: Bruce Wolfe, Executive Officer

FROM: Carmen Fewless, Environmental Scientist
North Bay Watershed Division

SUBJECT: **Staff Response to comments on Tentative Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed (Tomales Bay, Lagunitas Creek, Walker Creek and Olema Creek) in the San Francisco Bay Region**

Presented here are staff responses to comments received on the Tentative Conditional Waiver of WDRs for Grazing Operations in the Tomales Bay Watershed. These comments were provided in person at a workshop held at Point Reyes Station, via e-mail, fax, and traditional mail. The comments received are presented in *Italics*; the commenter has been identified at the end of each comment, and the comments have been grouped by theme to facilitate response.

Listed below are all the entities that provided comments:

Comments by Marc Commandatore
Environmental Scientist
California Department of Public Health
DPH

Comments by Sheila Foster
Development Director
Marin Organic
MO

Comments by Joel Gerwein
Project Manager
California Coastal Conservancy
CCC

Comments by Dominic Grossi
President,
Marin County Farm Bureau
MCFB

Comments by Paul Martin
Director of Environmental Services
Western United Dairymen
WUD

Comments by Don Neubacher
Superintendent
United States Department of the Interior
USDI

Comments by David Lewis
University of California Cooperative Extension
UCCE

Comments Received at the Public Workshop
Public Workshop Comments

Comments by Justin Oldfield
Director of Industry Affairs
California Cattlemen's Association
CCA

Kenneth J. Fox
President
Tomales Bay Association
TBA

Comments by Nancy Scolari
Marin County RCD
MCRCD

Comments addressing elements determined when the Tomales Bay Pathogen Total Maximum Daily Load (TMDL) was adopted

The Grazing Waiver Plan proposes activities in Tomales Bay that may not be as effective in monitoring and improving water quality in the bay and its tributaries as site specific waste discharge requirements (WDR). Information provided in the "Project Description Waiver of Waste Discharge Requirements for Grazing Operators in the Tomales Bay Watershed" the SFBRWQCB has a choice between waste discharge requirements and or a waiver for such requirements. (Comment by DPH)

The Tentative Conditional Waiver of Waste Discharge Requirements for Grazing Operators in the Tomales Bay Watershed complies with the recommendations of the Tomales Bay TMDL implementation measures that propose a Waiver of Waster Discharge Requirements as the regulatory framework for grazing lands. In addition, the Tentative Waiver complies with the California Water Code and with the State's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Enforcement Policy) that list Conditional Waivers of Waste Discharge Requirements as a regulatory tool. Waivers of WDRs are at the discretion of the Water Board, which also has the authority to terminate them at any time. The existence of a waiver does not excuse a discharger from any other legal requirements nor does it permit the violation of water quality objectives or the impairment of beneficial uses.

The Water Board is pursuing the use of a Waiver of WDRs for grazing operations, as it reflects Board staff's expectation of compliance by the majority of the dischargers, it is protective of beneficial uses, and the most efficient permitting route given limited staff resources. The Water Board still retains the right to issue individual WDRs on an as-determined basis.

The pathogen TMDL is based on a concentration measure rather than a loading value. Because of this fact it would be more appropriate to require any discharger to meet target values for fecal coliform in streams and the bay (Recreation standards of 200 MPN - 400 MPN and bay standards of 14 MPN - 43 MPN). Waste discharge requirements appear to be better suited for regulating a specific pollutant such as fecal coliform by determining if each discharger is meeting the TMDL in any waste discharging from their property. (Comment by DPH)

The Tomales Bay Pathogen TMDL establishes that numeric targets and load allocations are not directly enforceable. Allocations are essentially performance goals that should be used to identify appropriate source control actions. For the purpose of demonstrating attainment of applicable allocations, responsible parties will only be responsible for compliance with specified TMDL implementation measures and applicable WDRs or Waiver conditions. Board staff is confident that conditional waivers of WDRs are a suitable regulatory tool to address pollution from grazing operations in the Tomales Bay watershed.

Any analytical methods that are used to evaluate fecal coliform should be consistent with the beneficial uses identified in the TMDL. (Comment by DPH)

Staff agrees with comment. According to the Baseline Water Quality Monitoring Program of the Tomales Bay Pathogen TMDL, the Water Board, in coordination with the sampling entities and interested third parties, such as National Park Service, California Department of Health Services, commercial shellfish growers, the Inverness Public Utility District, and the Salmon Protection and Watershed Network will implement this long term water quality monitoring program. All water quality monitoring (including quality assurance and quality control procedures) will be

performed pursuant to the State Water Board's Quality Assurance Management Plan for the Surface Water Ambient Monitoring Program.

Comment addressing public review of documents

The public should be able to review and comment on any operation that applies for a wavier plan. All records of land waste application should be made available to the public. (Comment by DPH)

The public will be able to review and comment on any documents submitted to our office. The Water Board will not be maintaining records of land waste application.

Comments addressing Third Party Programs

A "Third Party Program" to oversee enforcement of a gazing wavier is not recommended since it is unclear to the public how the SFBRWQCB can delegate its enforcement authority for the monitoring of grazing operations. (Comment by DPH)

The role of a third party program will not be that of overseeing the enforcement of the grazing Waiver. The discharger is the entity responsible for complying with Waiver conditions. The role of the third party program would be to assist dischargers in complying with the requirements of the Waiver, and the Water Board retains its enforcement authority.

If and when the Regional Board and those impacted determine a third party verification system is needed, CCA recommends producers are given the option to form watershed coalitions to share costs and monitoring activities. The coalition would also serve as an intermediary between ranchers and Regional Board staff to streamline information gathering and outreach. Coalitions have played a vital role in helping farmers and ranchers comply with waivers in other regions, work towards meeting water quality objectives and assist the regulated community in administering waiver provisions in a cost effective manner. (Comment by CCA)

If and when a third party program is developed, we will take into consideration the option to form watershed coalitions as long as the programs developed with these coalitions are protective of water quality.

Request to postpone issuance of the Waiver

Can the Water Board postpone issuance of the waiver for two years to allow time for the landowners/operators to come up to speed with the program? (Public Workshop Comment)

No; the TMDL Implementation Plan requires that a Waiver of Waste Discharge Requirements for Grazing Operations be in place by January 2009.

Comments related to clarification of submittal deadlines

Plan development deadline: The deadline for Ranch Water Quality Plan development is not clear. (Comment by UCCE)

Plan development deadline: The deadline for Ranch Water Quality Plan development is not clear. (Comments by MCRCD)

The current proposed deadline is unclear from the draft resolution, but it appears to be either January 31, 2009, when the Grazing Waiver Notice of Intent is due, or November 15, 2009, when the first compliance report is due. (Comment by CCC)

Staff agrees with these comments. As was written, the deadline for the Ranch Water Quality Plan development is not clear in the Waiver. Waiver language has been modified to spell out that the Ranch Water Quality Plan development deadline is November 15, 2009.

The waiver states that the NOI is due January 31, 2009, while Attachment A refers to November 15, 2008. (Comment by USDI)

The Notice of Intent is due on January 31, 2009. We have updated the NOI form to address this error

Comments addressing the extension of submittal deadlines

We must point out that it may not be possible to develop the necessary curriculum and conduct the outreach necessary to help landowners and operators complete the Ranch Plans by the proposed timeline of December 31, 2009. A large number of Tomales Bay watershed landowners are absentee owners. We expect substantial difficulty in contacting landowners, informing them of the Ranch Plan training opportunities that will be available, and actually getting agreement between the owner and the operator as to who is responsible for the planning activity. We suggest that the second annual certification date of November 15, 2010 is a more realistic date. (Comment by WUD)

It seems unlikely that all if any of the anticipated 150 plus parcels will have a plan completed by December 31, 2009. A more realistic deadline is the second annual certification date of November 15, 2010. (Comment by UCCE)

It seems unlikely that all if any of the anticipated 150 plus parcels will have a plan completed by December 31, 2009. A more realistic deadline is the second annual certification date of November 15, 2010. (Comments by MCRCD)

It would be helpful to extend the deadline for submitting conservation plans. Extending the deadline to January 2010 will give the ranching community a reasonable period of time to prepare water quality plans. A deadline extension will also allow time for the Marin County Resource Conservation District, UC Cooperative Extension, and the Natural Resources Conservation Service to work with the Regional Board to offer workshops and provide other support for plan preparation. (Comment by CCC)

In order to ensure that effective and comprehensive plans are developed with cooperation of the ranchers and the park staff, we request that the date for plans to be required is extended one year, to November 2010. Most ranchers have some form of basic ranch plan outlining their operations, but do not have plans that address water quality issues, non-point discharge features, approaches for rectifying discharges, nor a timeline for implementing BMPs. It will take more than several months to 1) complete pasture assessments to identify non point source locations; 2) develop BMPs to reduce threats to water quality; 3) secure funding to implement BMPs, and 4) develop a workable timeline for compliance. (Comment by USDI)

Regarding the condition in the waiver to prepare the first Ranch Water Quality Plan by November 15, 2009: There may not be enough time to complete a Ranch Plan, considering the

landowner/operator will be submitting a Notice of Intent on January 31, 2009. This is less than one year to get the first Ranch Plan in place. This is a concern, particularly to the technical consultants/advisors that will be helping the ranchers in preparing their plans. (Public Workshop Comment)

Water Board Staff have been working closely with ranchers and stakeholders in the Tomales Bay watershed over the past several years discussing pollution prevention efforts in the watershed both during the development of the Tomales Bay Pathogen TMDL, and in preparation for this Waiver of WDRs. The Tomales Bay Pathogen TMDL, adopted in September 2005, introduced the need for landowners/operators to prepare a Ranch Water Quality Plan. Additionally, at a meeting in November 2005, and at subsequent meetings in December 2005 and January 2006, Board staff met with ranchers and stakeholders to discuss potential requirements of the Waiver program. During these meetings, Board staff made clear that, to comply with the Tomales Bay Pathogen TMDL, a Ranch Water Quality Plan would be a requirement of the Waiver.

Throughout the development of the pathogen TMDL and this Waiver of WDRs, Board staff have been told repeatedly by ranchers and advisory group representatives, at meetings and in correspondence, that in the majority of the cases, ranchers have Ranch Water Quality Plans already in place, and that management practices that improve and protect water quality are currently being implemented. According to a letter sent to Mr. John Muller, Chair of the Water Board, by the Marin County Resource Conservation District (RCD), providing comments on the Draft Tomales Bay Pathogen TMDL, millions of dollars have been spent in the implementation of management practices that improve habitat and water quality in the Tomales Bay watershed, often with Water Board funding. In another letter sent to Chairman Muller, providing comments on the Draft Tomales Bay Pathogen TMDL, the University of California Cooperative Extension (UCCE) stated that advisors from UCCE have partnered with the Natural Resources Conservation Service and the Marin County RCD to develop and provide education on water quality improving practices and documentation methods. In numerous forums, Board staff has been told that the Ranch Water Quality Plans would only require minor updates and modifications to address the expected requirements of the Waiver.

The Tomales Bay Pathogen TMDL Implementation Plan requires that a Ranch Water Quality Plan be in place by January 2009. To allow for updates and modifications to these plans, Board staff has proposed postponing this deadline to November 15, 2009, when the first annual compliance report is due. This ten-month extension would provide landowner/operators sixteen months, a reasonable amount of time, from the time the Waiver is adopted until the plan is to be in place. Water Board staff feel strongly that delaying the submittal of the Ranch Water Quality Plan, therefore delaying implementation of management practices that address pollution problems, is unjustifiable given the fact that Tomales Bay and its tributaries are impacted And that the requirement for a Ranch Water Quality Plan was initially adopted by the Board in September 2005. It should be recognized that Ranch Water Quality Plans can continue to be updated after November 15, 2009, in response to changing conditions and lessons learned during plan implementation.

Comments related to the regulatory and financial burden on the ranching community

While the Conservancy supports the protection of the watershed's water quality and beneficial uses, we also want to ensure that ranching in this area remains viable. Ranching is an important part of the cultural legacy of West Marin, and ranches in the region also provide important wildlife habitat and ecosystem services. Preparing and implementing conservation plans will require a commitment of time and money on the part of ranchers. The Conservancy

suggests that the Regional Board try to mitigate the financial and time commitment required by ranchers. (Comment by CCC)

The intent of this Waiver is to improve water quality in the Tomales Bay watershed for the benefit of those who live and work there, visitors, and wildlife. In developing the Waiver conditions, Board staff seeks to strike a balance between improving water quality and requiring implementation actions that are reasonable and feasible. Financial costs should be offset by the human and societal benefits inherent in clean water and a sustainable environment. This is not to say that financial costs to ranchers will be negligible. The costs incurred by each rancher will depend on current management practices and investments to date in water quality protection improvements; there is no reason to expect that ranching in the area will not remain viable.

The Waiver does not require “extra” measures beyond those already required for compliance with existing waste management and water quality laws and regulations. For many years, Board staff have worked extensively with the agricultural community to develop a TMDL Implementation Plan with achievable goals. We hope that ranchers will find that improving water quality is a worthy cause and can demonstrate this by undertaking reasonable and feasible source control actions and working with us to demonstrate the benefits and limitations of such actions.

The Waiver conditions are flexible with regard to allowing identified management measures to be implemented on a schedule that considers resource constraints. (See also comment below)

One concern that many ranchers may have with the conditional waiver is that the improvements that may be required (riparian fencing, development of off-stream watering systems) will be expensive. If ranchers are required to demonstrate progress in implementing improvements, but cannot afford to pay for these improvements, they will have difficulty complying with the terms of the waiver. The Conservancy expects that programs like the Tomales Bay Watershed Enhancement Project and Conserving Our Watershed will continue to offer funding through the RCD for improvements that enhance habitat and water quality, and that funding may be available from other sources, such as the Natural Resources Conservation Service. However, not all ranchers’ improvement projects will be priorities for funding, and it is in the public interest to fund high priority projects first, based on a watershed perspective. If a rancher prepares a plan, and applies for funding needed to implement it, but does not receive funding, the ranch should still be considered in compliance with the terms of the Waiver. As long as the rancher continues to seek necessary funding for implementation and to make the improvements that he or she can afford independently, he or she should not be penalized if the ranch improvements in question are not considered high priorities. (Comment by CCC)

Staff disagrees with the comment. To be in compliance with the Waiver of WDRs, ranchers must identify and implement management measures necessary to reduce the discharge of pathogens, sediment and nutrients to Tomales Bay. Each landowner/operator is responsible for assessing his/her own property and identifying appropriate site-specific management measures to reduce pollution. The timeline for implementation of management measures is flexible, as it is the landowner who will propose a feasible schedule for implementation of their identified pollution reduction efforts. This flexibility allows the landowner/operator to build in financial resource issues it takes to get the work done. The timelines proposed, however, must be reasonable and protective of water quality.

For over a decade, using Clean Water Act Section 319 (h) funds, the State Water Board and the Regional Water Boards have reached out to dischargers with technical and educational information and financial support to assist with management practice implementation. Additional

technical expertise and/or financial assistance is provided through the grant and loan sources of other state and federal agencies. Currently, there is no funding to aid in the preparation of Ranch Water Quality Plans; Board staff will advocate for it in future funding. Board staff is also committed to consider the option of forming watershed coalitions to share costs and monitoring activities, as long as the programs developed with these coalitions are protective of water quality. Board staff encourages the Coastal Conservancy to continue funding the ranching community to help in the preparation of Ranch Water Quality Plans and in the implementation of management practices that enhance habitat and water quality in the Tomales Bay Watershed.

Is there any funding available to prepare a Ranch Water Quality Plan? (Public Workshop Comment)

Although the State Water Board has historically given grant funding for the implementation of Best Management Practices in the Tomales Bay watershed, there is, currently, no funding to aid in the preparation of Ranch Water Quality Plans. Board staff will advocate for it in future funding. Board staff is also committed to consider the option of forming watershed coalitions to share costs and monitoring activities, as long as the programs developed with these coalitions are protective of water quality.

Comments addressing the Ranch Water Quality Plan

A template of the Ranch Water Quality Plan would benefit all operators in fulfilling their legal requirement. (Comment by USDI)

Board staff seeks to maximize flexibility and to allow landowners/operators to identify management measures on a site-specific basis, as type of soil; slope; intensity of use, etc. are factors that determine the most appropriate management measures to be implemented at each ranch facility. A template of the Ranch Water Quality Plan would limit this flexibility and increase confusion.

The public meeting and presentation implied that the only required documentation to be submitted to the Regional Board include

The Notice of Intent to comply (by January 31, 2009)

A Compliance Reporting Plan and schedule for implementation (by November 15, 2009), and; Annual certification of compliance with the schedule included in the waiver (Condition 4(f) – November 15 of each year)

While condition 1 clearly identifies the expectations of the Ranch Water Quality Plan, staff played down the level of detail of this plan. Within the waiver language, there is no date mentioned for submittal of the Ranch Water Quality Plan. (Comment by USDI)

It has not been Board staff's intention to downplay the expectations of the Ranch Plan. At the public meeting, the questions and discussion regarding the Ranch Plan centered on its specificity; as a result, that's where our responses were focused. Board staff recognizes that there is no single best way of developing or organizing a Ranch Plan. Waiver Condition 1) a), b), and c) contain the essential elements that all landowner/operators must consider and address in the Ranch Plan. This approach provides the flexibility necessary to allow landowners/operators to identify management measures on a site-specific basis, as type of soil; slope; intensity of use, etc. are factors that determine the most appropriate management measures to be implemented at each ranch facility.

The Waiver does not require actual submittal of the Ranch Plan. Rather, the Plan shall be kept at the ranch and available for review by Water Board staff at all times.

The contents of the Compliance Reporting Plan and how they relate to the Ranch Water Quality Plan should also be defined in the Waiver conditions. (Comment by USDI)

Staff agrees with this comment and has updated Waiver language to clarify any confusion. A plan for compliance monitoring and reporting shall be completed and included in the Ranch Water Quality Plan (See Condition 1) c) of the Tentative Conditional Waiver of WDRs). This plan for compliance monitoring and reporting should describe the measures, protocols, and associated frequencies that will be used to verify the degree to which the management practices are being properly implemented and are achieving the Waiver conditions and/or to provide feedback for use in modifying and updating the Ranch Water Quality Plan. The Plan for Compliance Reporting must be completed and included in the Ranch Water Quality Plan by November 15, 2009. The NOI form has been also been updated to resolve the confusion.

Would the time schedule and plan for corrective actions be incorporated into the Ranch Water quality plan or the compliance report plan? (Comment by USDI)

The schedule for implementation of selected management practices and corrective actions are part of the Ranch Water Quality Plan. This schedule must be completed and included in the Ranch Water Quality Plan by November 15, 2009, and may be updated yearly thereafter. The NOI form has been also been updated to resolve the confusion.

How often does a ranch Plan need to be updated based on changes on the ground over time? Is this once per five year waiver? (Comment by USDI)

It is the expectation of Board staff that Ranch Water Quality Plans be updated in response to changing conditions, and lessons learned during plan implementation.

Comments on Conditions addressing mercury and methylmercury

Conditions, 3) Implementation of Management Practices b) and c) page 9: The language in these sections is inconsistent with the approach for plan development and filing established elsewhere in the document. Specifically in Section b stating “Any proposed management practice that involves work within the floodplain, or any proposal to implement a management practice that may have the potential for increasing the discharge of mercury or the production methylmercury, must be submitted to Water Board staff prior to implementation.” The inconsistency with other sections of the waiver is the requirement to submit a management practice directly to the Water Board for review. Alternative wording for the section could read “Any proposed management practice that involves work within the floodplain, or any proposal to implement a management practice that may have the potential for increasing the discharge of mercury or the production methylmercury, must be reviewed by Water Board staff prior to implementation. This review is typically made as part of required review and approval for relevant permits.” (Comments by UCE)

Conditions, 3) Implementation of Management Practices b) and c) page 9: The language in these sections is inconsistent with the approach for plan development and filing established elsewhere in the document. Specifically in Section b stating “Any proposed management practice that involves work within the floodplain, or any proposal to implement a management practice that may have the potential for increasing the discharge of mercury or the production methylmercury, must be submitted to Water Board staff prior to implementation.” The inconsistency with other sections of the waiver is the requirement to submit a management

practice directly to the Water Board for review. Alternative wording for the section could read “Any proposed management practice that involves work within the floodplain, or any proposal to implement a management practice that may have the potential for increasing the discharge of mercury or the production methylmercury, must be reviewed by Water Board staff prior to implementation. This review is typically made as part of required review and approval for relevant permits.” (Comments by MCRCD)

Board staff agrees with the comment and thanks the commenter for the proposed language. Waiver language has been modified in response to this comment.

With regards to the addition of the mercury sections, what process will the Water Board put in place for this review and approval of conservation practice implementation on those parcels in the identified portion of the Watershed? What is the anticipated turn around time for this review? (Comments by UCE)

With regards to the addition of the mercury sections, what process will the Water Board put in place for this review and approval of conservation practice implementation on those parcels in the identified portion of the Watershed? What is the anticipated turn around time for this review? (Comments by MCRCD)

Board staff ask that landowners/operators in the Walker Creek watershed, downstream of the Gambonini mine, consult with us, via e-mail or letter, prior to the implementation of a management practice. Response time will vary, as it may include on-site consultation with staff; however, in most of the cases, it should not take longer than 30 days from initial contact.

Water Board staff and advisory group representatives have already discussed coordinating on a Fact Sheet to help ranchers better understand mercury pollution and the management practices that prevent the formation of methylmercury.

With regards to Mercury in the Walker Creek watershed, you state “To avoid the inadvertent discharge of mercury, grazing lands' landowners and lessees in the Walker Creek watershed downstream of the Gambonini Mine must incorporate management practices that minimize the discharge of mercury or the production of methylmercury.”

I question whether there is sound science that proves that cattle grazing will increase the production of methylmercury. Have there been tests that show when cattle are in those fields more methylmercury is produced, perhaps the rainfall is all it takes to wash more mercury out of the soils. (Comments by MCFB)

Properties in the Walker Creek watershed, downstream of the Gambonini mine, have mercury-laden sediments in the depositional (floodplain) zone adjoining the Creek. Mercury-laden sediment from bank failure, sheet, rill, and gully erosion can disperse into the water column where it can be re-suspended, or can be transformed by certain microorganisms into methylmercury. Additionally, many deposits on the floodplain can also produce methylmercury. Certain management practices, if implemented in the floodplain area, may inadvertently discharge mercury-laden sediments and/or increase the potential for production of methylmercury. The Waiver requires that landowners/operators in the Walker Creek watershed, downstream of the Gambonini mine, consult with us, via e-mail or letter, prior to the implementation of a management practice, to make sure that the proposed management practice will minimize potential mercury problems.

Water Board staff and advisory group representatives have already discussed coordinating on a Fact Sheet to help ranchers better understand mercury pollution and the management practices that prevent the formation of methylmercury.

Comments on Conditions addressing dairies

It is our understanding that grazing lands of dairy operations will be regulated under existing dairy waivers (resolution 2003-0094). Waiver documentation notes that the existing dairy waiver will also cover the grazed land portion of the operation. Because the dairy waivers are focused on the confined animal areas of the operation, how will the Regional Board encourage operators to address these nonpoint source areas? What priority will the Regional Board place on nonpoint versus point source discharge areas. Are there specific practices in the dairy waiver which apply specifically to the Tomales Bay pathogen TMDL? (Comment by USDI)

Upon reissuance of General Waste Discharge Requirements, Waiver of Waste Discharge Requirements for Confined Animal Facilities, or both, grazing activities within those dairy facilities already covered under existing General Waste Discharge Requirements for Confined Animal Facilities, Resolution R2-2003-0094, will be considered part of the dairy facility operation. By virtue of the Waiver for grazing operations, these Dairies are put on notice of the need to manage nonpoint source issues on the grazing lands portion of their facilities. The Water Board does not prioritize between point and nonpoint sources of pollution; it focuses priorities on those activities posing the most significant threats to water quality.

Review of the Confined Animal Operation Waiver indicates that it is up for renewal in October 2008. Will language specific to grazing issues and Tomales Bay Watershed be added to the Dairy waiver when it is renewed? (Comment by USDI)

Yes; it is the intent of Water Board staff, upon reissuance of General Waste Discharge Requirements for Confined Animal Facilities, Waiver of Waste Discharge Requirements for Confined Animal Facilities, or both, to add language specific to grazing issues.

Comments on the Notice of Intent (NOI) Form, Attachment A

The NOI refers to compliance Reporting Plan which is not described in the Waiver document. This should be clarified. (Comment by USDI)

Staff agrees with this comment and has updated Waiver language to clarify any confusion. A plan for compliance monitoring and reporting that demonstrates the proposed management practices shall be completed and included in the Ranch Water Quality Plan (See Condition 1) c) of the Tentative Conditional Waiver of WDRs). This plan for compliance monitoring and reporting should describe the measures, protocols, and associated frequencies that will be used to verify the degree to which the management practices are being properly implemented and are achieving the Waiver conditions, and/or to provide feedback for use in modifying and updating the Ranch Water Quality Plan. The Plan for Compliance Reporting must be completed and included in the Ranch Water Quality Plan by November 15, 2009. The NOI form has been also been updated to resolve the confusion.

Notice of Intent Attachment A Section VI. Implementation of Waiver of WDRs Conditions: Clarification is needed so that an applicant understands which boxes to check. Part A seems appropriate if the grazer is already participating in a waiver program. No part B. Part C seems

appropriate for those who already have a plan. If an applicant does not have a plan but will be developing one what does an applicant mark? (Comments by UCCE)

Notice of Intent Attachment A Section VI. Implementation of Waiver of WDRs Conditions: Clarification is needed so that an applicant understands which boxes to check. Part A seems appropriate if the grazer is already participating in a waiver program. No part B. Part C seems appropriate for those who already have a plan. If an applicant does not have a plan but will be developing one what does an applicant mark? (Comments by MCRCD)

In the Notice of Intent Attachment A Section VI. Implementation of Waiver of WDRs Conditions: Clarification is needed. Part A seems appropriate if the grazer is already participating in a waiver program. Part C seems appropriate for those who already have a plan. If an applicant does not have a plan but will be developing one what does an applicant mark? (Comments by MCFB)

Board staff agrees with the comments and has updated Notice of Intent Attachment A, Section VI Implementation of Waiver of WDRs Conditions, to provide clarification so that an applicant understands which boxes to check.

Part D has what appear to be two duplicative options. Alternatively, how is it possible that at this stage, or at any point in the future, when filing an NOI an applicant would have a compliance report already submitted? (Comments by UCCE)

Part D has what appear to be two duplicative options. (Comments by MCFB)

Board staff agrees with the comment. The NOI form has been updated to resolve the error.

The dates in Section VI- D are not valid. (Comment by USDI)

Board staff agrees with the comment. The NOI form has been updated to resolve the error.

The Attachment is not specific to the TOMALES BAY TMDL and should be updated. (Comment by USDI)

Board staff disagrees with this comment.

Comments on the Checklist, Attachment B

Conditions 1) Ranch Water Quality Plan section b): The wording with regards to the checklist in Attachment B indicates that this is the only checklist that can be used in developing a Ranch Water Quality Plan. Currently, there are at least three different University of California and the United States Department of Agriculture Cooperating checklists in use on Tomales Bay Ranches to do water quality planning. How can these checklists and potentially others be applied in lieu of Attachment B? Resolving this will increase the ability of the applicant to capitalize on any planning that has already taken place and thus accelerate plan development, practice implementation, and waiver compliance. (Comments by UCCE)

Conditions 1) Ranch Water Quality Plan section b): The wording with regards to the checklist in Attachment B indicates that this is the only checklist that can be used in developing a Ranch Water Quality Plan. Currently, there are at least three different checklists in use on Tomales Bay Ranches to do water quality planning. How can these checklists and potentially others be

applied in lieu of Attachment B? Resolving this will increase the ability of the applicant to capitalize on any planning that has already taken place and thus accelerate plan development, practice implementation, and waiver compliance. (Comments by MCRCD).

Attachment B, Checklist Form for Assessing Grazing Operations, is to serve as a tool to aid the landowner/operator in the inventory of resources and the preparation of the Ranch Water Quality Plan. In an effort to accelerate plan development, practice implementation, and Waiver compliance, Board staff will work with UCCE in reviewing alternative checklists to determine their suitability. If deemed appropriate, Board staff will acknowledge, in writing, their suitability as alternative checklists. Waiver language has been updated to reflect this issue.

It should be stated on Attachment B clearly that forms such as these are to be included in the plan which is to be kept on the farm, and the questions are intended to generate thought provoking solutions. It should be stated that the surveyor should evaluate ranch components as they relate to the questions posed and whether or not non point sources are ultimately being delivered to nearby receiving waters. (Comments by MCRCD)

Attachment B, Checklist Form for Assessing Grazing Operations, is to serve as a tool to aid the landowner/operator in the inventory of resources and the preparation of the Ranch Water Quality Plan. In an effort to accelerate plan development, practice implementation, and Waiver compliance, Board staff will work with UCCE in reviewing alternative checklists to determine their suitability. If deemed appropriate, Board staff will acknowledge, in writing, their suitability as alternative checklists. Waiver language has been updated to address this matter. The Waiver does not require submittal of the Checklist; it is considered part of the Ranch Water Quality Plan.

Attachment B seems to be more about what the ranch looks like than about grazing. There are lots of questions about road erosion, crop fields, creeks and riparian areas. Maybe we should help to clarify this part of the Grazing Waiver so that it is more about grazing. (Comments by MCFB)

The Tentative Conditional Waiver of WDRs defines grazing operations as those facilities where animals are fed or maintained on irrigated vegetation or rangeland forage for a total of 45 days or more in any 12-month period and vegetation growth is sustained over the lot or facility during the normal growing season. The grazing operations include auxiliary facilities such as roads, reservoirs, etc. When preparing the Ranch Water Quality Plan, the landowner/operator is required to identify controllable discharge points for pathogens, nutrients and sediment and, for facilities in Walker Creek, mercury.

The following questions concerning potential mercury problems would benefit from clarification:

Checklist questions:

***Are structures that collect sediment a potential source of methyl mercury?
Could buffer zones potentially produce methyl mercury?
Could off-site water supply/storage facilities increase methyl mercury production?***

It would be helpful to explain what sorts of characteristics would result in increased production of methyl mercury or would make something a potential source of methyl mercury. Is it the risk of sediment resuspension? Is it particular reaches of the creeks? Something else? The more you can spell this out, the more useful the checklist will be to operators. If it is not

possible to clarify this, then completing the checklist will likely require expertise in the conditions that support methyl mercury production. In that case, it would be helpful if the Regional Board or another agency could provide technical assistance to ranchers on this issue. (Comments by CCC)

The Waiver and the Checklist language attempt to explain that, due to the way mercury behaves in the aquatic environment, certain grazing operations and management practices in the floodplain of Walker Creek may inadvertently increase the discharge of mercury-laden sediments and increase the potential for production of methylmercury. The Waiver language mentions that methylmercury can be present or be transformed from mercury by a series of biological and chemical processes in nature, and can pose a threat to aquatic organisms. To avoid the inadvertent discharge of mercury, grazing lands' landowners and lessees in the Walker Creek watershed downstream of the Gambonini Mine must incorporate management practices that minimize the discharge of mercury or the production of methylmercury.

Water Board staff and advisory group representatives have already discussed coordinating on a Fact Sheet to help ranchers better understand mercury pollution and the management practices that prevent the formation of methylmercury. Board staff will also be available to discuss mercury related questions that landowner/operators may have.

Regarding the Checklist (Attachment B): answering “yes” to questions in the checklist; what does this mean a landowner/operator needs to do? The concern is that if something isn’t done on a “yes” question, the landowner/operator will be out of compliance and subject to enforcement. (Public Workshop Comment)

Answering yes to those questions would mean those are areas that would need to be addressed by the implementation of management measures. The Waiver does not require submittal of the Checklist; it is considered part of the Ranch Water Quality Plan.

Recommend that the Checklist include an Assessors’ Parcel Number (APN) to identify the parcel being evaluated. (Public Workshop Comment)

Thank you for the recommendation; Board staff has added a line in the Checklist asking for the APN.

Seashore staff conducted a pasture assessment of all pastures on National Park Service lands that drain to Tomales Bay. As part of this process, staff used a version of this pasture checklist, developed in coordination with local operators and agencies that provided some guidance on locating potential discharge locations. Answering the questions in the checklist in Attachment B would not have provided sufficient information to identify discreet features that deliver or have the potential to deliver pollutants to surface waters. Recommendations based on our field experience conducting such assessments are included as an attachment – Recommendations for Pasture Assessments. (Comment by USDI)

Thank you for the recommendations.

The final sentence in the Mercury section should be restated “...landowners/operators in the Walker Creek watershed, downstream of the Gambonini mine are required to assess their land management practices to evaluate the potential for mercury and methylmercury pollution reduction”. (Comments by MCRCD)

Thank you for the recommendation. Board staff has updated attachment B to add the recommended language.

Comments addressing inspection/monitoring requirements

The proposed Waiver includes multiple sections which address Inspection and monitoring. While we agree with the intent of the monitoring, the current language is ambiguous. That ambiguity may result in monitoring that does not address or achieve the intent of the TMDL and this regulatory process. (Comment by USDI)

Comment noted. The Ranch Water Quality Plans are required to include specific monitoring for each ranch, suitable for each ranch's conditions and management measures implemented.

Our review of Section 2 of the Waiver- Monitoring Under Waiver of Waste Discharge Requirements- implies that there MAY be third party monitoring (2(c)) and that the monitoring "shall be designed to support the development and implementation of the waiver program, including but not limited to verifying the adequacy and effectiveness of the waiver condition." Based on this language, the Regional Board monitoring expectations are not clear. The waiver should clarify whether compliance monitoring includes water quality sampling or just visual inspection of installed practices. Is it the expectation of the Regional Board that an overall watershed monitoring effort is established, or that monitoring is conducted at the individual ranch scale? (Comment by USDI)

Waiver finding 2) b) states that the California Water Code requires a monitoring component, be it individual, group or watershed based. The Waiver language also discusses the potential development of third-party programs, including coalitions of dischargers in cooperation with a third party representative, organization, or government agency to assist the dischargers in complying with the requirements. The assistance of third-party programs may or may not include monitoring.

Compliance monitoring conditions for this Waiver, listed on Section 4) of the Waiver conditions, do not include water quality sampling. The Water Board, in coordination with the sampling entities and interested third parties, such as National Park Service, California Department of Health Services, commercial shellfish growers, the Inverness Public Utility District, and the Salmon Protection and Watershed Network, will implement a long term water quality monitoring program.

Monthly monitoring during the dry season and monitoring before every anticipated storm event will require a significant commitment of resources by ranchers. The Conservancy suggests that monitoring could occur twice during the dry season, when significant influx of sediment and nutrients into waterways is unlikely to occur, and monthly or before every anticipated storm event, whichever is less frequent, during the rainy season. (Comment by CCC)

Under the Compliance Monitoring and Reporting I have some concerns about the "Pre-Storm", "during extended storms", and after "actual storms" inspections. This seems to be excessive and will become burdensome on our ranchers. Since you are looking at applying monthly inspections already it does not make sense to inspect again just a few days later if the meteorologists now say a storm might be coming. Also, "during storm" inspections are very difficult and will not give you much information. For example, if there is some erosion on a road during a storm, that erosion will still be noticeable after the storm. And during the storm

there is nothing that you can do right then anyway, trying to fix it in the middle of the storm will only cause additional erosion. The key is to have effective post storm season inspections and if problems arise then solutions to fixing them should be added to the ranch plans.
(Comment by MCFB)

The inspections and monitoring requirements articulated in Condition 4 imply a far different level of detail than what was presented by staff at the public meeting in Point Reyes Station. It is important that the Regional Board provide clarity as to the expectations of the landowner/operator, and the intended results. Condition 4(c) states that inspections shall be conducted prior to, during, and after storm events; and on a monthly basis during dry conditions. Condition 4(d) requires before-storm inspections ‘to ensure that appropriate management practices are properly installed and maintained’, mid-storm and post-storm inspections to assure that management practices have functioned adequately...” (Comment by USDI)

At the Public Meeting, staff implied that the intent of the monitoring effort is to ensure that water quality BMPs that have been installed are functional. Requirements of visits on every storm, as well as monthly during the dry season may not achieve this objective. As an example, monthly monitoring during the dry season may provide no benefit at all since it is difficult to determine how water will flow and whether pollution discharges to waters during the dry season. It may be more appropriate to conduct regular monitoring of pastures during and after precipitation events to see what actually happens on the ground and where features that exist are problematic. If the actual intent of the Regional Board is to ensure BMP implementation and function, the monitoring language and required actions should be focused on BMPS installed to protect water quality. Currently, the language is very broad and may create confusion. (Comment by USDI)

Monthly inspections may not be practical. Can the Water Board set a different schedule depending upon usage of the pastures (sometimes pastures are not used for a season), or upon seasonal weather conditions (i.e., more inspections during the rainy season and few or none during the dry season)? (Public Workshop Comment)

Compliance Monitoring and Reporting sections c and d page 9: The implication for the pre-, mid-, and post- storm monitoring is that this monitoring is to take place for each storm. This is a difficult and burdensome task when considering the size of some of these operations and the difficulty of using ranch roads that are saturated during storms. An alternative is to have a pre-storm season (September-November), mid-storm season (January-March), and post-storm season (April-June) inspections. (Comment by UCE)

Compliance Monitoring and Reporting sections c and d page 9: The implication for the pre-, mid-, and post- storm monitoring is that this monitoring is to take place for each storm. This is a difficult and burdensome task when considering the size of some of these operations and the difficulty of using ranch roads that are saturated during storms. An alternative is to have a pre-storm season (September-November), mid-storm season (January-Marc), and post-storm season (April-June) inspections. (Comments by MCRCD)

The intent of the inspection and monitoring requirements is to assure that practices are properly applied and are effective in attaining and maintaining water quality standards. Inspections and monitoring are also intended to identify problem areas that may need more attention from the landowner/operator. The performance of inspections and monitoring will aid landowners/operators in evaluating compliance with the Waiver, and in evaluating the

effectiveness of their Ranch Water Quality Plans. Board staff believes that the performance of pre-storm inspections and post-storm inspections is essential in assuring that practices are properly applied and are effective in attaining and maintaining water quality standards. Board staff agrees with the comments that conducting inspections during extended storm events is a difficult and burdensome task when considering the size of some of these operations and the difficulty of using ranch roads that are saturated during storms. Board staff also agrees with the comments that monthly monitoring during the dry season and monitoring before and after every anticipated storm event will require a significant commitment of resources by ranchers, and accepts the suggestion that inspections and monitoring could occur twice during the dry season, and monthly or before and after every anticipated storm event, whichever is less frequent, during the rainy season. One of the dry season inspections must be conducted in the month of September, prior to the beginning of the rainy season, and must encompass the entire ranch facility to ensure the facility's readiness for the rainy season. The other inspections and monitoring may only focus on the active grazing areas of the ranch facility. Board staff has updated the Waiver language to reflect this change.

The language of Conditions 4) g) will likely result in no reporting from operators, What is meant by reporting any non compliance? Does this mean newly identified nonpoint source discharge point of the failure of BMPS that are in place? Often it is impossible or inappropriate to repair a BMP during the rainy season or when pastures are saturated. It is unclear exactly what a noncompliance event would be. If a new feature is identified, how should it be incorporated into the plan? (Comment by USDI)

Board staff has updated the Waiver language and changed the requirement to report any "noncompliance" with the requirement to report any "spills or discharges" that endanger human health or water quality.

Comments on stakeholder involvement

CCA recommends the Regional Board support ranchers working in conjunction with the Natural Resources Conservation Service (NRCS), The University of California Cooperative Extension (UCCE) System and local Resources Conservation Districts to develop and implement Ranch Water Quality Plans. Both organizations have a unique knowledge of addressing water quality concerns using best management practices based on sound science and research and have the experience working with ranchers and land managers in implementing management practices on the ground. (Comment by CCA)

While we cannot require that a rancher work with any specific organization, Board staff acknowledges that these entities have the experience to guide ranchers in the appropriate management practices.

Marin Organic would like to request that Salmon Safe be able to serve as a program that producers can use to demonstrate their efforts to meet the new Grazing Waiver requirements. As you may note from the checklist, those producers who have passed Salmon Safe have demonstrated a very high level of care for their land and the watershed, in many ways going beyond the basic requirements of the waiver. Those producers who do not pass the Salmon Safe certification at first are given a checklist of tasks and actions, giving them an opportunity to apply for assistance and implement projects that will reduce runoff and erosion. Having Salmon Safe acknowledged as a means of demonstrating a producer's efforts to meet the grazing waiver requirements will provide an market incentive for producers to meet the waiver

requirements and exceed them -- improving both water quality and, hopefully, increasing the economic viability of their operation. (Comments by MO)

Pursuant to our June 19, 2008 meeting, Board staff agreed that the Salmon Safe Program could be a valuable program. It is our intent to follow up with Marin Organic, after Waiver adoption, to discuss the Salmon Safe Program more in detail, and, if so determined, acknowledge the program as a means of demonstrating a producer's effort to meet some of the requirements of the Waiver.

CCA is also in support of ongoing and emerging research being developed at the Sierra Foothills Research and Extension Center evaluating the impacts of new management practices to help control pathogen runoff from non-irrigated rangeland. CCA hopes that as additional research and information becomes available, the Regional Board will consider this information valuable and generally support best management practices that are based on sound science and research. (Comment by CCA)

The Water Board is committed to considering new information and research that evaluate the effectiveness of new management practices to help control pathogen runoff from non-irrigated rangeland.

Other Comments

Regarding the annual certification submittal, MCRCD requests the Water Board mail out a reminder notice two months in advance, informing landowners of the pending annual deadline of November 15, 2009. This annual notification will best ensure waiver compliance. The notification may also clarify the Water Board's plans for compliance monitoring and enforcement. (Comments by MCRCD)

Board staff agrees. A reminder notice that annual certification is due on November 15 will be mailed to Waiver enrollees two months in advance.

If an annual compliance report form is prepared, please think about a process to ensure it reaches all landowners. Posting the form on the web may work. (Leslie Corp, with WUD, at Public Workshop)

Board staff will discuss the possibility of preparing an annual compliance report/annual certification form with the advisory group. If such form is prepared, it will be will be posted to the web, and mailed to Waiver enrollees two months in advance, along with a reminder notice that the report is due on November 15.

Horse ranches and others located along or adjacent to creeks that are less than 50 acres in size need to be addressed. (Public Workshop Comment)

Existing water quality laws and regulations require any ranch facility, regardless of size and type, to be effectively managed to eliminate the potential for water quality impacts.

Regarding the timeframe that the Water Board will take to address the major polluters: Does the Water Board have as swift a method for dealing with major polluters as they do with non-filers? [This followed a general question about the process of dealing with those eligible landowners/operators who do not file a Notice of Intent.] (Public Workshop Comment)

The Water Board has enforcement guidelines and processes to address violations of the California Water Code, and threat to water quality is taken into account.

Will the Water Board develop a form for an exemption to the waiver? (Public Workshop Comment)

If and when the need to develop this form arises, Board staff will develop a Waiver exemption form.

Is it the expectation of the Regional Board that BMPs will be implemented between the NOI and submission of the Ranch Water Quality Plan? This is not clear in the overall document, including attachments. (Comment by USDI)

Yes. It is Board staff's understanding that, in the majority of the cases, ranchers have Ranch Water Quality Plans already in place, and that management practices that improve and protect water quality are currently being implemented. The Waiver does not require that landowners/operators implement "extra" measures beyond those already required for compliance with existing waste management and water quality laws and regulations. The Waiver does allow for management practice implementation over a reasonable time schedule.

While we applaud the board for finally taking action with regard to reducing the sediment and pathogen loading that continues to make Tomales Bay an impaired water body, we are deeply concerned that it will be insufficient to actually improve water quality, and most importantly that the board will not have adequate enforcement for recalcitrant operators. improve water quality condition within the Tomales Bay Watershed. (Comment by TBA)

Comment noted.

As you may be aware, the County of Marin has recently revised its general plan, the Marin Countywide Plan (CWP). While the new CWP touts itself as being more protective of the environment than its predecessor, it in fact reduces the County's oversight of all agricultural activities, and greatly decreases protections for the Stream Conservation Area (SCA) on agricultural lands. In effect, there is no longer any county process for conversion of agricultural lands or intensity of use on those lands. Furthermore, while the CWP calls for protection of SCAs, there is no nexus for determining whether or not the SCA is in fact being respected.

As riparian buffer zones are integral to filtering and providing a biological buffer for pathogens and other undesirable water contaminants, the relaxation of monitoring and requirements for buffer zone protections by the County of Marin will seriously undermine the RWQCB proposal for a waiver of water quality requirements for grazing because there is now one less agency (the County of Marin) participating in protections meant to remedy water quality degradation and minimize soil erosion. The requirement that ranchers have a water quality plan and a facility map, and a requirement of at least visual inspection of their operations in relation to implementation of the plan, seems less meaningful when the County of Marin no longer involves itself in determining appropriate land use practices. (Comment by TBA)

Comment noted. It is not in the purview of the Waiver to comment on the actions of another agency. In addition, Board staff is not relying on Marin County for implementation of this Waiver of WDRs.

The implementation of RWQCB standards for a waiver under which there is a minimum delivery of pathogens into streams is undermined in a county that has little inclination to apply common sense environmental requirements on agricultural parcels, and puts undue burden and responsibility upon the RWQCB in maintaining the water quality goals that it is mandated to monitor and maintain. (Comment by TBA)

Comment noted

We therefore believe the RWQCB needs to engage a two prong approach: Increase RWQCB's own enforcement capability while working with ranchers to improve conditions on their parcels. As long as parcel owners demonstrate that they are continuing to work toward improving conditions on their properties and implement best management practices, including maintaining or improving riparian zones, then enforcement will be relatively benign and unnecessary. On the other hand, recalcitrant operators ought to have to pay for the additional involvement of RWQCB staff to ensure the implementation of the standards.

Instruct the County of Marin that its CWP is insufficient and that it needs to undergo emergency revision of its plan, and also needs to address the issues through implementation of more specific protections under its development code with respect to riparian zones on agricultural parcels. (Comment by TBA)

Comment noted, however the concerns raised regarding Marin County are not within the purview of this Waiver.

The Waiver should clarify responsibilities when the operator is not the landowner, Using the term landowner/operator as used in the waiver language implies that both the landowner and operator are equal and that all compliance activities need to be implemented by both. Changing the language to operator may rectify this ambiguity since the operator, who may also be the owner is required to comply with the NOI, Certification and Ranch Water Quality Plan. At the public meeting at Point Reyes Station it was stated that when the operator is not complying with Regional Board requirements for dealing with non-point source discharges, the Regional Board will then pursue the landowner. The Regional Board should clarify the requirements of the operator and landowner when these are different. (Comment by USDI)

Comment noted. The Waiver allows either the landowner or operator to develop a Ranch Water Quality Plan and implement it, thus complying with the Waiver. In case of non-compliance, Board staff would first focus on whoever is immediately responsible for grazing operations. However, in all cases, the landowner is ultimately responsible for compliance with the Waiver.

Comments expressing support for our Waiver

We believe that the waiver provides fair and reasonable expectations of our membership, and will provide a sound and effective instrument to protect the quality of Tomales Bay waters. Western United Dairymen supports adoption of the Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed with the change that we have requested (that the second annual certification date of November 15, 2010 is a more realistic date). (Comment by WUD).

The Waiver as written demonstrates the San Francisco Bay Regional Water Quality Control Board's commitment to listening and understanding the agricultural operations that the Waiver is intended to regulate. Providing for the use of existing plans, facilitating a process in which plans can remain on farm, and directing monitoring to conservation practice implementation all are steps that will increase participation and compliance with waiver conditions. The result will be increased conservation practice implementation, and improvements to water quality. Thank you for the opportunity to provide these comments and for the responsiveness the Water Board has demonstrated to early discussions about the Conditional Waiver. (Comment by UCE)

CCA Appreciates the SFBWQCB drafting a waiver that provides ranchers with the flexibility to determine what areas have the potential to be a discharge site, what management practices will effectively alleviate excess discharge and at what point should the management practices be implemented to most effectively minimize sediment and pathogen discharge. This approach will certainly encourage more ranchers to participate in the program and will achieve more effective water quality results.

CCA appreciates the opportunity to comment on the Draft and encourages the Regional Board to continue to collaboratively work with ranchers and research partners to address water quality concerns and known impairments while minimizing unnecessary regulatory burdens on ranchers within the region. (Comments by CCA)

We applaud the board for taking this action and its commitment to working with ranchers in order to improve conditions on agricultural lands in order to improve water quality condition within the Tomales Bay Watershed. (Comment by TBA).