

August 25, 2005

Stan Martinson, Chief
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-01000

Subject: Response to SWRCB August 18 letter — REQUEST FOR EXCEPTION
DISCHARGES INTO ASBS

Trinidad Rancheria has received your letter of August 18, 2005 responding to our request for a discharge exception. I will be attending the workshop in Monterey on August 31, and expect to work with the SWRCB to implement feasible measures to protect the Trinidad Kelp Beds ASBS. We have proactively addressed two of the problems cited by the SWRCB by taking the following steps:

- Purchased a refrigerator van to hold fish carcasses until they can be picked up by a fish waste recycler.
- Conducted a test of the effectiveness of hot water pressure cleaning of boat hulls to allow us to eliminate the use of bleach. While less effective than bleach, the pressure cleaner may be adequate and we plan on purchasing one for next season.

Although our intent is to continue to work with the SWRCB, we hope that testimony at Monterey will help the SWRCB to understand the need for a measure of reasonableness that has thus far been missing from the ASBS exception process.

Trinidad Rancheria understands that the Trinidad kelp beds were selected for early enforcement because of the pristine condition of the ASBS. We agree that the kelp beds are relatively pristine, and can imagine circumstances in which this enforcement priority might make sense. For example, this approach might be warranted if changing land uses or expanded development were threatening a pristine resource. At Trinidad Harbor, however, the land base is limited by surrounding steep and unstable slopes. Most of the usable land is devoted to parking for the harbor and adjacent beaches, to which we are required to maintain public access. The area that is suitable for mooring is also fully utilized, as it has been for many years. Therefore, Trinidad Harbor will likely to continue to operate in the future in pretty much the same way it has operated for the past 75 years, during which time the kelp beds have maintained their pristine condition. While it is prudent to implement reasonable protection measures, we should be given time to demonstrate that the harbor is not harming the kelp beds, since this position is strongly supported by the logic I have just presented. There is no reason for the SWRCB to insist on prohibitively expensive monitoring programs and operational changes that are completely inappropriate for Trinidad Harbor. For instance, just because a SWRCB staff person maintains that "moving of the mooring field may result in physical disturbance to the marine habitat" (California Marine Waters, Areas of Special Biological Significance Reconnaissance Report, Kelp Beds at Trinidad Head, June 1979, SWRCB Monitoring Report 79-19 as quoted in Final Report: Discharges into State Water Quality Protection Areas, July 2003, Southern California Coastal Water Research Project Final Report to the State Water Resources Control Board) does not provide justification for the harbor to discontinue a mooring method that has co-existed with healthy kelp beds for decades and may have no feasible alternative. Your enforcement program needs to be based on good science, not the opinions of staff persons based on drive-by observations.


Please note that your August 18 letter contains the first reference to "storm water runoff" that we have seen in your communications to us on this issue. The initial prohibition letter dated October 18, 2004 mentioned only "fish cleaning and other discharges associated with marine operations." My subsequent phone conversation with SWRCB staff clarified that boat washing, pulling of moorings, and mooring washing were additional issues. Why was storm water runoff not mentioned in the 2004 letter, which would have allowed us to understand the SWRCB's intent and to plan appropriately for the past 10 months? We think the August 2005 letter incorrectly expands the discharge issues that Trinidad Rancheria must address. We are willing to discuss changes in our operations that help mitigate the SWRCB's concerns, but we suggest that the storm water issue was added due to a misunderstanding.

Since the harbor is within the jurisdiction of the City of Trinidad and there is no harbor district, any storm water runoff issue at the harbor should be addressed in the City's overall approach to storm water management within the City limits in the same way that any other privately owned parking lot in the City would be treated. The City's point discharge of storm water is located on the beach down slope of the harbor parking lot, so it is logical that these discharges should be addressed together in the City's planning process, especially since tribes are not eligible for Proposition 50 funding (please note that Trinidad Rancheria offered support to the City for planning activities within the City's pending Proposition 50 funding application; however, we would have taken a more active role in this process had we known that the SWRCB was planning on dealing with the harbor as a storm water discharge separate from the City).

In summary, we are asking the SWRCB to note of the following factors specific to Trinidad Harbor in developing a reasonable and feasible approach to kelp bed ASBS protection:

- The kelp beds have thrived for 75 years of exposure to harbor operations that are similar in nature and scale to current operations.
- The potential for the harbor to generate additional discharges of any kind is negligible because of the limited land base and size of the harbor. The SWRCB should not rush into prohibitively expensive enforcement directives based on staff opinions that are not supported by logic or science in the case of the kelp beds at Trinidad.
- The proper framework for addressing storm water runoff issues for land within the City's jurisdiction is the City's storm water planning process, and the City's Proposition 50 grant should be funded to allow it to address the City as a whole, including the harbor.

Sincerely,



Greg Nesty

Environmental Program Director