

Executive Officer's Summary Report
8:30 a.m. November 3, 2011
Regional Water Quality Control Board
David C. Joseph Hearing Room
5550 Skylane Blvd., Suite A

ITEM: 4

SUBJECT: Public Hearing on Resolution No. R1-2011-0090, to adopt Editorial Amendments to the Water Quality Control Plan for the North Coast Region, Chapter 2 – Beneficial Uses

INTRODUCTION

On November 3, 2011 the North Coast Regional Water Quality Control Board (Regional Water Board) will consider draft Resolution No. R1-2011-0090, adopting Editorial Amendments to Chapter 2 – Beneficial Uses of the Water Quality Control Plan for the North Coast Region (Basin Plan). This item was originally scheduled to be heard at the September 29, 2011 Regional Water Board meeting. A copy of the Public Notice for the September meeting is included as Attachment A and a copy of the revised Public Notice for the November hearing is included as Attachment B.

A copy of draft Resolution No. R1-2011-0090 is included with this Executive Officer's Summary Report (EOSR) as Attachment C. The proposed editorial revisions to Chapter 2 are attached to the draft Resolution as Attachment 1 (strikethrough/underline version) and Attachment 2 (clean copy, with the revisions incorporated). The October 12, 2011 versions replace the versions released in August 2011. The proposed editorial revisions to Chapter 4 are attached to the draft Resolution as Attachment 3 (strikethrough/underline version) and Attachment 4 (clean copy, with the revisions incorporated). The proposed editorial revision to Chapter 4 – implementation Plans is limited to the relocation of the section on wetlands implementation program from Chapter 2 to Chapter 4, where it more properly belongs.

BACKGROUND

The purpose of the Editorial Amendment is to update the Basin Plan and to make it more user-friendly through grammatical corrections and section reordering corrections, and will provide updated language on changes in regulation and statewide policies and plans. Planning efforts relative to the Editorial Amendment were identified as a high priority (#5) on the 2007 Triennial Review List.

Revisions to the Basin Plan proposed as part of the Editorial Amendment will not cause any change to any regulatory provision of the Basin Plan, and therefore will be

proposed as a “Change Without Regulatory Effect” (1 CCR §100). Because the edits will not result in any physical change to the environment, the Editorial Amendment is not defined as a project for the purposes of the California Environmental Quality Act (CEQA). Suggested changes to the Basin Plan that arise as part of the Editorial Amendment process which could have a regulatory effect will be summarized and addressed in the future as part of the Triennial Review process.

PROPOSED REVISIONS TO CHAPTER 2 – BENEFICIAL USES

This EOSR presents an overview of the proposed editorial revisions to the Beneficial Uses chapter of the Basin Plan. The proposed editorial revisions include, but are not limited to:

- Replacing title “Section 2 – Beneficial Uses” with “Chapter 2 – Beneficial Uses”
- Section and paragraph reordering and introduction of section numbering system.
- Reformatting and relocation of Table 2-1 to end of chapter.
- Removal of the “existing” beneficial use assignment of inland saline waters (SAL) in the Russian Gulch hydrologic area (this was a typographical error introduced when reformatting of the table occurred as part of a software program upgrade).
- Removal of informative language (e.g. section on RARE beneficial uses) from the Basin Plan. This information will be presented in a “fact sheet” format at a later date.
- Relocation of portions of the wetlands section that describe implementation actions to a new section, “Wetlands Implementation Program” in Chapter 4 - Implementation Plans. The new section will be located at the end of the Nonpoint Source Measures section of the chapter. This section will be revised at a future date when the statewide wetlands effort is more fully developed.
- Removal of references to appendices that contain state plans and policies. The appendices contained in existing Chapter 5 – Plans and Policies will be deleted as part of the ongoing editorial amendment work. The reader instead will be directed to the State Water Board’s website to ensure that the most up to date state plan or policy is consulted.

PROPOSED REVISIONS TO CHAPTER 4 – IMPLEMENTATION PLANS

- Relocation of the section on wetlands implementation program from Chapter 2 to Chapter 4. Insert new header, “Wetland Implementation Program”.

PUBLIC COMMENTS AND STAFF RESPONSE

The written public comment period closed on September 29, 2011. Two written comment letters were received. These comment letters are included with this EOSR as Appendix D.

The first letter dated August 12, 2011 expressed concern that the revised discussion on “Rivers and Streams” failed to acknowledge that many residents rely exclusively on surface water as their domestic water source. The commenter recommended that the

header “fishable/swimmable” be revised to “drinkable/fishable/swimmable”. The discussion present under that section header is relative to the legal requirements for the Clean Water Act’s “fishable/swimmable” goals, these goals do not reflect “drinkable” goals. Staff has instead proposed to add additional language to clarify that individual residents rely on surface water for their drinking water.

The second comment letter, dated August 19, 2011 contained a number of concerns. The statement “The Regional Water Board reserves the right to balance the values and priorities of competing beneficial use” raised concern about the interdependencies of beneficial uses and water rights. This statement is a rewrite of the sentence “The Regional Water Board reserves the right to resolve conflicts among beneficial uses, based on the facts in a given case”. No additional authority is granted by this non-substantive revision to the existing language.

Concern was expressed about the substitution of the terms “designated use”, “beneficial use”, “criteria”, and “objective”. The revisions proposed in the Editorial Amendment were recommended to clarify the terms “designated use and criteria” are used under federal law, while the terms “beneficial use and objectives” are used under state law. This information was added for clarity and no additional authority is granted by this non-substantive revision to the existing language.

The commenter expressed concerns that the Editorial Amendment would lead to “reprioritizing” of beneficial uses. Nothing in the proposed revisions to Chapter 2 could be construed as a “reprioritization” of beneficial uses. The proposed language does include language to clarify that federal law requires that all existing beneficial uses of water must be protected.

STATUS OF EDITORIAL AMENDMENT FOR CHAPTER 1 – INTRODUCTION

On March 6, 2008, the Regional Water Board adopted Resolution No. R1-2008-0014. This resolution approved the editorial revisions to the Introduction (Chapter 1) of the Basin Plan. The Introduction describes basin planning, the legal context of the Basin Plan, and an overview of the North Coast Region. The Basin Plan amendment containing the Chapter 1 revisions will be submitted to the State Water Board for their approval in combination with the Chapter 2 editorial revisions amendment following their adoption by the Regional Water Board.

Regional Water Board staff is continuing to work on the proposed editorial revisions for the remaining Basin Plan chapters. The revisions to these chapters will be included as part of other ongoing Basin Plan amendment work currently being developed by staff.

PRELIMINARY STAFF RECOMMENDATION: Adopt Resolution No. R1-2011-0090 as proposed and direct staff to submitted Chapters 1 and 2 to State Water Board and OAL for final approval.