



United States Department of the Interior

NATIONAL PARK SERVICE
Point Reyes National Seashore
Point Reyes, California 94956

CALIFORNIA REGIONAL WATER

JUN 20 2008

QUALITY CONTROL BOARD

IN REPLY REFER TO:

L7617

June 19, 2008

San Francisco Regional Water Quality Control Board
ATTN: Carmen Fewless
1515 Clay St. Suite 1400
Oakland, CA 94612

RE: Tentative Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed.

Dear Ms. Fewless:

The National Park Service manages more than 30,000 acres within the Tomales Bay watershed as well as waters of Tomales Bay. Staff have worked with the Regional Board in the development of the Pathogen TMDL and have tracked the proposed Waiver of Waste Discharge Requirements for Grazing Operations (Waiver). More than 10 grazing operations within park lands drain to Tomales Bay. Grazing operations on these lands are authorized under Special Use Permits or Reservation of Possession. In addition, there are two dairy operations within the Seashore that have grazed land portions of the operation draining to Tomales Bay. Comments provided below are based on the draft waiver and attachments, as well as staff attendance at the public meeting held in Point Reyes on June 11, 2008.

Responsible Parties

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 discharge, the Regional Board will then pursue the landowner. The Regional Board should clarify the requirements of the operator and the landowner when these are different.

Dairy operations

It is our understanding that the grazing lands of these dairy operations will be regulated under the existing dairy waivers (Resolution R2-2003-0094). 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?

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?

Waiver Conditions

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

- 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.

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. In addition, a template of a Ranch Water Quality Plan would benefit all operators in fulfilling their legal requirement. 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.

How often does the Ranch Water Quality Plan need to be updated based on changes on the ground over time? Is this once per five year waiver?

Monitoring

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.

Our review of Section 2 of the waiver – Monitoring under Waivers 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?

The Inspection 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 pre-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...”

At the Public Meeting, staff implied that the intent of the monitoring effort is to ensure that water quality Best Management Practices (BMPs) that have been installed are functional. Requirement of visits on every storm, as well as monthly in 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 surface 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 that are problematic.

If the actual intent of the Regional Board is to ensure BMP implementation and function, then 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.

The language of Conditions 4) g) will likely result in no reporting from operators. What is meant by reporting any noncompliance? Does this mean newly identified nonpoint source discharge points or the failure of BMPs that are in place? Often it is impossible or inappropriate to repair a BMP failure during the rainy season or when pastures are saturated. Would the time schedule and plan for corrective actions be incorporated into the Ranch Water Quality Plan or the Compliance Reporting Plan? It is unclear exactly what a noncompliance event would be. If a new feature is identified, how should it be incorporated into the Plan.

Attachment A – Notice of Intent (NOI)

The Attachment is not specific to the Tomales Bay TMDL, and should be updated. The dates in Section VI. D are not valid. The Waiver states the NOI is due January 31, 2009,

while Attachment A refers to November 15, 2008. The NOI refers to Compliance Reporting Plan which is not described in the waiver document. This should be clarified. 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.

Attachment B

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 check list 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.

We appreciate the opportunity to comment on the Grazing Waiver. Should you have any questions regarding these comments please contact our park range manager John DiGregoria at (415) 464-5172, or hydrologist Brannon Ketcham at (415) 464-5192.

Sincerely,

A handwritten signature in black ink, appearing to read "Don L. Neubacher", with a long horizontal flourish extending to the right.

Don L. Neubacher
Superintendent

Attachments:

- Recommendations for Conducting Pasture Assessments

Recommendations for Conducting Pasture Assessments

When actually implementing the pasture assessments, we developed a Pasture Feature list for recording information on specific features such as headcuts, hillslope failures, bare ground, animal concentration areas, stream crossings, etc. Each feature was recorded on a map, GPSed, and noted as to whether it had the potential to deliver to a nearby water body. Our approach has allowed us to identify problems, prioritize projects, locate funding, and implement projects. This seems to be the ultimate goal of the Ranch Water Quality Plan and Certification. The checklist does not provide the information necessary to develop a Ranch Water Quality Plan as outlined in the Conditions Section of the Waiver. We could supply you with our lists and forms to assist with developing a pasture assessment method sufficient to develop a Ranch Water Quality Plan.

If you choose to continue to use the checklist in Attachment B, the following concerns should be addressed.

Because many of the ranches in the area have multiple pastures, a pasture checklist that laid out like a dichotomous key may be more appropriate. An example:

Are there areas devoid of vegetation on slopes above streams or adjacent to streams on flat land? If yes, are there signs of sediment moving towards the watercourse? If yes, record as a non-point source discharge location.

Do bare soil surfaced roads cross and type of drainage? If yes, record as a non-point source discharge location.

Are there culverts or drainage ditches along bare soil roads that drain to any type of drainage? If yes, record as a non-point source discharge location.

The first two questions under Pastures are ambiguous. What does close inspection mean? In some areas, the soils don't support thick vegetative cover and the soil is visible without close inspection, this does not necessarily mean there is erosion. Also, there will always be animal concentration areas with erosion potential within a pasture. The location of the animal concentration area relative to a water course is the key to whether there is a problem.

Cow pies can often be distinguished in pastures at 20 feet or more that have sufficient Residual Dry Matter or green vegetation to prevent rain splash and sheet erosion. Not sure what the answer to this question tells us.

The following questions might better provide insight into problem areas.

Are animal concentration areas near surface waters?

Do animals have access to unstable slopes, slumps, or steep sloping riparian areas?

Are seasonal and/or ephemeral stream channels within pasture?

Are watering facilities, salt licks, and supplemental feeding areas at least 300 feet away from surface water?

Under Road Erosion we have the following suggestions:

Change, Do road surfaces consist of bare soil? To: Do bare soil surfaced (dirt) roads cross or drain directly/indirectly to surface waters.

Other questions to consider:

Are there headcuts upstream from culverts?

Are roads near surface waters used during the rainy season?

For the Nutrients and Pathogens section the following questions may be more useful:

Do animals have direct access to seasonal or ephemeral streams during the rainy season?

Are watering facilities developed in the upland on flat areas at least 300 feet away from stream channels?

Do animals have direct access to perennial streams?

The Riparian Area questions are good.

Answering yes to any of the questions on the checklist does not necessarily mean there is discharge to surface waters. Answering yes when there is discharge does not identify what the actual problem is. Also does a yes mean there is one feature or multiple features. To develop a Plan, discreet features need to be identified in order rectify them.