

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – NORTH COAST REGIONAL WATER BOARD
MAY 19, 2015**

ITEM 2

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE NORTH COAST REGION TO ESTABLISH A POLICY IN SUPPORT OF RESTORATION IN THE NORTH COAST REGION

DISCUSSION

On January 29, 2015, the North Coast Regional Water Quality Control Board (North Coast Water Board) adopted [Resolution No. R1-2015-0001](#)—the *Policy in Support of Restoration in the North Coast Region* (Restoration Policy), and [Resolution No. R1-2015-0004](#)—*Adopting Basin Plan Amendment for the Policy in Support of Restoration in the North Coast Region* (Adopting Resolution).

The Restoration Policy (R1-2015-0001) is primarily a narrative expressing support for restoration and similar type projects that describes in detail: (1) the importance of restoration projects for the protection, enhancement and recovery of beneficial uses, (2) the obstacles that slow or preclude restoration actions, (3) the legal and procedural requirements for permitting restoration projects, (4) the ongoing North Coast Water Board effort to provide support towards the implementation of restoration projects, and (5) direction to staff to continue to support restoration in the future. In addition, the Restoration Policy includes Basin Plan narrative amendment language that provides a similar expression of support for restoration but without specific details on current restoration efforts that will become dated over time.

The Adopting Resolution (R1-2015-0004) serves as the adopting instrument for the Basin Plan narrative amendment language included in the Restoration Policy. The Adopting Resolution includes required findings relative to: CEQA, consistency with anti-degradation policies, and conformance with the “Necessity Standard” of the Administrative Procedures Act. The Basin Plan narrative amendment will be included in Chapter 4 (Implementation) of the Basin Plan, under nonpoint source measures.

POLICY ISSUE

While the Restoration Policy is primarily a narrative and description of existing law, the North Coast Water Board is treating the Adopting Resolution as a regulatory amendment out of an abundance of caution. It clarifies that the Action Plan for Logging, Construction, and Associated Activities prohibitions do not apply to restoration projects otherwise subject to an order by the State Water Resources Control Board (State Water Board) or North Coast Water Board. There was no opposition to this action.

FISCAL IMPACT

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

REGIONAL BOARD IMPACT

Yes. Approval of the Adopting Resolution No. R1-2015-0004 will amend the North Coast Water Board's Basin Plan by incorporating the narrative language included in Resolution No. R1-2015-0001, the Restoration Policy.

STAFF RECOMMENDATION

1. Approve the Adopting Resolution No. R1-2015-0004 to incorporate into the Basin Plan the following narrative language from Resolution No. R1-2015-0001, the Restoration Policy, into Chapter 4 (Implementation) of the Basin Plan, under nonpoint source measures:

POLICY IN SUPPORT OF RESTORATION IN THE NORTH COAST REGION

To achieve the objectives of the Clean Water Act and Porter-Cologne, the North Coast Water Board must take an active role in promoting the implementation of restoration projects that are expected to help restore the chemical, physical, and biological integrity of the waters within the North Coast Region.

Restoration projects are implemented for the purpose of eliminating, reducing or ameliorating a variety of conditions that can negatively impact aquatic ecosystems, including but not limited to: water pollution, eutrophication, desiccation, habitat simplification, species displacement, migration barriers, erosion from diverted streams, riparian zone disturbance, effects of climate change, or other impairments to the beneficial uses of waters of the State.

The Policy in Support of Restoration in the North Coast Region includes Resolution No. R1-2015-0001, which accomplishes the following: (1) recognizes the important role that restoration plays in restoring and maintaining water quality, (2) highlights some of the barriers that inhibit implementation of restoration projects, (3) describes the work being done by the North Coast Water Board and its staff to support restoration, (4) describes the regulatory requirements for permitting restoration projects, and (5) provides direction on how the North Coast Water Board and its staff will continue to promote and support restoration in the future.

GUIDELINES FOR IMPLEMENTATION OF RESTORATION POLICY

The *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* requires that all current and proposed nonpoint source discharges be regulated under waste discharge requirements, waivers of waste discharge requirements, basin plan prohibitions, or some combination of these administrative tools. The implementation of restoration projects with potential to cause nonpoint source discharges of waste into waters of the State is regulated similarly to other types of nonpoint source activities.

The State and North Coast Water Boards use permitting authorities to implement the requirements of applicable State policies and state and regional water quality control plans. Boards may permit or certify restoration projects that result in significant and sometimes unavoidable impacts (including temporary exceedances of water quality objectives) if it is shown that the project will result in long-term protection of beneficial uses and water quality. In issuing waste discharge requirements, the North Coast Water Board may include a time schedule, subject to revision at the discretion of the Board and pursuant to the provisions of Water Code section 13263. Similarly, in issuing a water quality certification under the Clean Water Act section 401, the state certifies a federal project or a project required to obtain a federal permit with conditions to protect beneficial uses and meet water quality objectives. The state has discretion to condition the water quality certification based on the circumstances of a specific project, and may include time schedules for achieving compliance.

The Basin Plan includes prohibitions that apply to restoration projects within the action plans for the Action Plan for the Garcia River Watershed Sediment TMDL (2002) and the Action Plan for the Klamath River Total Maximum Daily Loads Addressing Temperature, Dissolved Oxygen, Nutrient, and Microcystin Impairments in the Klamath River in California and Lost River Implementation Plan (2010). Both of these watershed-specific action plans describe the North Coast Water Board's support for restoration efforts and provide methods for compliance with the prohibitions.

The Basin Plan also includes waste discharge prohibitions within the Action Plan for Logging, Construction, and Associated Activities. While useful as an enforcement tool to regulate certain nonpoint source or unpermitted discharges, the Action Plan for Logging, Construction, and Associated Activities is not necessary to regulate or enforce upon otherwise authorized restoration projects. Therefore, it shall not be construed to prohibit any restoration project subject to a permit or other order of the State or North Coast Water Board.

State Water Board action on this item will assist the Water Boards 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.

State Water Board action on this item will also assist the Water Boards in reaching Goal 4 of the Strategic Plan Update: 2008-2012 to comprehensively address water quality protection and restoration, and the relationship between water supply and water quality, and describe the connections between water quality, water quantity, and climate change, throughout California's water planning process.

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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 TO ESTABLISH A POLICY IN SUPPORT OF RESTORATION IN THE NORTH COAST REGION

WHEREAS:

1. On January 24, 2015, the North Coast Regional Water Quality Control Board (North Coast Water Board) adopted [Resolution No. R1-2015-0001](#)—*the Policy in Support of Restoration in the North Coast Region* (Restoration Policy), and [Resolution No. R1-2015-0004](#)—*Adopting Basin Plan Amendment for the Policy in Support of Restoration in the North Coast Region* (Adopting Resolution).
2. The Restoration Policy is primarily a narrative expressing support for restoration and similar type projects that describes in detail: (1) the importance of restoration projects for the protection, enhancement and recovery of beneficial uses, (2) the obstacles that slow or preclude restoration actions, (3) the legal and procedural requirements for permitting restoration projects, (4) the ongoing North Coast Water Board effort to provide support towards the implementation of restoration projects, and (5) direction to staff to continue to support restoration in the future. In addition, Restoration Policy includes Basin Plan narrative amendment language that provides a similar expression of support for restoration but without specific details on current restoration efforts that will become dated over time.
3. While the Restoration Policy is primarily a narrative and description of existing law, the North Coast Water Board has treated the Restoration Policy as a regulatory amendment out of an abundance of caution. It clarifies that the Action Plan for Logging, Construction, and Associated Activities prohibitions do not apply to restoration projects otherwise subject to an order by the State or North Coast Water Board.
4. The North Coast Water Board found that the analysis contained in the California Environmental Quality Act (CEQA) Substitute Environmental Document (SED) adopted for the *Policy for the Implementation of the Water Quality Objectives for Temperature* (Temperature Policy) complies with the requirements of Public Resources Code section 21159, including the CEQA Environmental Checklist containing an analysis of environmental impacts, mitigation measures to reduce or avoid those impacts, and alternative means of compliance that would avoid or eliminate environmental impacts, and California Code of Regulations, title 23, sections 3775-3781. Various projects intended to comply with the Temperature Policy are similar if not identical to the various projects contemplated under the Restoration Policy. Pursuant to California Code of Regulations, title 14, section 15164, the North Coast Water Board prepared an addendum to the SED to

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analyze factors that would trigger the need to prepare subsequent CEQA analyses under California Code of Regulations, title 14, section 15162, subdivision (a). The addendum reports no anticipated new or worsened water quality impacts that are expected to result from the adoption of the Restoration Policy. The North Coast Water Board therefore found that it was not required to prepare subsequent or supplemental CEQA documentation. The State Water Board has reviewed the SED and addendum for the Basin Plan amendment and concurs with the North Coast Water Board's findings and determinations, including the programmatic statement of overriding considerations.

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 Waters in California (State Water Board Resolution No. 68-16) and the federal Antidegradation Policy (40 C.F.R. §131.12), in that it is supportive of restorative actions designed to protect or recover instream beneficial uses and impaired aquatic ecosystems. While some restoration projects could result in temporary exceedances of water quality objectives, short-term impacts may be acceptable in cases where long-term benefits to beneficial uses outweigh short-term impacts, based on detailed, site-specific information and findings.
6. The North Coast Water Board found that the Basin Plan amendment meets the "Necessity" standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b).
7. 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 section 13242, which requires a program of implementation for achieving water quality objectives. In addition, the State Water Board finds that the Basin Plan amendment is in conformance with Water Code section 13241, which requires the establishment of water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance, in consideration of various factors including past, present and probably future beneficial uses of water.
8. A Basin Plan amendment does not become effective until it is approved by the State Water Board and until 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.

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THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the Basin Plan amendment adopted under Resolution Nos. R1-2015-0001 and R1-2015-0004.
2. Authorizes the Executive Director or designee to submit the amendment adopted under North Coast Water Board Resolution Nos. R1-2015-0001 and R1-2015-0004 to OAL for approval of the regulatory provisions.

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 May 19, 2015.

Jeanine Townsend
Clerk to the Board