



Redwood Chapter P.O. Box 466 Santa Rosa, CA 95402 Ph 544-7651

14 December 2007

North Coast Regional Water Quality Control Board  
5550 Skylane Boulevard, Suite A  
Santa Rosa, CA 95403

Re: Comments on the Draft Workplan to Control Excess Sediment

Attention: Rebecca Fitzgerald

Dear Ms. Fitzgerald:

We support this Draft Work Plan. We find it to be comprehensive, detailed and sufficiently flexible to address current conditions and those that may have been overlooked or arise in the future. It provides a clear path for both regional tasks and watershed specific steps that can address the sediment impairment of the listed rivers and lead to their eventual de-listing. It establishes a time schedule for commencement consistent with the 2006 TMDL schedule and the requirements of Porter-Cologne Para. 13242 (b)<sup>1</sup>.

We would, however, emphasize the Workplan will not stand alone, and will serve little purpose if not fully staffed as proposed in the draft resolution. Forecasting the needed personnel and setting out the schedule is a strong statement for the Regional Board to make. While the resolution makes it clear that this work will not happen unless the needed personnel are provided, we would like to see the resolution make a stronger case for the staffing increase. The climate in Sacramento will be difficult making it necessary to show a convincing rationale for the necessary funding.

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<sup>1</sup> 13242 The program of implementation for achieving water quality objectives shall include, Implementation (b) A time schedule for the actions to be taken.

## Legal Responsibility of the State

The state has an affirmative legal obligation to initiate remediation for the watersheds that are TMDL listed for impairment and do not have implementation plans. Failure to do so exposes the state to the same liability to which the EPA was found responsible in the 1996 Consent Decree. The language of the resolution can make the point that it is in the economic interest of the state to finance this program. It should be made clear that this work is not optional; it must be done.

The earlier 2004 Board Resolution R1-2004-0087 set out the objective for the adoption of the subject Work Plan:

*There is an immediate need for the prevention and control of sediment waste discharges with a greater dedication of staff time to outreach, education, prevention, permitting, and enforcement of existing rules.*

It recognized the urgency and, it pointed out at paragraph 3, the long failure to address the subject impaired watersheds:

*The vast majority of these water bodies have been so listed since 1993.*

The current draft resolution states at paragraph 5 that the water bodies do not meet the "water quality standards as of 2006." This statement fails to communicate the failure of the state to respond for the past thirteen years. We suggest the statement above referencing the origin of the impairments back to 1993 be repeated in the current draft. It is significant not only to the issue of approval of additional staffing and the urgency of the program but also to the liability of the state in meeting its obligations to the Clean Water Act and Porter-Cologne Act.

It is our understanding that the Regional Board has had primary responsibility as the Lead Agency for nine of the listed rivers since the 1996 consent decree<sup>2</sup> and the others rivers since EPA completion of the technical TMDLs. We believe this information should be listed as a relevant fact in

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<sup>2</sup> Garcia, Redwood Creek, Noyo, Navarro, Gualala, Big, Klamath, Scott and Mattole. See EPA-Regional Board schedule from the Consent Decree dated July 9, 1997

the draft resolution as pertinent information influencing those who must decide to approve the staff increase. While the EPA may arguably contend they have met the obligations of the Consent Decree, the obligations of California that follow the role of the EPA have not been met.

### Stream and Wetland Protection Policy

Failure of the Board to adopt the Stream and Wetland System Protection Policy (Regional Tasks 4-6) would significantly and negatively impact the progress and quality of the Work Plan. Many of the regional tasks could not be achieved if it were not adopted.

We would suggest that the following or similar stronger language be added to the resolution:

*The Work Plan places a major reliance upon the subsequent adoption of the Stream and Wetland System Protection Policy for the support and direction of many of the stated tasks. It is to be incorporated into this Work Plan.*

### Monitoring

The 2004 resolution, at paragraph 1 I, describes in detail the need for a TMDL implementation monitoring strategy to be part of the Work Plan. It is acknowledged at page 5 of the Draft Work Plan that monitoring is not addressed in the draft. We accept the draft is to be a "living document" and that monitoring, as stated in the 2004 resolution, is important and must be added to the Work Plan as soon as possible, accompanied by its associated staff needs. It would seem appropriate to make a statement in the resolution to this effect.

### Staffing Levels

There was a concern expressed from the Board about the size of this proposed staff increase. We would offer that the staff size which was increased in response to the 1996 Consent Decree has been regressively reduced in the last six years to a level that makes compliance with the statutory requirements set out in that decree impossible. Following the consent decree staff was progressively increased up to 137 in 2001. Today it is now down to 87 staff members.

While 19 new staff are required to address the sediment TMDLs, this increase will still leave the overall program far short of responding to the additional needs of the Klamath TMDLs and the need to develop action plans for 21 listed temperature TMDLs. The program also lacks staffing to provide the needed personnel for monitoring and administration of these plans once they are finalized. We see this request for additional staff not as being too large, but as just a first step for the state to respond to its obligation to all the listed impaired watersheds of the North Coast. We will amplify this issue at the Board hearing in January.

We recognize there are political and fiscal realities. We understand the hard work that will be needed to convince those in Sacramento to support this effort, and we are prepared to use the resources of the Sierra Club to encourage others to support the approval of the funding necessary to make this program happen.

The Draft Work Plan is an excellent start. We appreciate the work that has gone into it and we will be an advocate for its adoption and the staff increases it requires.

Daniel Myers for  
Redwood Chapter of the Sierra Club  
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Diane Beck  
Conservation Chair, Redwood Chapter of the Sierra Club

Chris Malan  
Chair Water Committee, Redwood Chapter of the Sierra Club

CC: Regional Board, Alexis Strauss EPA