

## **Memo: External Peer Review Exemption for Gualala River Sediment TMDL Action Plan**

**Purpose:** This memo addresses the rationale for why the Gualala River Sediment Total Maximum Daily Load (TMDL) Action Plan does not require external peer review under the provisions of [Health and Safety Code section 57004](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/07/HS-Code-57004.pdf) (<https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/07/HS-Code-57004.pdf>).

### **Summary:**

The Gualala River Sediment TMDL was established through the United States Environmental Protection Agency (U.S. EPA) process and has been properly noticed and posted as a U.S. EPA Final Action. The Gualala River TMDL Action Plan relies upon existing science and points to the use of North Coast Regional Water Quality Control Board (North Coast Water Board) established authorities, as directed under the State Water Resources Control Board's Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program (Nonpoint Source Policy) and the Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region (Sediment TMDL Implementation Policy), to direct implementation in the watershed which will meet the goals of the TMDL. Therefore, the Gualala River TMDL Action Plan does not require external peer review under the provisions of Health and Safety Code section 57004.

### **Background:**

The Gualala River watershed was listed on the Section 303(d) list of impaired waters due to elevated sedimentation in 1993. Development of a TMDL was necessary to quantify the natural and management-related sediment sources in the watershed, determine the loading capacity of the watershed for sediment, and establish the sediment load allocations necessary to return water quality to a condition supportive of beneficial uses. The Gualala River Sediment TMDL was established by the United States Environmental Protection Agency (U.S. EPA) in December 2001. The Gualala River Sediment TMDL underwent the public process and reviews required of U.S. EPA. The North Coast Water Board is developing an implementation strategy (Action Plan) for the TMDL, and will be incorporating the U.S. EPA established TMDL by reference, into the Basin Plan per the requirements of Sections 303(d)(2) and 303(e)(3) of the Clean Water Act. Incorporation by reference is also supported by 40 C.F.R. section 130.6 (c) which allows for water quality planning elements, including TMDLs to be incorporated by reference into water quality management plans.

### **Established Scientific Basis of the Gualala TMDL:**

The Gualala River Sediment TMDL was established by U.S. EPA with assistance from North Coast Water Board staff and has already undergone comprehensive scientific

evaluation, public review and approval by U.S. EPA. The proposed TMDL Action Plan includes a supporting Staff Report that contains summaries for each of its foundational scientific elements, including source analysis, load allocations, and numeric targets, and are entirely based on the technical TMDL established by the U.S. EPA. The technical TMDL has been properly noticed and posted in the Federal Register, and the North Coast Board has no discretion in incorporating it into the Basin Plan as required by the Clean Water Act. Therefore, scientific peer review of these sections is not necessary. The U.S. EPA established TMDL states, "The load allocations, when implemented, are expected to result in the attainment of the applicable water quality standards for sediment for the Gualala River and its tributaries."

#### **Consideration of Changes to the Landscape Since Establishment of the TMDL:**

Since establishment of the Gualala Sediment TMDL in 2001, land cover and land use in the watershed have not drastically changed, and therefore do not indicate a need for reassessing sources of sediment. The National Land Cover Database (NLCD) shows small increases in forested and developed areas and small decreases in herbaceous grass and shrubland. These changes may be attributed to forest growth and urban development in areas previously classified as herbaceous grasslands but may also be attributed to increased accuracy in the National Land Cover Database. Additionally, an updated roads data layer from 2023 revealed an increase in road density across all five subwatersheds when compared to the road density calculations used in the TMDL in 2001. This updated road density assessment, along with consistent NLCD data, supports maintaining the current focus on implementation efforts outlined in the TMDL Action Plan, as guided by the sediment source analysis in the Gualala River TMDL.

#### **Nature of the Action Plan:**

The goal of the Action Plan is to establish measures to achieve TMDL load allocations. The Action Plan constitutes a program of implementation for the Gualala River Watershed Sediment TMDL, consistent with the Nonpoint Source Policy and the Sediment TMDL Implementation Policy. Additionally, the Action Plan focuses on commonly used implementation actions accepted as industry standards and does not introduce any new scientific approaches to address sources of sediment identified in the TMDL.

Implementation actions detailed in the Action Plan directly pertain to the North Coast Water Board's legal authorities under Porter Cologne Water Quality Control Act (Water Code) These include authority to issue Waste Discharge Requirements (WDRs) and/or waivers of WDRs, to control discharge of pollutants from nonpoint sources into the waters of the state (Water Code 13000 et seq.), as well as the authority to issue investigatory orders under section 13267 of the Water Code and the authority to issue clean up and abatement orders under Water Code sections 13304 and 13267.

**Regulatory Compliance with Health and Safety Code section 57004:** Health and Safety Code section 57004 mandates peer review for the scientific portions of a new

rule (policy or regulation) adopted by the State Water Resources Control Board; and by extension, the North Coast Board. The scientific assessment of the Gualala Sediment TMDL is complete and was established through the U.S. EPA process and has been properly noticed and posted as a U.S. EPA Final Action. The Action Plan, focused on implementation, falls outside the scope of this requirement. The Action Plan does not introduce new scientific data, or requirements based on new scientific studies, but operationalizes the existing scientific findings found in the U.S. EPA established TMDL along with the North Coast Board's authorities to implement the TMDL that are described in the Sediment TMDL Implementation Policy.

Actions to implement the TMDL detailed in the Action Plan include issuance of investigative orders, cleanup and abatement orders, time schedule orders, cease and desist orders, administrative civil liability orders and waste discharge requirements. None of these actions are part of the rule making process subject to scientific peer review requirements.

**Conclusion:**

Given that the Gualala River Sediment TMDL has been established through the U.S. EPA process and has been properly noticed and posted as a U.S. EPA Final Action, and that the current Action Plan pertains to implementation strategies consistent with the Nonpoint Source Policy and Sediment TMDL Implementation Policy, while operationalizing the North Coast Board's existing authorities and regulatory tools, there is no necessity for further external scientific peer review required under Health and Safety Code section 57004.