

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – NORTH COAST REGIONAL WATER BOARD
FEBRUARY 22, 2017**

ITEM 7

SUBJECT

CONSIDERATION OF A RESOLUTION APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE NORTH COAST REGION TO INCORPORATE THE ACTION PLAN FOR THE UPPER ELK RIVER SEDIMENT TOTAL MAXIMUM DAILY LOAD (TMDL)

DISCUSSION

On May 12, 2016, the North Coast Regional Water Quality Control Board (North Coast Water Board) adopted [Resolution No. R1-2016-0017](#), amending the Water Quality Control Plan for the North Coast Region (Basin Plan) to add an Action Plan for the Upper Elk River Sediment TMDL (TMDL Action Plan) to Chapter 4: Implementation Plans. The Upper Elk River is a 44.2 mi² watershed south of the City of Eureka; the lowest portion of the Upper Elk River is the most severely impacted (impacted reach). The Upper Elk River was added to the Clean Water Act 303(d) list of impaired water bodies in 1998 by the North Coast Water Board because beneficial uses were negatively affected and nuisance flooding was occurring. The beneficial uses impacted include domestic water supplies (MUN); agricultural water supplies (AGR); cold water habitat (COLD); spawning, reproduction, and early development (SPWN); rare, threatened, or endangered species (RARE); and contact and non-contact recreation (REC-1 and REC-2).

The TMDL Action Plan establishes a TMDL for sediment in the Upper Elk River, including requirements for U.S. EPA approval, consisting of the problem statement; description of the Water Quality Standards to be addressed by the TMDL; numeric targets; linkage analysis; source analysis; TMDL including margin of safety, seasonal variations, and critical conditions; load and waste load allocations; and public involvement. The sediment load allocation for the Upper Elk River Watershed is zero; that is, the system currently has no assimilative capacity for sediment to maintain full beneficial uses and prevent nuisance flooding.

Per the California Water Code, the TMDL Action Plan also includes a Program of Implementation which uses a mix of regulatory and non-regulatory tools to restore beneficial uses to the Upper Elk River and abate nuisance flooding. The regulatory portion of implementation is the issuance of waste discharge requirements (WDR) for the two major private landowners, Humboldt Redwood Company (HRC) and Green Diamond Resource Company, and coverage under the U.S. Forest Service Waiver (Order No. R1-2015-0021) for relevant Bureau of Land Management projects.

The WDR for HRC replaces the existing permit that was carried over from Pacific Lumber Company, which filed for bankruptcy and was reformed as HRC in 2007. On November 30, 2016 the North Coast Water Board adopted Order No. R1-2016-0004, Waste Discharge Requirements for Nonpoint Source Discharges and Other Controllable Water Quality Factors Related to Timber Harvesting and Associated Activities Conducted by Humboldt Redwood Company, LLC in the Upper Elk River Watershed. The non-regulatory portion of implementation consists of the Watershed Stewardship Program (Stewardship) and the Elk

River Recovery Assessment (ERRA). Stewardship is a participatory program that engages residents, community members, scientists, land owners, and regulatory agencies in developing a collaborative planning process to restore beneficial uses to the Upper Elk River. The ERRA is a full-scale sediment and hydrodynamic modeling project that assesses the feasibility of remediation actions and informs the technical foundation for the Stewardship planning process. These three pieces together are intended to implement the TMDL Action Plan.

POLICY ISSUE

Should the State Water Board approve the amendment to the Basin Plan to:

- 1) Establish a TMDL for sediment in the Upper Elk River Watershed;
- 2) Verify that TMDL requirements from U.S. EPA are met. Approve the Program of Implementation to restore beneficial uses and reduce nuisance flooding.

FISCAL IMPACT

This action provides the rationale for updated WDR permits to reduce sediment discharge from upstream land owners, which may impact continuing timber harvest operations, the main economic activity in the Upper Elk River Watershed. While funding for the ERRA and Stewardship have been acquired through the State Water Board Cleanup and Abatement account and federal non-point source 319(h) grants, respectively, future full-scale sediment remediation of the impacted reach and other reaches of the Upper Elk River will require additional funding.

REGIONAL WATER BOARD IMPACT

Approval of this Resolution and Basin Plan amendment will impact the North Coast Water Board by amending its Basin Plan to establish a sediment TMDL for the Upper Elk River Watershed and program of implementation for the TMDL. North Coast Water Board and State Water Board staff requirements associated with or resulting from this action will be addressed with existing and future budgeted resources.

STAFF RECOMMENDATION

- 1) Approve the amendment to the Basin Plan adopted under Regional Water Board Resolution No.R1-2016-0017 (Chapter 4, Implementation Plans).
- 2) Authorize the Executive Director or designee to submit the amendments adopted under Regional Water Board Resolutions No.R1-2016-0017 (Chapter 4, Implementation Plans) as approved and the administrative record for these actions to the Office of Administrative Law for approval of the regulatory provisions and to U.S. Environmental Protection Agency for approval of the TMDL.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2017-

APPROVING AN AMENDMENT OF THE WATER QUALITY CONTROL PLAN FOR THE NORTH COAST REGION (BASIN PLAN) INCORPORATING THE ACTION PLAN FOR THE UPPER ELK RIVER SEDIMENT TOTAL MAXIMUM DAILY LOAD (TMDL) IN CHAPTER 4 (IMPLEMENTATION PLANS)

WHEREAS:

1. On May 12, 2016, the North Coast Regional Water Quality Control Board (North Coast Water Board) adopted [Resolution No. R1-2016-0017](#), amending the Water Quality Control Plan for the North Coast Region (Basin Plan) to incorporate the Action Plan for the Upper Elk River Sediment TMDL (TMDL Action Plan) in Chapter 4 (Implementation Plans) of the Basin Plan.
2. The framework and information for the TMDL Action Plan are contained in the [Upper Elk River: Technical Analysis for Sediment](#) (Technical Report) (Tetra Tech, October 2015), which provides a concise synthesis of the data, analyses, results, and conclusions from the [2013 Staff Report to Support the Technical Sediment Total Maximum Daily Load for the Upper Elk River](#) and other reports, including those received from dischargers (e.g., Reports of Waste Discharge). The Technical Report provides the scientific basis for the sediment TMDL for the Upper Elk River Watershed.
3. The proposed Basin Plan amendment, adopted by the North Coast Water Board by Resolution No. R1-2016-0017 is an action subject to the requirements of the California Environmental Quality Act (CEQA). The North Coast Water Board previously prepared a “substitute environmental document” (SED) for the Temperature Policy (North Coast Water Board [Resolution No. R1-2014-0006](#)) and prepared an addendum to the SED to support the Policy for the Implementation of the Water Quality Objectives for Temperature (North Coast Water Board [Resolution R1-2015-0004](#)). The North Coast Water Board found that the analysis contained in the Temperature Policy SED, and addendum to the SED prepared for the Restoration Policy, satisfied CEQA requirements for the proposed Basin Plan amendment and complied with the requirements of the State Water Board’s certified regulatory process as set forth in California Code of Regulations title 23, section 3775 et seq. The North Coast Water Board found that the Basin Plan amendment did not alter the environmental analysis that was prepared for the Temperature Policy and Restoration Policy as it would not result in different implementation actions, mitigation measures, or reasonably foreseeable methods of compliance to warrant additional environmental analysis pursuant to Public Resources Code section 21159 and California Code of Regulations, title 14 section 15187. The North Coast Water Board found that because the Basin Plan amendment was consistent with the prior CEQA documentation it was not required to prepare subsequent or supplemental CEQA documentation for the TMDL Action Plan pursuant to California Code of Regulations title 14, sections 15162 and 15163. The State Water Board has reviewed the Substitute Environmental Documents for the Basin Plan amendment and concurs with the North Coast Water Board’s findings and determinations, including its Statement of Overriding Considerations.

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4. The North Coast Water Board adopted the Basin Plan amendment pursuant to the "Necessity" standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b).
5. The North Coast Water Board found that the Basin Plan amendment is consistent with the Statement of Policy with Respect to Maintaining High Quality of Waters in California (State Water Board Resolution No. 68-16) and the federal Antidegradation Policy (40 C.F.R. section 131.12), in that it does not allow degradation of water quality, but requires restoration of water quality and control of the discharge necessary to assure that pollution or nuisance will not occur, and water quality standards will be met.
6. The State Water Board finds that the Basin Plan amendment is in conformance with California Water Code section 13240, which specifies that regional water quality control boards may revise basin plans, and section 13242, which requires a program of implementation for achieving water quality objectives. The State Water Board also finds that the TMDL as reflected in the Basin Plan amendment is consistent with the requirements of section 303(d) of the federal Clean Water Act.
7. A Basin Plan amendment does not become effective until approved by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law (OAL). The TMDL must also receive approval from the U.S. Environmental Protection Agency (U.S. EPA).

THEREFORE, BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendment to the Basin Plan adopted under North Coast Water Board Resolution No.R1-2016-0017.
2. Authorizes the Executive Director or designee to submit the amendment adopted under North Coast Water Board Resolution No. R1-2016-0017 as approved and the administrative record for this action to the Office of Administrative Law for approval of the regulatory provisions and to U.S. Environmental Protection Agency for approval of the TMDL.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 22, 2017.

Jeanine Townsend
Clerk to the Board