COAST ACTION GROUP
P.O. BOX 215
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December 13, 2007

Regional Water Quality Control Board
5550 Skylane Blvd
Santa Rosa, CA 95403

Subject: Comment - Work Plan To Control Sediment In Sediment-Impaired Watersheds In Support of Regional Board Resolution No. R1-2007-0095

Listed Sediment-Impaired Watersheds - Albion River, Big River, Eel River, Elk River Watershed, Estero Americano, Freshwater Creek, Garcia River, Gualala River, Jacoby Creek, Klamath River, Mad River, Mattole River, Noyo River, Redwood Creek, Russian River, Scott River, Stemple Creek, Ten Mile River, Trinity River.

HISTORY -OVERVIEW

Rivers, streams, and wetlands of the north coast basin have been subject to land use practices that have introduced large amounts of sediment (from accelerated erosion). These impaired listed (and effected non-listed) waterbodies are suffering from diminished beneficial uses where Water Quality Standards are not being met. .

In 1997 the Federal District Court issued a Consent Decree initiating prioritization and promulgation of TMDLs to deal with the impaired conditions existing (and continuing to exist) on the above noted waterbodies. Subsequently TMDLs have been approved by both the EPA and the State of California. Under State Water Code, State promulgated TMDLs must have Action/Implementation Plans that assure compliance with the Basin Plan (area Water Quality Control Plans) and where such Action/Implementation Plans will assure attainment of Water Quality Standards - over time. EPA promulgated TMDLs deal only with Waste Load Allocations, indicate needed pollutant load reductions, and set limits on pollutant loading. No Action or Implementation Plans are attached to the EPA TMDLs. Thus, with EPA approved TMDLs there are no programs or tasks in place to assure attainment of Water Quality Standards. To date the only

TMDL produced with truly enforceable land use criteria is the Garcia River TMDL and Action Plan to reduce sediment - were ether State imposed actions or landowner developed Action Plans will ensure compliance.

State produced TMDLs on the Shasta and Scott Rivers fall short in addressing land use and water use measures that are enforceable to the point of assurance of attaining Water Quality Standards and are reliant on additional programs and tasks - as outlined in the Work Plan. As stated, EPA TMDLs contain no land use or water use actions, programs, or tasks. There are many other waterbodies in the North Coast Region that are impaired that are not noted as same and are not subject to TMDLs. These additional, non-listed, water resources are also reliant on actions, programs, and tasked as listed in the Work Plan.

Thus, for most all waterbodies and wetlands in the north coast basin the approval, funding, and implementation of actions, programs, and tasks as described in the *Work Plan* to Control Sediment in Sediment-Impaird Watersheds is crucial (of necessity) for the protection and recovery of Beneficial Uses and attainment of Water Quality Standards.

Additional Issue in Consideration of Approval of Resolution to Support the Work Plan

The Regional Board has been grappling with these issues for some time. As noted in the Work Plan, and other documentation – including the Impaired Waters Listings, the problem is very large in scope – involving vastness in scale and complexity of actions, programs, and tasks that are needed to assure compliance. There have been some successes. There is much more to be done. The Regional Board, in compliance with Water Code and Clean Water Act mandates, has historically indicated its intent to move forward with actions to address sediment issue. Support (approval) of a Resolution supporting the *Work Plan* is consistent with Regional Board Resolution R1-2004-0087.

Such action would also be consistent with State Non-Point Source Policy.

Coastal Zone Management Act - Compliance

The Sediment *Work Plan* is in compliance with State Non-Point Source Policy and that both the Sediment *Work Plan* and State Non-Point Source Policy (and implementation of same) are necessary to comply with the findings of the California Coastal Non-Point Source Program and related findings of the EPA and NOAA regarding the State of California's regulatory authority and responsibility under the Coastal Zone Management Act. The State of California has agree with federal agency, EPA and NOAA, to use existing regulatory authority (including TMDLs) in compliance with the Re-authorization of the Coastal Zone Management Act. (Please see additional background information – attached)

Pending development are actions, programs, and tasks, as the Sediment Work Plan, outline to the Regional Board what is necessary to accomplish in a plan to address outstanding sediment issue and to move toward the goal of attaining Water Quality Standards on the impaired waterbodies listed above.

Action items (including programs and tasks) pending are listed in great detail in the Sediment Work Plan. The following is a short list of some of the proposed needed actions in the *Work Plan* – with some discussion attached. This list and discussion is limited to a number of actions and issues that CAG would like to highlight. Total immersion into the entire Work Plan, including the Waterbody specific plans and recommended actions, is beyond the scope of this document and capability of CAG at this time.

Work Plan - Regional Actions & Tasks - Discussion:

Basin Plan Amendment - Excess Sediment - To provide Basin Wide policy, objectives, and prohibitions for the control of the production of excess sediment. This Basin Plan amendment would provide protections to water resources not listed as impaired in addition to sediment impaired listed waterbodies.. The outreach component of this Excess Sediment Basin Plan Amendment is necessary to develop understanding and cooperation from those permitting and conducting land use projects where excess sediment may be an issue.

Agencies, Department of Fish and Game, Department of Forestry, CalTrans, US Forest Service, etc., and including County and City Planning Agency (General Plans, Stormwater and Grading Ordinance) should be approached and enlisted in programs assuring compliance with excess sediment control objectives.

Along with a publication of "*Guidance for Excess Sediment Control*" the "*Handbook for Forest and Ranch Roads – A Guide for planning, designing, constructing, reconstructing, maintaining and closing wildland roads*, Weaver and Hagans, 1994" are key elements to assure compliance in land use activity and road construction standards to limit excess sediment production. The "Handbook for Forest and Ranch Roads" is out of date and needs to be republished and additional copies need to be printed for distribution. The Regional Board should support the updating and republication (including publication in Spanish and links on the web) and distribution of this document. the "*Handbook for Forest and Ranch Roads* " has been an very important and successful educational tool and useful as an aid in achieving compliance in excess sediment control. All agencies noted above should have copies of the "*Handbook*" for education and distribution.

Basin Plan Amendment - Stream and Wetland Protection - To provide Basin Wide policy, objectives, and prohibitions - including narrative objectives for watershed hydrology dealing with infiltration capacity, stream channel equilibrium, floodplain connectivity, riparian vegetation, and wetland structure – all necessary attributes to be considered for successful protection of stream and wetland water quality resources on the north coast. When a successful guidance document is produced an outreach program will facilitate understanding and progression towards compliance in activities the will take place respecting stream and wetland desired attributes.

Waste Discharge Reports, Conditional Waivers, as Controls for different land uses and ownership's - This includes development of Watershed Wide WDRs (or Conditional Waivers), Land Use Specific WDRs (or Waivers), e.g. WDRs (or Waivers) for Timber Harvest Operations - by ownership or watershed wide.

Timber Harvest (WDRs and Conditional Waivers) – Timber Harvest is the predominant land use on most of the sediment impaired listed north coast waterbodies. Inappropriate harvesting and related activity is noted to be a major cause of sediment impairment in these waterbodies (see EPA/NOAA findings - included) and other Scientific Review Panel reports to the Board of Forestry). Thus, Timber Harvest activity should receive significant review and consideration under the Work Plan tasks and activities enumerated.

WDRs and Conditional Waivers for Timber Harvest Operations have been found to have some notable loopholes or inconsistencies that need repair. One example is Non-Industrial Timber Harvest Plans (NTMPs). NTMPs involves permanent approval of Timber Harvest on non-industrial lands less than 2,500 acres. Exemption for NTMPs from many of the Conditions present in regular Timber Harvest Conditional Waivers are erroneously justified on the assumption that NTMPs are less damaging applications of timber harvest activity (i.e. clear-cuts are not allowed). With NTMPs evenaged silviculture (clear-cuts) may not be permitted. However, permitted silvicultural prescriptions (Alternative Prescription, Rehabilitation, and sometimes Variable Retention) can all have (as it is often the case) the same net effects as clear-cutting activity. In addition NTMPs are subject to the same erosion propensity as any Timber Harvest Plan – with similar road construction and harvest activity (including frequency of entry) as any standard Timber Harvest Plan.

In addition, and in regard to timber harvest activity, the Regional Board should continue to comment on rule making by the Board of Forestry and the Department of Fish and Game regarding Impaired Waters Policy and Coho Recovery Guidelines. The Regional Board should strongly support the current Forest Practice Rules for Threatened and Impaired Waterbodies. These Threatened and Impaired Rules provide needed additional protections to aid in limiting sediment inputs from Timber Harvest Activity (See CDF Hillslope monitoring).

Vineyards - Proliferation of this land use has had major impacts on several north coast rivers, such as the Russian, Navarro and Gualala. The *Work Plan* cites the San Francisco Bay Regional Water Quality Control Board (SFBWQCB) conditional waivers for vineyards as a possible model. While the SFBRWQCB process is somewhat effective in reducing individual points of discharge within vineyards through implementation of "Best Management Practices (BMPs), there has been overall failure to control cumulative impacts related to the in the watersheds mentioned above. Emperical evidence shows continuing impacts to the Russian River, Navarro River, and Gualala River watersheds from sediment pollution problems due to vineyard development. This issue needs to be looked at more closely by the Regional Board and related suggested tasks in the Work Plan.

Other Regional Tasks Underway – or - Should be Underway - Regional Board participation and comment on land use projects that could, if not mitigated properly, have adverse affects on water

quality values (including the production of excess sediment). Regional Board participation in the development of General Plans, Stormwater Plans, Grading Ordinance, and other non-point source control programs, 401 Certification, etc.. These activities are necessary to make progress limiting the production of excess sediment. Such participation in these processes by the Regional Board is effective in and consistent with the goal of limiting the production of sediment (and other pollutants).

Interagency Training - One effective component of successful solicitation of other responsible agency cooperation would be interagency training. It is often the case (with the divergent missions and mind sets of different agency staff) that there is failure or less successful outcomes due to communication failure. CAG has, for many years, advocated for interagency staff training (or cross-training) for the various agency staff to gain a better grasp on mission needs and objectives – with the final outcome being better cooperation and more success in attaining objectives related to tasks. This can be added to a task activity in outreach.

Waterbody Specific Work Plan Tasks/Actions (where CAG is taking an active role)

Garcia River (p.109) - Continue to Implement the Garcia River TMDL Action Plan. This seems reasonable as the Garcia River has the only enforceable Action Plan with default land use and stream protection criteria – and/or – the option for land owners to develop their own sediment control criteria. Due to the implementation of this policy the Garcia River is showing measurable improvement. **(See Attached letter from NMFS).** Other empirical evidence of success is the return of fish (See Garcia River – A TMDL Success Story – in RB file) that have not been seen for generations.

Garcia River Tasks as outlined are appropriate.

Gualala River (p.112) – The Gualala River has a completed EPA Technical TMDL. The Gualala River, a sister river to the Garcia with very similar historic land use (mostly Timber Harvest), geology, and erosion potential (high erosion propensity) is suffering greatly from the lack of protective measures in the form of an Action Plan (or Basin Plan Amendments for Control of Excess Sediment and Stream and Wetland protection – to fill the gap of Action Plan absence). Timber Harvest is by far the major land use. Timber harvest roads are a major sediment source (see p. 113). The task of funding restoration projects seems wasteful – until such protections for streams and road construction are put in place to assure the long term success of such restoration. Ownership-wide WDRs for the major timber operators in the Gualala is a good idea an energy and staff time should be mobilized to accomplish this task. Task No. 6 to Work with Coastal Ridges for compliance with the Regional Excess Sediment Prohibition may be one solution. Coastal Ridges has a history of sediment issue on their property and the watercourses in their ownership are problematic. Thus, the utmost attention (including field review of Timber Harvest Plans) should be attached to assuring that Coastal Ridges does comply with sediment prohibitions. Coastal Ridges, an historic owner linked to historic and continuing impacts from excess sediment production, may need additional enforcement (possibly ownership wide WDRs) - if continuing problems are observed.

Regional Board staff time would help the Gualala River if directed towards other land use activity allowing for sediment impacts from the following activity: Forestland conversion to vineyard use, road construction for agricultural and residential use, transportation road construction and maintenance. Regional Board staff time could be directed towards participation in the review of the above noted projects and the development of Sonoma County and Mendocino County Grading Ordinance and Stormwater Plans.

Most Gualala River Tasks outlined (except as noted above) are appropriate.

The Gualala River watershed is subject to an EPA technical TMDL with no associated action plan. Thus, attainment of Water Quality Standards is entirely dependent on successful completion and implementation of tasks as outlined in the Work Plan.

Development of the Klamath River TMDL for Sediment, Temperature, Nutrients, and lack of Dissolved Oxygen (p.123) - This complex TMDL (an understatement) is just getting under way. Issues related to getting a good working TMDL and Action/Implementation Plan include having the staff, funding, and necessary science to produce a good TMDL. Agreement with the EPA for a time extension to accomplish this TMDL is pending (CAG believes such time extension will be approved).

Development of the Russian River TMDL (Including Laguna de Santa Rosa) for Sediment, Temperature, Nutrients, and lack of Dissolved Oxygen (p.162) - This TMDL to be developed by the Regional Board in the near future might be the most complex TMDL project of all (Klamath issues are also complex and cover more area – with less development and competing land uses). The Russian River, from it sources and tributaries and including the Laguna de Santa Rosa, is suffering (as documented) from excess inputs of excess sediment. The problem with the Russian River is that the drainage is subject to so many types of development – Road construction, industrial development and construction, residential development and construction, dams (including illegal water impoundments), timber harvest, and agricultural land uses are all producing sediment impacts diminishing water quality values. Assessment and allocation of responsibility to specific sources is going to be difficult.

Outreach will be a major component in the hierarchy of tasks. In addition the Basin Plan Amendments for Sediment Control and Stream and Wetland Protection should be an acknowledged necessity in making progress in addressing excess sediment inputs.

Regional Board staff time would help the Russian River, and tributaries, if directed towards addressing issue in the varied land use activity allowing for sediment impacts - including the following activities: Forestland conversion to vineyard use, road construction for agricultural and residential use, transportation road construction and maintenance. Regional Board staff time could be directed at participation in the review of the above noted projects and the development of Sonoma County and Mendocino County Grading Ordinance and Stormwater Plans.

Due to limited restoration and 319h grant funds available, restoration projects should be assessed for potential for long term success. Support for granting funds in areas where protections are absent and moneys spent may have diminished success in objective attainment due to lack of protection or other threats should be limited.

Russian River Tasks as outlined in Table 37 (p.163) are appropriate

Scott River (p. 174) - The Scott River watershed is suffering from inputs of excess sediment for timber harvest and other anthroprogenic sources. The Regional Board has developed an Action Plan with tasks listed in Table 38. The tasks are appropriate. However, reliance for success of this depends on other actions, programs and tasks noted in the *Work Plan* - Including - WDRs, Conditional Waivers, yet to be seen water studies and Grading Ordinance Development. Completion of Regional Tasks (including the Basin Plan Amendment for Sediment and Stream and Wetland Protection) would be a significant aid in attaining the goals noted in the State promulgated TMDL.

Shasta River (not in Work Plan - not listed as sediment impaired) - The Shasta River watershed is suffering from inputs of excess sediment for timber harvest and other anthroprogenic sources. The Regional Board has developed an TMDL Action Plan for the Shasta River - with tasks (not discussed in Work Plan). Reliance for success of the State promulgated TMDL and Action Plan for the Shasta River depends on other actions, programs and tasks noted in the *Work Plan* - Including - WDRs, Conditional Waivers, and yet to be seen water studies and Grading Ordinance Development. Completion of Regional Tasks (including the Basin Plan Amendment for Sediment and Stream and Wetland Protection) would be a significant aid in attaining the goals noted in the State promulgated TMDL.

Rivers With EPA Technical TMDLs and No Action Plan

Albion River (p. 35) – The Albion River watershed is suffering from excess sediment inputs – mostly from Timber Harvest and road related sources. This watershed is subject to an EPA technical TMDL with no associated Action Plan. Thus, attainment of Water Quality Standards is entirely dependent on successful completion and implementation of tasks as outlined in the Work Plan.

Big River (p. 40) – The Big River watershed is suffering from excess sediment inputs – mostly from Timber Harvest and road related sources. This river is subject to an EPA technical TMDL with no associated action plan. Thus, attainment of Water Quality Standards is entirely dependent on the work load tasks as outlined in the Work Plan.

Eel River (various segments) (p.46) – The Eel River watershed is suffering from excess sediment inputs – from a combination of areas with Timber Harvest and road related sources and some areas with excessively high rates of natural erosion with additional anthroprogenic sources. The Eel River, and it's tributaries – including the **Van Duzen River**, is subject to an

EPA technical TMDL with no associated action plan. Thus, attainment of Water Quality Standards is entirely dependent on successful completion and implementation of tasks as outlined in the Work Plan.

Gualala River – Conditions and actions on the Gualala River are discussed above. . This watershed is subject to an EPA technical TMDL with no associated Action Plan. Thus, attainment of Water Quality Standards is entirely dependent on successful completion and implementation of tasks as outlined in the Work Plan.

Mad River (p.127) - The Mad River watershed is suffering from excess sediment inputs – mostly from Timber Harvest and road related sources. This watershed is subject to an EPA technical TMDL with no associated Action Plan. Thus, attainment of Water Quality Standards is entirely dependent on successful completion and implementation of tasks as outlined in the Work Plan.

Mattole River (p.134) - The Mattole River watershed is suffering from excess sediment inputs – mostly from Timber Harvest and road related sources. This watershed is subject to an EPA technical TMDL with no associated Action Plan. Thus, attainment of Water Quality Standards is entirely dependent on successful completion and implementation of tasks as outlined in the Work Plan.

Navarro River (p.141) - The Navarro River watershed is suffering from excess sediment inputs – from a combination of sources with Timber Harvest, road related, and agricultural sources and some areas with excessively high rates of natural erosion. This watershed subject to an EPA technical TMDL with no associated Action Plan. Thus, attainment of Water Quality Standards is entirely dependent on successful completion and implementation of tasks as outlined in the Work Plan.

Noyo River (p.147) - The Noyo River watershed is suffering from excess sediment inputs – from a combination of areas with Timber Harvest and road related sources and some areas with excessively high rates of natural erosion. This watershed subject to an EPA technical TMDL with no associated Action Plan. Thus, attainment of Water Quality Standards is entirely dependent on successful completion and implementation of tasks as outlined in the Work Plan.

Redwood Creek (p.154) - The Redwood Creek watershed is suffering from excess sediment inputs – mostly from Timber Harvest, management (agricultural), and road related sources. This watershed is subject to an EPA technical TMDL with no associated Action Plan. Thus, attainment of Water Quality Standards is entirely dependent on successful completion and implementation of tasks as outlined in the Work Plan.

Ten Mile River (p,190) - The Ten Mile River watershed is suffering from excess sediment inputs – mostly from Timber Harvest and road related sources. This watershed is subject to an EPA technical TMDL with no associated Action Plan. Thus, attainment of Water Quality Standards is entirely dependent on successful completion and implementation of tasks as outlined in the Work Plan.

Trinity River (various segments) (p.195) - The Trinity River watershed is suffering from excess sediment inputs – mostly from Timber Harvest and road related sources – with high natural background levels. This watershed is subject to an EPA technical TMDL with no associated Action Plan. Thus, attainment of Water Quality Standards is entirely dependent on successful completion and implementation of tasks as outlined in the Work Plan.

Note: The watersheds noted in this section, plus others with uncompleted TMDLs or suffering from excess sediment loading but are not listed are not subject to any specific pollutant reduction program (i.e. TMDL Action Plan or other abatement program or planning). These watersheds would benefit greatly, or recovery of beneficial uses is dependent on programs and tasks as described in the Sediment Work Plan. Failure to support such actions, programs, and tasks with action or necessary funding will greatly inhibit the possibility of these watersheds to recover and meet Water Quality Standards – as required by both State and Federal mandates.

Work product tasks, as noted in the Work Plan, are appropriate and essential.

REGIONAL BOARD WORK PLAN TO CONTROL SEDIMENT IN SEDIMENT-IMPAIRED WATERSHEDS

The work load outline and budgetary needs (some of which is outlined and discussed, briefly, above) as outlined in the *Work Plan* are quite robust and of necessity in getting these tasks moving forward and completed as part of our goal of achieving improvement of water quality in our north coast rivers, streams, and wetlands. Without funding to help support these needed tasks it will be very difficult to accomplish these goals.

Forecasting the needed personnel and setting out a list of tasks and schedule is essential in planing activities and actions necessary to address sediment control issues. for the Board to make. you get the needed personnel. The Board has recognized its obligation to identify waters not in compliance as well as obligation to address the impairments under federal and state law. Guidelines for activities for sediment control and stream and wetland protection would be accomplished in the Basin Plan Sediment Amendment and Basin Plan Stream and Wetland Protection Amendment.

Prioritization of projects, actions, and tasks should allow for an orderly and economic progression to attaining Water Quality Standards.

Approval of policy and *Work Plan* attributes should be accomplished in the context of meeting the needs all state and federal mandates (noted above) and be consistent with the goal of meeting Basin Plan Objectives - including Anti-degradation language that states that controllable pollutant sources shall be controlled if possible and additional pollutant introduction into impaired waterbodies is not permissible.

Comments submitted for Coast Action Group by _____

Alan Levine

Cc:

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Authority and Responsibility - Background

The State Water Resources Control Board and the Regional Boards have the ultimate authority and responsibility to assure compliance with the State Water Quality Control Act (Porter Cologne). Water Code Sections 13240-13247 vests authority of State and Regional Boards to amend water quality objectives and water quality control plans. Basin Plan Amendment with additional narrative and/or numeric criteria and implementation standards are the mechanisms for achieving water quality standards under the Act.

Some analysis of authorities can be found in FINDINGS FOR THE CALIFORNIA COASTAL NONPOINT PROGRAM and CZARA (finally the Coastal Zone Management Act) Action Plan. These documents contain the findings for the coastal nonpoint pollution control program submitted by the State of California pursuant to Section 6217(a) of the Coastal Zone Management Act Re-authorization Amendments of 1990 (CZARA). The findings are based on a review of the California Coastal Nonpoint Pollution Program Submittal, September 1995. *Partial text attached to this document.* Both the State and Regional Boards have a legal responsibility to comply with the non-point source control issue, by agreement, noted as part of the re-autorization of the Act in California.

Coastal Zone Management Act - Re-Authorization (CZARA) Findings - Exerpts

June 1998

FINDINGS FOR THE CALIFORNIA COASTAL
NONPOINT PROGRAM

FOREWORD

This document contains the findings for the coastal nonpoint pollution control program submitted by the State of California pursuant to Section 6217(a) of the Coastal Zone Act Re-authorization Amendments of 1990 (CZARA). The findings

are based on a review of the California Coastal Nonpoint Pollution Program Submittal, September 1995. The National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) reviewed this information and evaluated the extent to which it conforms with the requirements of CZARA.

NOAA and EPA commend the State of California on the substantial time and effort put into developing this program and appreciate the commitment the State has shown to complete an ambitious task with limited resources. In keeping with one of the major objectives of section 6217, further development and implementation of the California Coastal Nonpoint Pollution Program is to be coordinated between the State water quality and coastal management programs, and long-term mechanisms to implement the management measures should be incorporated into both agency's programs. NOAA and EPA will continue to work with coastal states and territories to ensure that these findings represent an accurate assessment of current state and territorial abilities and efforts to address coastal nonpoint source pollution. NOAA and EPA recognize that further administrative changes that will affect these findings may be made to the coastal nonpoint program and, once such changes are finalized, will review these findings in light of the changes and make any necessary adjustments.

APPROVAL DECISION

NOAA and EPA approve the coastal nonpoint pollution control program submitted by the State of California pursuant to Section 6217(a) of the Coastal Zone Act Re-authorization Amendments of 1990, subject to certain conditions.

This document provides the specific findings used by EPA and NOAA as the basis for the decision to approve the State's program. It also provides the rationale for the findings and includes the conditions that will need to be met for California to receive final approval of its program. The time frames associated with conditions become effective upon the date of the approval letter for these findings.

INTRODUCTION

This document is organized by the major nonpoint source

categories and subcategories identified in the Section 6217(g) guidance and the administrative elements identified in the program guidance (including the boundary for the 6217 management area). Where appropriate, NOAA and EPA have grouped categories and subcategories of management measures into a single finding. The structure of each finding follows a standard format. Generally, the finding is that the State program includes or does not include management measures in conformity with the (g) guidance and includes or does not include enforceable policies and mechanisms to ensure implementation. In some cases, the finding reflects that the State has identified a back-up enforceable policy but has not demonstrated the ability of the authority to ensure implementation. For further understanding of terms used in this document, the reader is referred to the following:

Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters (EPA, January 1993);

Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance (NOAA and EPA, January 1993);

Flexibility for State Coastal Nonpoint Programs (NOAA and EPA, March 1995).

The references in this document refer to the California Coastal Nonpoint Pollution Program Submittal, September 1995 ("program submittal"). NOAA and EPA have written this document as succinctly as possible. We have relied upon, but do not repeat here, the extensive information that the State included in the program submittal. Further information and analysis is contained in the administrative record for this approval decision and may be reviewed by interested parties at the following locations:

EPA/Office of Wetlands, Oceans and Watersheds
Assessment & Watershed Protection Division
Nonpoint Source Control Branch
401 M St., SW (4503-F)
Washington, DC 20460
Contact: Robert Goo (202/260-7025)

NOAA/Office of Ocean and Coastal Resource

Management
Coastal Programs Division
1305 East-West Highway
Silver Spring, MD 20910
Contact: Bill Millhouser (301/713-3121, ext. 189)

U.S. EPA, Region IX
Water Division (W-3-1)
75 Hawthorne Street
San Francisco, CA 94105
Contact: Sam Ziegler (415/744-1990)

I. BOUNDARY

FINDING: California has included the entire State as the management area within which it will implement the coastal nonpoint program. Therefore, California's boundary is sufficient to control the land and water uses that have or are reasonably expected to have a significant impact on the coastal waters of California.

RATIONALE: The State submittal indicates that California has chosen not to develop a separate program for coastal watersheds, but rather will implement a statewide nonpoint source management program that addresses the requirements of Section 6217. Thus, the 6217 management area encompasses the entire State. This is consistent with the State's approach of preparing the section 6217 program submittal as a means to update its Section 319 Nonpoint Source Program. In this manner, California can improve the effectiveness of its program statewide by addressing a wide range of nonpoint source issues, while protecting State coastal waters in compliance with section 6217. In addition, this approach accurately reflects the ecological relationships that exist for many of California's stream systems whose headwaters are far from the coast but ultimately flow to the Pacific Ocean.

II. AGRICULTURE

FINDING: California's program includes management measures in conformity with the (g) guidance and enforceable policies and mechanisms to address the management measures for large and small confined animal facilities. California's program does not include management measures in conformity with the 6217(g) guidance to address the remainder of the agricultural management

measures. The State has identified a back-up enforceable authority but has not yet demonstrated the ability of the authority to ensure widespread implementation throughout the 6217 management area.

CONDITION: Within two years, California will include in its program management measures in conformity with the 6217(g) guidance, other than for large and small confined animal facilities. Within one year, California will develop a strategy (in accordance with Section XIV, page 18) to implement the agricultural management measures throughout the 6217 management area.

RATIONALE: Sections 2560-2565 of the regulations (23 Cal.Code Reg.) implementing the Porter-Cologne Water Quality Control Act (Cal. Water Code 13000 et.seq.) require all animal facilities to implement standards consistent with the confined animal facility management measures. The Regional Water Quality Control Boards (RWQCBs) can waive requirements on an industry wide basis, but the standards must be made a condition of the waiver. As noted on page 160 of the submittal, waivers of these requirements have been given routinely by some RWQCBs to dairy facilities on an industry wide basis. EPA and NOAA strongly encourage the State to implement the TAC Report recommendations regarding various activities to ensure widespread implementation of the management measures.

Regarding the other 6217 (g) agricultural management measures, California's program submittal lists the management measures set forth in the 6217(g) guidance, but it does not indicate whether California intends to implement these measures, nor does it describe any practices that would be used to implement the measures. California appears to have several authorities and programs that could be used to implement the agricultural management measures. The State identifies the Porter-Cologne Water Quality Control Act as providing back-up authority to implement the 6217(g) management measures, but the State's preferred approach as described in the submittal is to encourage voluntary implementation activities through local comprehensive watershed management efforts. California's Nonpoint Source Program utilizes a three-tiered approach to protect California's water quality: a voluntary approach (Tier 1); regulatory encouragement (Tier II); and, mandatory implementation through effluent requirements and waste discharge permits (Tier III).

Other authorities which, per the State, can be used to implement management measures include Section 5650 of the Fish and Game Code, which provides enforceable authority where "any substance or material deleterious to fish, plant life, or bird life" enters or is placed where it can enter waters of the State, and Sections 11501 et.seq. of the Food and Agriculture Code, which provide for protection of the environment from pesticides, but do not specifically require implementation of the pesticide management measure. While these and other programs and authorities appear usable to help implement the management measures in some situations, the State has not presented an implementation strategy that ensures widespread implementation.

Application of the measures may best be achieved if coordinated to produce an overall system of site-appropriate practices. The Natural Resources Conservation Service's (NRCS) whole farm planning process is one important tool that could be used to apply multiple management measures within the framework of an overall system that works for the individual producer. NOAA and EPA also recommend that the State's implementation strategy integrate the recommendations of the Technical Advisory Committees for irrigated agriculture, nutrients and pesticides to implement the management measures.

III. FORESTRY

FINDING: California's program includes management measures in conformity with the 6217(g) guidance and includes enforceable policies and mechanisms for implementation. However, additional management measures are necessary in order to attain and maintain water quality standards (see Section XII, page 16).

RATIONALE: The primary authority in California to implement the management measures for forestry in conformance with the 6217 (g) guidance comes from the Z'berg-Nejedly Forest Practice Act (FPA) (Cal. Pub. Res. Code 4511 et.seq.). Regulations (14 Cal. Code Reg. 895 et.seq.) adopted pursuant to this law include practices in conformity with the management measures. The State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCBs) also have oversight over nonpoint discharges associated with forestry operations through the Porter-Cologne Act. The Porter-Cologne Act provides back-up authority for implementing the management measures, including waste discharge requirements, cease and

desist orders, cleanup and abatement orders, civil monetary liability for specified violations, and criminal prosecutions for specified violations.

Prior to any timber harvest on non-federal lands, a Timber Harvest Plan (THP) must be prepared by a Registered Professional Forester. A multidisciplinary and interagency review is intended to be conducted for all THPs to meet the functional equivalency requirements of environmental documentation under the California Environmental Quality Act (CEQA). These activities are carried out primarily by the California Department of Forestry and Fire Protection and the Board of Forestry(CDF/BOF), as well as the RWQCBs, in accordance with the Water Quality Management Plan for Timber Operations on NonFederal Lands, and the Management Agency Agreement (MAA), as overseen by the SWRCB.

Although California does have the basic legal and programmatic tools to implement a forestry program in conformity with Section 6217, these tools have not been fully effective in ensuring water quality standards are attained and maintained and beneficial uses are protected. California waters currently experience significant impacts from forestry. For example, silviculture is the leading source of impairment to water quality in the North Coast of California. Related to these water quality problems, California has a number of species, in particular salmon, that are endangered, threatened or otherwise seriously at risk, due in very significant part to forestry activities that impair their spawning, breeding and rearing habitat.

Section 6217 recognizes that implementation of the (g) management measures alone may not always be adequate to protect coastal waters from nonpoint sources of pollution. In these cases, Section 6217 requires the identification and implementation of additional management measures. Thus, California will need to adopt additional management measures for forestry to address coastal waters that are not attaining or maintaining applicable water quality standards or protecting beneficial uses, or that are threatened by reasonably foreseeable increases in pollutant loadings from new or expanding forestry operations. (See Section XII, page 16)

XI. CRITICAL COASTAL AREAS

FINDING: California's program does not identify and include a

process for the continuing identification of critical coastal areas adjacent to impaired and threatened coastal waters.

CONDITION: Within one year, California will revise its process to provide for the identification of critical coastal areas beyond the existing coastal zone boundary and within watersheds draining into Monterey Bay.

RATIONALE: The State's program includes several of the components necessary for the identification of critical coastal areas. California reviewed existing State programs that implement sections 319(a)(1) and 303(d) of the Clean Water Act as a starting point to evaluate and identify critical coastal areas for the purposes of section 6217. The State developed a working definition of critical coastal areas to include "the coastal zone portions of watersheds which drain into impaired and threatened coastal waters". Areas meeting this definition are listed in the State's submittal.

There are two factors that preclude the State from fully meeting the critical coastal area requirements: restriction of critical coastal areas to the existing coastal zone, and exclusion of the watersheds draining into Monterey Bay. The State proposes to limit the inland extent of critical coastal areas to the existing coastal zone boundary. In some cases, the coastal zone boundary is as narrow as 100 feet inland from mean high water. Thus, the truncation of critical coastal areas at the coastal zone boundary may not provide adequately for the implementation of additional measures needed to protect against current and anticipated nonpoint source problems.

The State also proposes to exclude watersheds draining into Monterey Bay from consideration as critical coastal areas. As discussed in the Program Development and Approval Guidance, States are encouraged to include previously designated areas, such as Marine Sanctuaries, as critical coastal areas. NOAA and EPA are involved in a joint effort with the State to develop a water quality plan for the Monterey Bay National Marine Sanctuary (MBNMS), however, the water quality plan has not been completed. When completed, the State may be able to use the MBNMS water quality plan as a mechanism to apply additional management measures to critical coastal areas within watersheds draining to Monterey Bay.

XII. ADDITIONAL MANAGEMENT MEASURES

FINDING: California's program does not provide for the identification of additional management measures and the continuing revision of management measures applicable to critical coastal areas and cases where (g) measures are fully implemented but water quality threats or impairments persist.

CONDITION: Within two years, California will include in its program a process for developing and revising management measures to be applied in critical coastal areas and in areas where necessary to attain and maintain water quality standards. Within one year, the State will identify additional management measures for forestry necessary to attain and maintain water quality standards.

RATIONALE: California's program identifies some critical coastal areas. In addition, it provides an example of how management measures are applied within a critical coastal area (Tomales Bay watershed). However, the program does not include a continuing process, including milestones for implementing, evaluating and, as necessary, revising the additional management measures. The 6217 Program Development and Approval Guidance identifies a number of alternatives for selecting additional management measures. These include developing measures not covered in the (g) guidance, and applying the (g) measures more intensively or more stringently. The State needs to establish a continuing process for identifying and implementing additional management measures that includes milestones for implementation, evaluation and, as necessary, revision.

California needs to develop and implement additional management measures for forestry. As discussed in Section III above, California's program includes management measures for forestry in conformity with the (g) guidance. However, in some cases, these measures have been ineffective for attaining and maintaining water quality standards and protecting beneficial uses. As indicated in the State's submittal "(m)ost of the critical coastal areas in this region [the North Coast of California] are impaired because of historical and current timber harvesting". To address this type of situation, CZARA provides for the implementation of additional management measures. Therefore, NOAA and EPA have included a condition regarding the need for additional forestry management measures.

The need to improve California's forestry program to protect water quality has been documented during the past decade by federal and State agencies including EPA and the California Department of Forestry and Fire Protection (CDF). In 1988, EPA reviewed the Water Quality Management Plan for Timber Operations on NonFederal Lands submitted by the State Water Resources Control Board, and set forth specific conditions that addressed inspection and compliance, monitoring and evaluation, enforcement, conflict resolution and financial capability.

According to the State's 1995 CDF report (discussed below) and the CZARA evaluation report (UC Davis, 1995), many of these concerns and issues are still unresolved today.

In October, 1995, the State issued a Final Report on Implementation and Effectiveness of the Watercourse and Lake Protection Rules (CDF 1995) to obtain a qualitative assessment of the Watercourse and Lake Protection Rules (WLPZ) rule performance and needs. The Report summarized problems and proposed improvements in numerous areas related to the management measures including roads, landings, and skid trails; watercourse crossings; soil and debris stabilization; and enforceable standards and rule evaluation. Furthermore, as part of the State's preparation of its 6217 submittal, a report was prepared entitled Evaluation of the Coastal Zone Management Act, April 1995, that raised similar concerns regarding the adequacy of the Forest Practices Rules to protect water quality and the environment, particularly as they relate to mass wasting, road planning in landslide-prone areas, and sizing of drainage structures.

As the water quality management agency for silvicultural activities, the Board of Forestry and CDF should utilize their established processes for identifying and implementing additional forestry management measures necessary to attain and maintain water quality standards. In identifying additional forestry management measures, California should refer to the interagency team report which is being developed to address concerns raised in the Final Report on Implementation and Effectiveness of the Watercourse and Lake Protection Rules report (CDF,1995). In addition, the State should build upon related efforts including: recommendations from the Coastal Salmon Initiative, which is developing voluntary measures for landowners to undertake to address adverse effects of forestry activities on salmon habitat and populations; the Northwest

Forest Plan; and, other related watershed activities that are addressing nonpoint source pollution related to forestry activities.

XIII. MONITORING

FINDING: California's program does not include a plan to assess over time the success of the management measures in reducing pollution loads and improving water quality.

CONDITION: Within one year, California will include in its program a plan that enables the State to assess over time the extent to which implementation of management measures is reducing pollution loads and improving water quality.

RATIONALE: California partially describes several federal, State, and local monitoring programs that have potential for assessing over time the success of the management measures in reducing pollution loads and improving water quality. It appears that California could use these and other monitoring efforts to meet Section 6217 monitoring needs, but the State has not yet described in adequate detail how these monitoring programs and techniques will be applied to assess over time the extent to which the management measures are reducing pollution loads and improving water quality.

California should prepare an assessment plan that includes information regarding the number and location of monitoring stations, the types and frequency of water quality data being collected, and the analytic approaches that will be employed in conjunction with existing monitoring efforts to assess the success of management measures in achieving water quality objectives. The State should include some inexpensive tracking of management measure implementation in conjunction with water quality monitoring, as such information is needed to assess the success of management measures in achieving water quality objectives. Furthermore, California is encouraged to pursue its "Initiative In Nonpoint Source Management" recommendations for monitoring and assessment as part of this plan.

EPA and NOAA recognize that the California State Water Resources Control Board, in cooperation with EPA Region 9, is currently developing a state-wide monitoring strategy. The State is strongly encouraged to coordinate the development of this monitoring strategy with its plan to assess over time the success

of the 6217 management measures.

XIV. STRATEGY AND EVALUATION FOR BACK-UP AUTHORITIES

Within one year, California will develop a strategy to implement the management measures for agriculture, urban areas, marinas, hydromodification, and wetlands throughout the 6217 management area. This strategy will include a description and schedule for the specific steps the California Coastal Commission and the State Water Resources Control Board, along with the appropriate Regional Boards, will take to ensure implementation of the management measures; describe how existing backup or new authorities can be used to ensure implementation where voluntary efforts are unsuccessful; and identify measurable results which, if achieved, will demonstrate the State's ability to achieve widespread implementation of the management measure using the described approach. (For additional information, see footnote 1.)

California will also develop and apply credible survey tools to demonstrate the ability of the State's approach to achieve widespread implementation of these management measures. The use of credible assessment techniques is necessary in order for NOAA and EPA to evaluate after the end of the three year period described in the March 16, 1995 guidance issued by NOAA and EPA entitled Flexibility for State Coastal Nonpoint Programs, whether the State's approach has been successful or whether new, more specific authorities will be needed.

----------Agreed upon Action Plan

TMDL - Medthodology for Implementing Goals and Policies - under Porter-Cologne

California CZARA "Action Plan"
Prepared by the SWRCB, CCC, EPA HQ, NOAA, EPA Region 9
8/25/97

This "action plan" outlines a framework and activities to achieve an approvable program under CZARA §6217, while improving California's Nonpoint Source Program.

1) Management Measures and Authorities

The SWRCB and CCC will review management measures in consultation with other state and local agencies and develop a Management Measure Review document within 8 months (3/98). The document will include:

identification of management measures
identification of authorities that implement the management measures
identification of who will implement the management measures (e.g., lead agency)
existing programs/strategies/implementation plans
existing BMP's and BMP guidance

A. When meeting with other agencies, SWRCB/CCC will look for opportunities to link management measures with existing authorities and programs.

B. The SWRCB and CCC will identify gaps in existing management measures/authorities/programs and strategies for follow-up.

C. The SWRCB and CCC may propose alternative management measures, as necessary. If proposing alternatives, the State will:

provide justification on why alternative is necessary
explain how the alternative management measure will be equally or more effective than the g-guidance measure

D. With respect to counties and municipalities, the SWRCB and CCC will focus on State authorities (e.g., the CEQA Guidance checklists, General Plan guidelines, Subdivision Map Act, and CCC's Local Coastal Program guidance).

E. The SWRCB and CCC will adapt and refine CCC manual for polluted run-off as a tool to work with other agencies.

2. Implementation Strategy

SWRCB/CCC/EPA/NOAA agree that the program goal will be to implement management measures (except exclusions), including additional management measures where necessary, within 15 years.

It is anticipated that incremental implementation of the

management measures will occur through "prioritization" and