

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – NORTH COAST REGIONAL WATER BOARD
APRIL 8, 2015**

ITEM 12

SUBJECT

CONSIDERATION OF A RESOLUTION APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE NORTH COAST REGION (BASIN PLAN) TO ESTABLISH A POLICY FOR THE REGION-WIDE IMPLEMENTATION OF THE WATER QUALITY OBJECTIVES FOR TEMPERATURE AND ACTION PLANS TO ADDRESS TEMPERATURE IMPAIRMENTS IN THE MATTOLE, NAVARRO, AND EEL RIVER WATERSHEDS.

DISCUSSION

On March 13, 2014, the North Coast Regional Water Quality Control Board (North Coast Water Board) adopted [Resolution R1-2014-0006](#) amending the Basin Plan to establish a Policy to Implement the Water Quality Objective for Temperature (Temperature Policy) and add additional Action Plans to implement the Mattole, Navarro, Upper Main Eel, Middle Main Eel, Lower Eel, Middle Fork Eel, North Fork Eel, and South Fork Eel River temperature total maximum daily loads (Action Plans), previously established by the U.S. EPA.

The proposed Basin Plan amendment describes the approach to region-wide implementation of the water quality objectives for temperature in one cohesive policy. It identifies the regulatory mechanisms staff will employ to ensure achievement of the water quality objectives for temperature, it describes the significance of stream shade as a factor determining stream temperatures and identifies shade as a controllable water quality factor, and it directs staff to address temperature concerns through existing authorities and processes. The proposed Temperature Policy also directs the development of a temperature monitoring plan and temperature workplan.

Policy

The purpose of the Temperature Policy is to describe the range of tools available for protection against anthropogenically elevated water temperatures; to remediate, restore, and protect temperature-impaired waterbodies; and to control the cumulative impacts of elevated water temperature on other waterbodies. It affirms the need to address water temperatures region-wide, but on a case-by-case basis in the context of a given permit or other action to reduce impairments and prevent further impairment. It directs staff to continue implementing temperature Total Maximum Daily Loads (TMDL) through regional nonpoint source programs, permits, waivers, and enrollments as appropriate, and to work with other agencies to protect and maintain water temperatures.

The Temperature Policy directs North Coast Water Board staff to examine and address temperature when developing permits. At a minimum, any program or permit should implement temperature shade load allocations in areas subject to existing temperature TMDLs, including U.S. EPA-established temperature TMDLs. Any program or permit should implement riparian management measures, sediment controls, and stream flow considerations as appropriate and necessary to address and prevent further impairments. The North Coast Water Board shall do so in coordination with the State Water Resources Control Board and other local, state, and federal agencies to the extent possible.

The Temperature Policy does not specify any prescriptions for any land use activity. The Resolution contains a detailed discussion of temperature protection measures in the context of region-wide nonpoint source programs including riparian management. The Resolution describes how in many instances the same management measures can address multiple sources of pollution, and how incorporating TMDL implementation into broad-based nonpoint source programs can increase efficiency and avoid overlapping water quality regulation. The Resolution includes an extensive discussion on how the North Coast Water Board can, and often does, rely on existing non-Water Board programs if those actions will result in attainment of water quality standards, with a focus on the significant progress made in this regard for timber harvesting.

The Temperature Policy establishes in the Basin Plan that the amount of shade provided by riparian vegetation is a controllable water quality factor. The Temperature Policy includes the term “site-specific potential effective shade” to describe shade conditions consistent with the intrastate water quality objective for temperature. The term illustrates a general concept, but should not be construed as a hard and fast standard because the concept inherently considers site-specific variability.

TMDL load allocations are not automatically enforceable; rather, they must be translated and implemented through some sort of permitting mechanism and for the North Coast Water Board this is generally through implementation of best management practices for nonpoint source land use activities. Compliance is generally achieved by not removing or hindering vegetation that provides shade to a waterbody. This is accomplished by managing riparian areas differently than the surrounding land. Riparian buffers are also important for controlling sediment and other pollutants.

Action Plans

From 1999 to 2007, the U.S. EPA established eight TMDLs for temperature and sediment impairments in the Mattole, Navarro, and Eel River watersheds. The TMDLs contain all of the components of a standard TMDL (problem statement, source analysis, load allocation, numeric targets, load allocations, linkage analysis, and margin of safety) but do not include implementation plans. These TMDLs were developed on an aggressive schedule, pursuant to a consent decree, which did not allow for the development and adoption of implementation plans. The three Action Plans were developed to address elevated water temperatures, implement the TMDLs listed above, and satisfy a stipulated agreement.

The Action Plans are consistent with the more general Temperature Policy, but include specificity on actions to take place in the individual watersheds, such as identification of specific permitting mechanisms to implement load allocations. The Temperature Policy directs the Regional Water Board to focus temperature implementation actions on three factors: shade, flow, and sediment. The actions described in the Action Plans for Mattole, Navarro, and Eel River watersheds address shade and flow issues. Sediment controls in these watersheds are addressed through implementation of the Sediment TMDL Implementation Policy already contained in the Basin Plan.

POLICY ISSUE

Should the State Water Board approve the amendment to the Basin Plan to: 1) establish a Policy for the Implementation of the Water Quality Objectives for Temperature, and 2) incorporate Action Plans to Address Temperature Impairments in the Eel River Watershed, Navarro River Watershed, and Mattole River Watershed.

FISCAL IMPACT

This action does not create and new permits or programs. Staff work associated with or resulting from this action by both the North Coast Regional Board and the State Water Board will be addressed with existing and future budgeted resources.

REGIONAL WATER BOARD IMPACT

Yes, approval of this Resolution will amend the North Coast Water Board's Basin Plan.

STAFF RECOMMENDATION

1. Approve the amendment to the Basin Plan adopted under North Coast Water Board Resolution No. R1-2014-0006.
2. Authorize the Executive Director or designee to submit the amendment adopted under North Coast Water Board Resolution No. R1-2014-0006 as approved and the administrative record for this action to the Office of Administrative Law.

<p>State Water Board action on this item will assist the North Coast Water Board in reaching Goal 1 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030. In particular, approval of this item will assist in fulfilling Objective 1.1 to prepare, adopt, and implement TMDLs, designed to meet water quality standards, for all impaired water bodies on the 2006 list by 2019.</p>

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2015-

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE NORTH COAST REGION (BASIN PLAN) TO ESTABLISH A POLICY FOR THE REGION-WIDE IMPLEMENTATION OF THE WATER QUALITY OBJECTIVES FOR TEMPERATURE AND ACTION PLANS TO ADDRESS TEMPERATURE IMPAIRMENTS IN THE MATTOLE, NAVARRO, AND EEL RIVER WATERSHEDS.

WHEREAS:

1. On March 13, 2014, the North Coast Regional Water Quality Control Board (North Coast Water Board) adopted [Resolution No. R1-2014-0006](#) amending the Basin Plan to establish the *Policy for the Implementation of the Water Quality Objectives for Temperature* (Temperature Policy, [Attachment 1](#)). The Temperature Policy directs Staff to examine and address temperature when developing permits. At a minimum, any program or permit should implement temperature shade load allocations in areas subject to existing temperature Total Maximum Daily Loads (TMDLs), including U.S. EPA-established temperature TMDLs. Any program or permit should implement riparian management measures, sediment controls, and stream flow considerations as appropriate and necessary to address and prevent further impairments. The North Coast Water Board shall do so in coordination with the State Water Resources Control Board and other local, state, and federal agencies to the extent possible.
2. The purpose of the Temperature Policy (Attachment 1) is to describe the range of tools available for protection against anthropogenically elevated water temperatures; to remediate, restore, and protect temperature-impaired waterbodies; and to control the cumulative impacts of elevated water temperature on other waterbodies. It affirms the need to address water temperatures region-wide, but on a case-by-case basis in the context of a given permit or other action to reduce impairments and prevent further impairment. It directs staff to continue implementing temperature TMDL through regional nonpoint source programs, permits, waivers, and enrollments as appropriate, and to work with other agencies to address elevated water temperatures.
3. In 2012, the North Coast Water Board adopted [Resolution No. R1-2012-0013](#), the *Policy Statement for the Implementation of the Water Quality Objective for Temperature* (Resolution, [Attachment 2](#)), which the Temperature Policy incorporates by reference. The Resolution describes in one cohesive document the North Coast Water Board's efforts to date in implementing temperature objectives and guidance on the range of implementation tools to apply for temperature protection in future programs and permits, including coordination with other federal, state, and local agencies to the extent possible. The Resolution articulates in further detail ongoing and future efforts for implementing temperature controls in a site- or activity-specific context.
4. The *Action Plans to Address Elevated Water Temperature in the Eel River Watershed, Navarro River Watershed, and Mattole River Watershed* (Action Plans, [Attachment 3](#)) will implement the U.S. EPA-established Eel River, Navarro River, and Mattole River TMDLs.¹ The Action Plans each include a standalone implementation plan applicable to

¹ The USEPA has established the following temperature TMDLs:

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actions addressing temperature impairments in each watershed. The Action Plans are consistent with the more general Temperature Policy, but include more specificity on actions to take place in the individual watersheds. The three Action Plans were developed to address temperature impairments, implement the TMDLs, and satisfy a stipulated agreement.

5. The State Water Board finds that under Clean Water Act section 303(d)(2), once U.S. EPA establishes a TMDL, the state must incorporate the TMDL into its water quality management plan, which includes the Basin Plan and other plans developed as part of the state's continuing planning process under Clean Water Act section 303(e). The Temperature Policy and Action Plans will become part of the Basin Plan, and be considered part of the continuing planning process under Clean Water Act section 303(e). The Temperature Policy not only implements existing temperature TMDLs, but is intended to implement future temperature TMDLs and prevent additional temperature impairments to avoid the need for further listings and TMDLs.
6. The State Water Board finds that the Basin Plan amendment is in conformance with Water Code section 13240, which specifies that the regional water quality control boards may revise basin plans, and 13242, which requires a program of implementation for achieving water quality objectives. First, the Policy and Action Plans describe multiple actions that are necessary for achieving the water quality objectives for temperature. The Policy directs Regional Water Board staff to prevent, minimize, and mitigate temperature alterations associated with various factors through a combination of riparian management and other temperature controls as appropriate in nonpoint source control programs, permits and waivers, grants and loans, and enforcement actions; support of restoration projects; and coordination with other agencies with jurisdiction over controllable factors that influence water temperature. This sufficiently describes actions necessary for achieving water quality objectives and includes recommendations for appropriate actions by other entities.
7. The North Coast Water Board found that the analysis contained in the California Environmental Quality Act (CEQA) "Substitute Environmental Documents" for the proposed Basin Plan amendment, including the CEQA checklist, the final staff report entitled "Supporting the Policy for the Implementation of the Water Quality Objectives for Temperature and Action Plan to Address Temperature Impairment in the Mattole River Watershed, Action Plan to Address Temperature Impairment in the Navarro River Watershed, and Action Plan to Address Temperature Impairment in the Eel River Watershed", and the response to comments complies with the State Water Boards' regulations for the implementation of CEQA as set forth in the California Code of Regulations, title 23, sections 3775 through 3871. The North Coast Water Board's analysis takes into account a reasonable range of environmental, economic, and

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- *Lower Main Eel River* (December 18, 2007)
 - *North Fork Eel River* (December 30, 2002)
 - *Middle Fork Eel River* (December, 2003)
 - *South Fork Eel River* (December 16, 1999)
 - *Middle Main Eel River* (December, 2005)
 - *Upper Main Eel River* (December 29, 2004)
 - *Mattole River* (December 30, 2002)
 - *Navarro River* (December, 2000)

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technical factors. 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 the programmatic Statement of Overriding Considerations (CEQA Findings, [Attachment 4](#)).

8. The North Coast Water Board also adopted the Basin Plan amendment pursuant to the "Necessity" standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b). It is necessary to articulate in the Basin Plan the range of implementation mechanisms that are necessary for achieving the water quality objectives for temperature, and to formally incorporate the implementation plans for U.S. EPA-established temperature TMDLs into the state's continuing planning process under Clean Water Act section 303(e).
9. The Temperature Policy and Action Plans are consistent with the provisions of Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality Waters in California." The Policy and Plans identify a wide range of factors affecting temperature and compliance measures to attain temperature objectives, both within and outside of the Board's permitting jurisdiction, that will help attain temperature objectives and ensure the protection of beneficial uses of the state's waters. The Temperature Policy and Action Plans are intended to implement the antidegradation standard as it applies to unimpaired waters and waters that became impaired after 1968. The Policy directs the Regional Water Board staff to incorporate temperature protection measures into its nonpoint source permitting, which relies on implementation of best management practices and other measures that can be considered best practicable treatment or control methods. Management measures are generally applied through individual water quality plans that tailor measures to a particular site that includes an iterative planning approach based on monitoring feedback. The Policy and Action Plans do not themselves authorize or permit any activity that will discharge waste into high quality waters. A full antidegradation analysis is appropriate at the time of permit development and adoption.

Site- or activity-specific projects that will cause degradation to existing high quality waters will undergo additional analysis to determine whether the change in water quality is consistent with maximum benefit to the people of the State, and will not unreasonably result in water quality less than that prescribed in the Basin Plan and other Policies.
10. A Basin Plan amendment does not become effective until approved by the State Water Board, the regulatory provisions are approved by the Office of Administrative Law (OAL) and the CEQA filing fee is collected by the California Department of Fish and Wildlife.
11. Occasionally during its approval process, Regional Water Board staff, State Water Board, or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity and consistency. Under such circumstances, the Executive Officer should be authorized to make such changes, provided that the Regional Water Board is informed of any such changes.

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THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendment to the Basin Plan adopted under Regional Water Board Resolution No. R1-2014-0006.
2. Authorizes the Executive Director or designee to submit the amendment adopted under Regional Water Board Resolution No. R1-2014-0006 as approved and the administrative record for this action to the Office of Administrative Law for approval.

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 April 8, 2015.

Jeanine Townsend
Clerk to the Board