

Response to Public Comments

on the

Draft Policy in Support of Restoration in the North Coast Region Resolution No. R1-2015-0001

January 2015

The public comments received on the draft *Policy in Support of Restoration in the North Coast Region* – Resolution No. R1-2015-0001 (Restoration Policy) and Regional Water Board staff responses are presented below.

The 45-day public review period for the Restoration Policy began on November 17, 2014 and ended at 5:00 p.m. on January 1, 2015. Regional Water Board staff involved interested stakeholders through publication in three major newspapers, posting on the Regional Water Board's website, and email distribution to approximately 1,000 individuals via an interested parties list. A Public Notice of the proposed Basin Plan Amendment was published on November 17, 2014. Regional Water Board staff conducted a public workshop in Santa Rosa, on November 20, 2014 to receive public comment.

Complete copies of the comments are presented following this Response to Comments document. Public comments have been largely supportive of the Restoration Policy. Regional Water Board staff has responded to all substantive comments and has included revisions to the Restoration Policy to incorporate recommended additions, as appropriate. Some additional modifications were made to the Restoration Policy to improve the clarity and refine intended meaning of the Policy. Due to the small number of public comments received, the responses are organized according to individual commenter below.

Regional Water Board staff received comments from the following individuals and organizations:

Dr. Hollie Hall, Hollie Hall & Associates Watershed Resources Consulting
Earle Cummings, Sonoma Resource Conservation District
Alan Levine, Coast Action Group
Duane Shintaku, Deputy Director, CAL FIRE
Helen Birss, California Department of Fish and Wildlife
Crystal Robinson, Quartz Valley Indian Reservation
Leaf Hillman, Director, Department of Natural Resources, Karuk Tribe
Mayor Michael Winkler, City of Arcata

Comments and Responses

COMMENTS #1:

Dr. Hollie Hall, Hollie Hall & Assoc. Watershed Resources Consulting

Dr. Hall's comments largely focused on the importance of monitoring related to restoration projects. Dr. Hall included the following two specific recommendations to improve the Restoration Policy by:

1. Elaborating on the benefits of restoration effectiveness monitoring as the basis for informing restoration projects; and,
2. Prioritizing support of pre & post-restoration project monitoring to verify restoration effectiveness.

Response: Regional Water Board staff agrees with Dr. Hall that monitoring is an integral and necessary component of restoration projects. Regional Water Board staff has revised the Restoration Policy by including a new finding #27 on page 7 which speaks directly to the importance of monitoring relative to restoration projects.

COMMENTS #2:

Earl Cummings, Sonoma Resource Conservation District

Mr. Cummings provided a letter that emphasizes the importance of opportunities to accomplish water quality and water conservation through watershed and wetland restoration. Mr. Cummings letter was supportive of a policy that supports implementation of these project types.

Response: Regional Water Board staff agrees with Mr. Cummings regarding the importance of restoration projects and appreciates the letter of support for the Restoration Policy.

COMMENTS #3:

Alan Levine, Coast Action Group

Mr. Levine declared the Coast Action Group's ongoing and long serving support for restoration projects. Mr. Levine highlights the importance of restoration as a part of the matrix of actions necessary to recover watersheds and to successfully reattain water quality standards.

Mr. Levine emphasized the Coast Action Group's ongoing concerns about the causes of impairment and limiting factors that are affecting recovery of impaired watersheds. Mr. Levine declared his belief that the Regional Water Board's implementing programs (e.g., WDRs, Waiver, NPDES, NPS Policy, etc.) are insufficient to curtail the land use activities that are causing impairments.

Mr. Levine also stated that the Garcia River TMDL (and potentially other TMDLs and related compliance) could benefit from restoration. Mr. Levine also stated that the Restoration Policy as currently written is insufficient without adequate implementing programs to back it up. Coast Action Group highlighted the specific findings within the Restoration Policy that could benefit from additional “backbone” in terms of land use programs and Regional Water Board implementing programs.

Response:

Regional Water Board staff agrees with Mr. Levine and the Coast Action Group that restoration, in addition to land use pollution control and effective regulation, are essential to the recovery of impaired beneficial uses and disrupted aquatic ecosystems. Finding #8 of the Restoration Policy states: “The re-attainment of an impaired beneficial use, or uses, often requires some combination of pollution controls, restorative actions, adaptive management, and sufficient time for an undesirable condition or conditions to abate and recovery to occur. Often, no single action can be expected to recover an impaired beneficial use or to restore a cumulatively affected watershed.”

The Restoration Policy is primarily a narrative expressing support for restoration and similar type projects. It describes in more 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 Regional Water Board effort to provide support towards the implementation of restoration projects, (5) the directives and actions staff shall conduct to support restoration into the future, and (6) abbreviated basin plan amendment language regarding the Restoration Policy.

The Restoration Policy is not a regulatory action, but rather, describes the actions that the Regional Water Board intends to implement to aid in the recovery of impacted watersheds and degraded beneficial uses. These actions are intended to complement other implementing programs being designed and implemented by the Regional Water Board.

Regional Water Board staff believes that the Garcia River Watershed Sediment TMDL is an important model for a comprehensive watershed recovery program for the North Coast Region, and beyond, the experiences from which have informed development of the Restoration Policy itself. For decades, Regional Water Board staff, landowners, resource conservation district, environmental non-profits, and other stakeholders – including the Coast Action Group and Friends of the Garcia - have been collaborating to promote recovery of the Garcia River watershed that was largely caused by various land use and logging activities during the middle to late 20th century. Regional Water Board staff is continuing to: promote land stewardship principles, implement pollution control programs, support restoration actions, conduct instream physical and biological monitoring, and participate in anti-poaching efforts to recover the watershed. Investments by landowners and the public have resulted in sediment control efforts across more than 80% of the entire watershed, largely as a result of the implementation of the Action Plan

for the Garcia River Watershed Sediment Total Maximum Load by the Regional Water Board. The restoration activities in the watershed have included many miles of streambank stabilization and riparian replanting as well as more than 10 miles of large wood augmentation projects to benefit state and federally listed salmon and trout. Since 2007, staff from the Regional Water Board and The Nature Conservancy has been implementing a watershed-wide physical and biological monitoring program across more than 80 permanent monitoring reaches. Public funding through grant and loans has been provided by the Regional Water Board, California Department of Fish and Wildlife, NOAA-NMFS, Natural Resources Conservation Service, CAL FIRE and elsewhere, to assist with pollution control and restoration efforts.

COMMENTER #4:

Duane Shintaku, Deputy Director, CAL FIRE

Mr. Shintaku, Deputy Director for the CAL FIRE, submitted a letter of strong support for the Restoration Policy. Mr. Shintaku declared the various ways CAL FIRE has been promoting restoration actions, including through the Anadromous Salmonid Protection Rules of 2009, funding of large wood augmentation projects in the Garcia and Gualala Rivers, and various projects being conducting on both the Jackson and Soquel Demonstration State Forests, and revisions to the Technical Rule Addendum No. 2 (Cumulative Impacts Assessment) in the California Forest Practice Rules to help promote restoration actions through the timber harvest planning process.

Mr. Shintaku has also highlighted several collaborations staff members from CAL FIRE and the North Coast Regional Water Quality Control Board have been working on together, including the joint leadership role they have taken within the Wood for Salmon Working Group since 2010 and Section V Technical Advisory Committee.

Response:

Regional Water Board staff appreciates the support provided by CAL FIRE for the Restoration Policy. Additionally, Regional Water Board staff is interested in continuing to collaborate with CAL FIRE to restore impaired watersheds and recover beneficial uses in the North Coast Region.

COMMENTER #5:

Helen Birss, California Department of Fish and Wildlife (CDFW or Department)

Ms. Birss, on behalf of several CDFW staff, submitted a public comment letter with general and specific comments regarding the Restoration Policy. Ms. Birss also included a description of the CDFW's ongoing and successful implementation of more than 2,000 restoration projects over the past four decades.

General CDFW Comments and Responses:

The CDFW shared several perspectives regarding the importance of restoration, water quality monitoring, and some of the challenges faced by the Department during the permitting process. The CDFW also recommended that the Restoration Policy be modified to identify and support all components of restoration project planning. Regional Water Board staff in large part agrees with the comments provided by the CDFW and have modified or added new findings into the Restoration Policy to reflect these comments.

Staff has added a few terms to the Restoration Policy within the “*Removing Barriers to Restoration*” section, finding #12 on page 3, to highlight some of the challenges faced by the regulatory agencies when reviewing proposed restoration projects, including incomplete applications and project design complexity. Finding #17 on page 4 of the Restoration Policy has been revised to emphasize the importance of collaboration amongst regulatory agencies, stakeholders, and restoration practitioners to promote beneficial restoration projects. Staff added directive #6 on page 12 of the Restoration Policy: “Improve the coordination between restoration practitioners, landowners, and agency contacts to help facilitate the submittal of complete permit applications and supporting technical information to support successful project outcomes.”

Specific CDFW Comments:

1. Page 2, Finding 10. *Sediment removal and water storage should be added as examples of restoration project types.*

Response: The Restoration Policy is purposefully drafted in very general terms. While “water storage” and “sediment removal” could in some instances be considered restoration, these terms are unnecessarily specific and already encompassed in the general description of instream flow augmentation and habitat improvement. No revision was made.

2. Page 2, Item 10. *The Draft Restoration Policy should recognize that enforcement of water diversion rights is an integral part of restoring aquatic ecosystems within the region.*

Response: The Regional Water Board agrees with the CDFW that the enforcement of water rights and water diversion is an integral part of restoring and protecting aquatic ecosystems. The Restoration Policy does reference and support the implementation of restoration projects that are designed to augment or support instream flows.

3. Page 3, Finding 11. *The sentence with “net effect” is unclear in its meaning and should be rewritten.*

Response: The Regional Water Board oversees other regulated activities that may include actions that are restorative in nature but that may not be conducted for the original purpose of benefiting the environment. An example would be an enforcement action that requires a responsible party to restore an illegally cleared riparian zone by

stabilizing exposed soils and replanting the area with native vegetation. Although the restorative actions included in the example are intended to counteract the impacts of the illegal clearing activity, Regional Water Board staff must regulate these restorative actions in a similarly expeditious and effective manner as that of a project that is intended for restoration purposes alone. Finding #11 on page 3 has been slightly modified to clarify its meaning.

4. Page 4, Findings 16 and 17. *The North Coast RWQCB may consider including in the Draft Restoration Policy their willingness to facilitate connecting small practitioners who can help facilitate successful project implementation. Another proactive step would be for the North Coast RWQCB to consider developing programmatic permitting programs, because these programs generally streamline the permitting process.*

Response: Agreed. Regional Water Board staff frequently directs project practitioners toward experienced restoration practitioners, environmental non-profits, resource conservation districts, or agency contacts to support restoration projects. Additionally, State and Regional Water Board staff members are included as available points of contact on the CDFW's own Coho HELP Act website. A new directive #6 on page 12 has been added to direct staff to: "Improve the coordination between restoration practitioners, landowners, and agency contacts to help facilitate the submittal of complete permit applications and supporting technical information to support successful project outcomes."

The Regional Water Board is very supportive of programmatic permitting programs and assisted the Mendocino County Resource Conservation District and Natural Resources Conservation Service in development of the *Navarro Permit Coordination Program* and the recently adopted *Mendocino County Permit Coordination Program* (MCPCP). The Regional Water Board secured the contract funding necessary to complete the Initial Study and Mitigated Negative Declaration for the MCPCP and issued a general water quality certification and waiver of waste discharge requirements for the MCPCP in November 2013 to streamline the permitting process and maintain a low fee structure for certain conservation and restoration practices. Similarly, the MCPCP would benefit from a programmatic lake and streambed alteration agreement (1600) from the CDFW.

5. Page 8, Finding 29(e). *The distinction between the Mendocino County Permit Coordination Program allowed restoration practices and promoted restoration projects should be clarified.*

Response: Agreed. New finding 30(e) has been revised to clarify the types of restoration practices that are promoted through the MCPCP.

6. Page 9, Finding 29(h). *To facilitate the North Coast RWQCB's permitting of restoration projects which benefit fish recovery efforts, the North Coast RWQCB could consider adopting a waiver or Basin Plan amendment of programmatic Best Management Practices and water quality standards for restoration projects outside of the Trinity River Restoration and Five Counties Salmonid Conservation Programs, including projects that fall under Coho HELP Act or those that are funded by CDFW, U.S. Fish and Wildlife Service, and National Marine Fisheries Service including FRGP or other similar funding.*

Response: The Regional Water Board appreciates the CDFW's recommended strategies to help facilitate permitting of restoration projects and is working with the Department to consider innovative ways to promote restoration under its own authority. An example of this is the State Water Board's development and ongoing use of the General 401 Water Quality Certification for Small Habitat Restoration Projects (General Certification). The General Certification was first adopted in 2007 in response to the former Secretary of Natural Resources development of a categorical exemption from CEQA for small habitat restoration projects (Cat Ex 15333).

Currently, North Coast Regional Water Quality Control Board staff is working closely with the State Water Resources Control Board to revise and improve the General Certification. As part of that revision, State and Regional Water Board staff are actively engaging staff from the CDFW to determine how the revised General Certification can be developed to complement the Department's permitting process, including the Coho HELP Act (AB1961) and the recently passed Habitat Restoration and Enhancement Act (AB 2193).

These two new assembly bills (AB 1961 and AB 2193) were approved to help the CDFW more effectively administer certain types of restoration projects that would otherwise require a Lake and Streambed Alteration Agreement and are not funded through the Fisheries Restoration Grant Program.

Regional Water Board staff has been striving to establish a more effective and synchronized permitting relationship with the CDFW relative to restoration practices and permitting. Various efforts that have been promoted by the Regional Water Board and certain CDFW staff include development of consolidated permit applications, development of new restoration permitting pathways, joint development of CEQA analyses (5 County Roads Program), coordination of grant and contract funding, and the development of restoration project planning tools and educational materials.

These actions that have been taken through a variety of different programs and ongoing collaborations, including the Coho Recovery Team (CRT), Priority Action Coho Team (PACT), and the Wood for Salmon Working Group. No revision was made.

7. Page 10, Finding 1. *Regarding "addressing recovery of beneficial uses," the North Coast RWQCB may consider discussing how the Draft Restoration Policy could support*

restoration efforts at marijuana grow clean-up sites. Marijuana grows have resulted in significant damage to aquatic ecosystems; for example, non-point source pollution containing poisonous chemicals and an increase in sediment cause by tree removal and illegal roads.

Response: Regional Water Board staff agrees with the CDFW that certain marijuana grows pose a significant threat to water quality as a result of vegetation removal, grading, water diversions, and the use of chemical fertilizers and pesticides. Regional Water Board staff has recently created a new cannabis regulatory unit as part of the Statewide Marijuana Enforcement Taskforce. See new directive 12 on page 12.

COMMENTS #6:

Crystal Robinson, Environmental Director, Quartz Valley Indian Reservation

Ms. Robinson declared the Quartz Valley Indian Tribe's support for the Restoration Policy and described the Tribe's active participation in the monitoring and restoration of water quality impairments in the Scott River watershed. Ms. Robinson provided two recommendations to the Regional Water Board for consideration to improve the Restoration Policy:

1. Page 1, Footnote 1. Ms. Robinson requests that Native American Cultural use be added to the list of beneficial uses cited in the footnote.

Response: Agreed. Regional Water Board staff has included this important beneficial use into the Restoration Policy and appreciates the recommendation. See revised footnote 1 on page 1.

2. Page 4, Finding 15. Ms. Robinson pointed out that the Restoration Policy does not currently mention the oversight and permitting authority that tribal agencies have over restoration projects that occur within reservations. Ms. Robinson has requested two modifications to the Restoration Policy within finding 15 on page 4 to incorporate tribal agencies into the list of permitting authorities.

Response: Agreed. Regional Water Staff have modified the finding to reflect the permitting authority of tribal agencies. See revised findings 15 and 17 on page 4.

COMMENTS #7:

Leaf Hillman, Director, Department of Natural Resources, Karuk Tribe

Mr. Leaf Hillman submitted a letter of support for the Restoration Policy on behalf of the Karuk Tribe. In addition to expressing the overall support for the Restoration Policy, the Karuk Tribe has requested revision to the following three findings:

1. Page 1, Footnote 1. Similar to the Quartz Valley Indian Tribe, the Karuk Tribe has also requested that the Native American Cultural use be added to the list of beneficial uses cited in footnote 1 on page 1.

Response: Agreed. Regional Water Board staff has included this important beneficial use into the Restoration Policy and appreciates the recommendation. See revised footnote 1 on page 1.

2. Page 2, Item 6. The Karuk Tribe would like to emphasize that fire on the landscape is vital to a fire-adapted ecosystem. Finding 6 on page 2 discusses natural stressors that can disrupt aquatic ecosystems and includes as examples floods, fires, landslides, and droughts. Mr. Hillman has requested changing the list of natural stressors from “fires” to “catastrophic wildfires” and adding to the list of anthropogenic stressors a mention of the lack of beneficial fire use through policies at both the State and Federal level.

Response: Agreed. Regional Water Board staff recognizes the potential impacts associated with catastrophic wildfire and the significant role that fire suppression can have on altering aquatic and terrestrial ecosystems. See revised finding 6 on page 2.

3. Page 4, Finding 15. Similar to the Quartz Valley Indian Tribe, the Karuk Tribe also highlighted the role that tribal agencies have overseeing restoration projects and has asked for the finding to be modified.

Response: Agreed. Regional Water Staff have modified the finding to reflect the permitting authority of tribal agencies. See revised findings 15 and 17 on page 4.

COMMENTS #8:

Michael Winkler, Mayor, City of Arcata

Mayor Winkler submitted a letter supporting various elements of the proposed Restoration Policy and declared the City of Arcata’s commitment to, and track record for, restoration projects.

Response:

We appreciate Mayor Winkler’s letter of support for the draft Restoration Policy and dedication to restoration actions within the boundaries of the City of Arcata.