

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – NORTH COAST REGIONAL WATER BOARD
FEBRUARY 16, 2016**

ITEM 4

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION APPROVING AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR THE NORTH COAST REGION (BASIN PLAN) TO MAKE NONSUBSTANTIVE CHANGES TO SECTION 1 (INTRODUCTION) AND SECTION 5 (PLANS AND POLICIES) AND UPDATE SECTION 3 (WATER QUALITY OBJECTIVES)

DISCUSSION

On June 18, 2015, the North Coast Regional Water Quality Control Board (North Coast Water Board) adopted [Resolutions No. R1-2015-0018](#), amending the Water Quality Control Plan for the North Coast Region (Basin Plan) to update Section 3 (Water Quality Objectives) and [Resolution No. R1-2015-0013](#), amending the Basin Plan to make nonsubstantive editorial revisions to Section 1 (Introduction) and Section 5 (Plans and Policies). This Water Quality Objective Update Amendment to the Basin Plan includes the following: an update to the surface water and groundwater objectives for chemical constituents; a new narrative water quality objective for groundwater toxicity; updates to the surface water objectives for dissolved oxygen (DO); additional language to clarify the process the North Coast Water Board uses when narrative objectives are translated into numeric thresholds for use in permits, orders, or other actions; and updates to the water quality objectives for pesticides, radioactivity, taste and odor, and toxicity in surface waters to be consistent with existing statutes, regulations, and other water quality objectives in the Basin Plan.

Therefore, the North Coast Water Board approved an amendment, including:

- 1) Revisions to the water quality objectives for chemical constituents for surface water and groundwater to reflect current scientific understanding and to more clearly apply to the protection of all beneficial uses;
- 2) The addition of a narrative water quality objective for groundwater toxicity, using the toxicity objective for surface water as a model, for the explicit protection of human health;
- 3) Revisions to the water quality objective for DO in surface water to: a) better protect sensitive aquatic organisms from depressed DO; b) better ensure that the natural pattern and range of DO variation is maintained in those waterbodies unable to meet the aquatic life-based objectives due to natural conditions; and c) reduce the possibility that natural variation in DO is erroneously identified as DO impairment leading to improper 303(d) listings;
- 4) The addition of language to Section 3 to clarify how numeric thresholds can be identified to implement narrative water quality objectives in accordance with the specific circumstances of a project and the specific controlling statute and regulations; and,

- 5) Revisions to update narrative objectives for pesticides, radioactivity, taste and odor, and toxicity in surface water to be consistent with existing statutes, regulations, and other narrative objectives in the Basin Plan .

Policy

Currently, the North Coast Water Board establishes appropriate water quality thresholds when issuing permits, orders, and other regulatory actions by using its authority to implement the existing Basin Plan, in combination with statewide policies such as the *Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (State Implementation Plan or SIP); *Antidegradation Policy* [Resolution No. 68-16](#); *Policy on Cleanup and Abatement* [Resolution No. 92-49](#); and other established and relevant resources. The North Coast Water Board adopted the Water Quality Objective Update Amendment to make more explicit the responsibilities and authorities of the North Coast Water Board by prospectively incorporating MCLs, adding a narrative groundwater toxicity objective, and describing the process used to translate narrative objectives into numeric thresholds, when implementing the Basin Plan and State Water Board policies and programs.

With respect to the revised DO objectives, the amendment updated the existing aquatic life-based numeric objectives to include protection against both acute and chronic effects of DO impairment for sensitive beneficial uses (i.e., COLD, SPWN). The amendment also revised Table 3-1 of the Basin Plan to remove waterbody-specific numeric objectives for DO that were based on day-time grab samples collected in the 1950s and 1960s, but used to define daily minimum conditions. The alternative approach adopted by the North Coast Water Board was to replace the waterbody-specific numeric objectives with a natural conditions clause, which requires that the natural pattern and range of ambient DO variability be maintained in those waterbodies that cannot, due to natural conditions, meet the updated aquatic life-based numeric objectives.

Action Plans

The action taken by the North Coast Water Board relies on existing programs, policies, and action plans of the State and Regional Water Boards for the implementation of revised water quality objectives. No revisions to Section 4 (Implementation Plans) of the Basin Plan were adopted as part of this action. To elaborate, there are a number of existing State Water Board policies that, in addition to Basin Plan requirements, are implemented for the protection of human health and aquatic life, including the State Water Board Resolutions No. 68-16 (Antidegradation), [No. 88-63](#) (Sources of Drinking Water), and No. 92-49 (Cleanup and Abatement Policy). In addition, there are numerous existing programs of implementation addressing the actions needed to treat wastewater and storm water prior to its discharge to waters of the state, as well as programs established to remediate pollution from discharges to state waters. Each of these existing policies and programs has its own evolving and improving set of actions needed to achieve compliance with water quality objectives. As best available technologies improve, so too do the efficiencies in cost and program implementation. In addition, each of these existing policies and programs includes general, site-specific, or project-specific time schedules for which compliance will be met. One of the goals of the revisions adopted by the North Coast Water Board was to elaborate on existing authorities so as to make clear and transparent the process it has been using and will continue to use when establishing numeric thresholds in permits, orders, and other regulatory actions of the North Coast Water Board.

POLICY ISSUE

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

- 1) Make nonsubstantive editorial changes to Section 1 (Introduction) and Section 5 (Plans and Policies);
- 2) Update the water quality objectives for chemical constituents for surface water and groundwater to reflect updated scientific understanding (e.g., prospectively incorporate MCLs for protection of drinking water) and to more clearly apply to the protection of all beneficial uses;
- 3) Add a water quality objective for groundwater toxicity, using the toxicity objective for surface water as a model for the explicit protection of human health;
- 4) Update the DO objectives to: a) better protect sensitive aquatic organisms from depressed DO; b) better ensure that the natural pattern and range of DO variation is maintained in those waterbodies unable to meet the aquatic life-based objectives due to natural conditions; and c) reduce the possibility that natural variation in DO is erroneously identified as DO impairment leading to improper 303(d) listings;
- 5) Add language to Section 3 (Water Quality Objectives) to clarify how numeric thresholds are identified to implement narrative water quality objectives, in accordance with the specific circumstances of a project and the specific controlling statute, regulations, and policies; and,
- 6) Update objectives for pesticides, radioactivity, taste and odor, and toxicity in surface water to be consistent with existing statutes, regulations, and other narrative objectives in the Basin Plan.

FISCAL IMPACT

This action does not create any 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

Approval of this Resolution will impact the North Coast Water Board by amending its Basin Plan in the manner described above.

EDITORIAL REVISIONS

In addition to the substantive revisions to the Basin Plan, on June 18, 2015, North Coast Water Board adopted Resolution No. R1-2015-0013, amending the Basin Plan to make nonsubstantive editorial revisions to Section 1 (Introduction) and Section 5 (Plans and Policies). The Basin Plan currently contains minor typographical and grammatical errors and various instances where language is outdated due to changes in regulation or conditions. Revisions to update new information included: a) the full number of board members appointed to the North Coast Water Board and b) correction of various regional statistics. Nonsubstantive revisions to Section 5 (Plans and Policies) included replacement of all references to individually named

statewide plans and policies with a reference to the State Water Resources Control Board website, instead.

STAFF RECOMMENDATION

- 1) Approve the amendments to the Basin Plan adopted under Regional Water Board Resolutions No.R1-2015-0013 (Section 1, Introduction and Section 5, Plans and Policies) and No. R1-2015-0018 (Section 3, Water Quality Objectives).
- 2) Authorize the Executive Director or designee to submit the amendments adopted under Regional Water Board Resolutions No.R1-2015-0013 (Section 1, Introduction and Section 5, Plans and Policies) and No. R1-2015-0018 (Section 3, Water Quality Objectives) 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 water quality standards.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

APPROVING AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR THE NORTH COAST REGION (BASIN PLAN) TO MAKE NONSUBSTANTIVE CHANGES TO SECTION 1 (INTRODUCTION) AND SECTION 5 (PLANS AND POLICIES) AND UPDATE SECTION 3 (WATER QUALITY OBJECTIVES)

WHEREAS:

1. On June 18, 2015, the North Coast Regional Water Quality Control Board (North Coast Water Board) adopted [Resolutions No. R1-2015-0018](#), amending the Water Quality Control Plan for the North Coast Region (Basin Plan) to update Section 3 (Water Quality Objectives) and [Resolution No. R1-2015-0013](#), amending the Basin Plan to make nonsubstantive editorial revisions to Section 1 (Introduction) and Section 5 (Plans and Policies). The proposed Water Quality Objective Update Amendment to the Basin Plan includes the following: revision to the water quality objectives for chemical constituents in surface waters and groundwaters; clarifying revisions to the water quality objectives for pesticide, radioactivity, taste and odor, and toxicity in surface waters; addition of a narrative water quality objective for toxicity in groundwaters; revision to the water quality objective for dissolved oxygen (DO) in surface waters; and revisions to improve clarity on the application of water quality objectives, and readability and organization through nonsubstantive editorial changes. A clean copy and strikeout/underline version of the revisions to Section 3 (Water Quality Objectives) are contained in Resolution No. R1-2015-0018, [Attachments 1](#) and [2](#), respectively.
2. The revisions to the surface and ground water objectives for chemical constituents include: applying the objectives to the protection of all relevant beneficial uses, not just Agricultural Supply (AGR); adding language regarding the prevention of nuisance, as required in Porter-Cologne; deleting the outdated Table 3-2, *Inorganic, Organic, and Fluoride Concentrations Not to be Exceeded in Domestic or Municipal Supply*; and prospectively incorporating the Maximum Contaminant Levels (MCLs) listed in California Code of Regulations, title 22 as the minimum water quality objectives for chemical constituents to protect the Municipal and Domestic Supply (MUN) beneficial use.
3. The newly adopted narrative groundwater toxicity objective is designed to protect the municipal and domestic beneficial uses of groundwater, and to provide an explicit objective for groundwater cleanups, discharges of waste to land, and other activities that threaten groundwater. The objective ensures adequate consideration of toxicity, in all cases, and it also is useful for establishing permit limits or cleanup levels in the absence of specific numeric water quality objectives.
4. The revisions to the water quality objective for DO are designed for the protection of sensitive aquatic organisms in fresh, free-flowing waters and include revision of the aquatic life-based DO objectives, to include prevention of both acute and chronic effects. Further, revision includes the deletion of waterbody specific DO objectives in Table 3-2 to be replaced by the updated aquatic life based objectives, unless attainment is prevented by natural conditions. In those waterbodies, the Executive Officer can approve the calculation of natural background DO as applicable water quality objectives.

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Natural background DO concentrations are derived from minimum percent DO saturation criteria for wet and dry periods and estimates of natural temperatures.

5. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) requirements for preparing environmental documents. (Cal. Code Regs., tit. 14, § 15251, subd. (g); Cal. Code Regs., tit. 23, § 3782.) The Substitute Environmental Documents (SED) include the Final Staff Report for the Amendment to the Water Quality Control Plan for the North Coast Region to Update Water Quality Objectives, dated June 18, 2015, the environmental checklist and analyses, the comments and responses to comments, and the Basin Plan amendment language.
6. In preparing the accompanying SED, the Regional Water Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and intends the SED to serve as a programmatic review. Many of the compliance obligations will be undertaken or approved by public agencies that will have separate obligations under CEQA. Project-level impacts may need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2. Consistent with the requirements of that section, the CEQA Environmental Checklist includes an analysis of environmental impacts, mitigation measures to avoid or minimize those impacts, and alternative means of compliance that would avoid or mitigate environmental impacts (Pub. Resources Code, § 21159, subd. (a)(1)-(3); Cal. Code Regs., tit. 14, §§ 15187, subds. (b), (c)(1)-(3), 15189.) The analysis takes into account a reasonable range of environmental, economic, and technical factors.
7. Consistent with Public Resources Code section 21081(b), specific overriding economic, legal, social, technological or other benefits may outweigh the unavoidable adverse environmental impacts. The State Water Board has reviewed the SED for the Basin Plan amendment and concurs with the North Coast Water Board's findings and determinations including the programmatic Statement of Overriding Considerations. The CEQA findings for the Water Quality Objective Update Amendment pursuant to California Code of Regulations, tit. 14, § 15091 are presented in Resolution No. R1-2015-0018, [Attachment 3](#).
8. The North Coast Water Board found the Basin Plan amendment is consistent with the State Antidegradation Policy (State Water Board [Resolution No. 68-16](#)) and the federal Antidegradation Policy (40 C.F.R. § 131.12). The revisions to the water quality objectives do not themselves authorize or permit any activity that will discharge waste into high quality waters. Further analysis of the proposed amendment and the Antidegradation Policy is presented in Chapter 6 of the Staff Report. 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.

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9. In addition to the substantive revisions to the Basin Plan, the North Coast Water Board adopted Resolution No. R1-2015-0013 amending the Basin Plan to make nonsubstantive editorial revisions to Section 1 (Introduction) and Section 5 (Plans and Policies). The Basin Plan currently contains minor typographical and grammatical errors and various instances where language is outdated due to changes in regulation or conditions. Revisions to update new information include: a) the full number of board members appointed to the Regional Water Board and b) correction of various regional statistics. Proposed nonsubstantive revisions to Section 5 (Plans and Policies) include replacement of all references to individually named statewide plans and policies with a reference to the State Water Resources Control Board website, instead.
10. The changes shown in R1-2015-0013, Attachment 1 (clean copy version formatted with changes incorporated) are the full new text as proposed for Sections 1 and 5. R1-2015-0013, Attachment 2 shows all of the changes to Section 1 in ~~strikeout~~/underline, as well as the changes to Section 5 in ~~strikeout~~/underline. These changes are nonsubstantive revisions for Sections 1 (Introduction) and 5 (Plans and Policies) to the Basin Plan and do not require environmental review under the CEQA.
11. The State Water Board finds that the regulatory action meets the “necessity” standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b). The necessity of the Basin Plan amendment is established in the Staff Report for the amendment.
12. The State Water Board finds that the Basin Plan amendment is in conformance with Water Code section 13240, which specifies that regional water quality control boards may revise basin plans.
13. A Basin Plan amendment does not become effective until approved by the State Water Board and submitted to the Office of Administrative Law (OAL). The revised water quality objectives 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 amendments to the Basin Plan adopted under Regional Water Board Resolutions No. R1-2015-0013 (Section 1, Introduction and Section 5, Plans and Policies) and No. R1-2015-0018 (Section 3, Water Quality Objectives).

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2. Authorizes the Executive Director or designee to submit the amendment adopted under Regional Water Board Resolutions No. R1-2015-0013 (Section 1, Introduction and Section 5, Plans and Policies) and No. R1-2015-0018 (Section 3, Water Quality Objectives) 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 water quality objectives.

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 16, 2016.

Jeanine Townsend
Clerk to the Board