

## North Coast Regional Water Quality Control Board

### Response to Comments for the Proposed Amendment to the Water Quality Control Plan for the North Coast Region to Update Water Quality Objectives

This document presents comments and/or summarizations of comments provided by stakeholders during the latest public comment periods for the Amendment for the Water Quality Control Plan for the North Coast Region to Update Water Quality Objectives along with Regional Water Board [staff] responses to comments. The public comment period for this amendment began upon public release of the Staff Report and Basin Plan amendment language on February 25, 2015 and ended on April 13, 2015. Public comments received on previous drafts of the staff report and Basin Plan amendment language (e.g., 2012 draft and 2013 draft) were considered when revising the staff report and Basin Plan amendment language released on February 25, 2015.

No.	Commenter Name	Organization	Date
1	David Guhin, Director of Utilities	City of Santa Rosa	April 13, 2015
2	Bob Legge, Policy and Outreach Coordinator	Russian River Keeper	April 13, 2015
3	Grant Davis, General Manager	Sonoma County Water Agency	April 13, 2015

## **Water Quality Objectives Update Amendment Response to Comments from the 2015 Public Comment Periods**

### **City of Santa Rosa**

#### **Comment: Incorporation by Reference of the City's Previous Comments**

In April 2013, the City (Santa Rosa) submitted extensive comments on the Basin Plan amendments at that time. To avoid repeating each of those comments here, the City incorporates by reference those previous comments, particularly those related to the inconsistency with the other terms of the Basin Plan, the Water Code, and with the Administrative Procedures Act (APA), the "reasonableness" of the Regional Water Boards actions per Water Code 13000, and general allegations that the proposed amendments are not supported by findings, and/or findings made are not supported by adequate evidence in the administrative record, and asks that these earlier comments, where still applicable, be made part of the adoption record for these amendments should they proceed.

#### Response

Previous iterations of the proposed amendment did not include any 13241 considerations or CEQA impacts under the baseline rationale. The proposed Basin Plan amendment is essentially designed to make explicit in the Basin Plan the process by which the Regional Water Board already implements its authority under Porter-Cologne, including its obligations under the State Water Board's plans and policies and the Regional Water Board's plans and policies. As stated in the Staff Report, water quality objectives already exist for chemical constituents and DO for surface water and chemical constituents for groundwater. Additionally, a water quality objective for toxicity exists for surface water. Even the newly proposed groundwater toxicity objective would result in compliance measures already used to address groundwater toxicity and in most cases actions that are being implemented throughout the North Coast Region. However, staff acknowledges that the proposed Basin Plan amendment would remove existing numeric objectives and replace them, in some cases, with more stringent objectives with potential for those objectives to become even more restrictive as MCLs are modified in the future.

The City's April 2013 comment letter and verbal comments at the June 2013 item before the Board resulted in several significant changes to proposed Basin Plan amendment including:

1. Removal of any translation policy of narrative water quality objectives in the Basin Plan;
2. Rewording of the water quality objectives for toxicity and chemical constituents in surface waters;
3. Rewording of the water quality objectives for toxicity and chemical constituents in groundwaters.

Additionally, substantial additions were made to the Staff Report including;

1. Revisions to the water code section 13241 considerations;
2. Revision to the CEQA analysis;
3. Revision to the antidegradation section of the Staff Report; and

4. Revisions to the justifications for amending the water quality objectives.

Out of an abundance of caution, the CEQA analyses and cost considerations are now based on a wide range of compliance measures for updated chemical constituents objectives, groundwater toxicity objective, and updated DO objectives. These considerations include soil and groundwater cleanup, wastewater treatment, and various DO compliance measures. The revised Staff Report has addressed the necessary considerations for revising water quality objectives pursuant to Water Code section 13241. Many standard compliance measures are discussed and evaluated for potential impacts to the environment and their implementation costs.

Additionally, the CEQA analysis and economic considerations in Chapter 5 and Chapter 6 of the Staff Report, respectively, outline and analyze a large list of foreseeable compliance measures implemented through the existing and future regulatory framework.

### **City of Santa Rosa**

#### **Comment: Obligations under water code section 13241**

1. The overview of Section 13241 analysis on page 1-9 and 1-10 appears to be for the entire package of amendments, not each objective individually, which is contrary to law.
2. The discussion includes an unsupported statement that “in many cases” the use of best achievable technology has proven to prevent or remediate pollution. There is no supporting evidence that it is reasonable to expect compliance with water quality objectives through the coordinated control factors.

#### Responses

1. The analyses of Water Code section 13241 factors in the Staff Report meets Water Code requirements. Reviewing the Basin Plan amendments as a whole is also practical and provides the proper scope and scale for a meaningful analysis. Compliance measures evaluated for toxicity and chemical constituents mostly treat and remediate individual compounds in the same way. For example, an excavation is not partial to an individual compound. Treating contaminated water or wastewater with ozone, activated carbon, or aeration are remediation measures that need not be analyzed pollutant by pollutant. Often in complex remediation sites or wastewater treatment plants a combination of treatment technologies is used to comply with water quality objectives. This was the structure of the evaluation in the Staff Report when considering Water Code section 13241.

As noted in Chapter 6 (Economic Considerations) of the Staff Report, the existing regulatory baseline already requires the treatment of chemicals, and many wastewater treatment plants and groundwater remediation sites have requirements to remove such pollutants. In fact, the cost associated with revisions of the water quality objectives in most cases will be a fraction of the total cost of compliance, if there is any additional cost at all. The Staff Report was conservative as it contemplates the full range of costs of measures identified as reasonably foreseeable. However, if taken as a whole, they are likely an overestimate of the actual costs of compliance. This is because of the multiple and overlapping regulatory programs or an existing program under

which the same reasonably foreseeable compliance measures are evaluated. Therefore, the economic impact of the existing obligations (baseline) should not be attributed as costs of compliance with the proposed Basin Plan amendment. The Staff Report addresses the cost of the actions as a whole without subtracting the cost of the existing requirements from the new requirements since the differences in costs are not uniform throughout the region.

For example, removing nitrate from groundwater or wastewater may have a similar cost per gallon treated; however, the total costs associated with treatments vary throughout the region. Energy costs alone are directly linked to the volume of wastewater treated or the depths to groundwater for pump and treat systems. Therefore, assessing the cost difference between MCLs and other lower criteria can only be done in a case-by-case manner. These site-specific variables that change due to the sites physical constraints are why the Regional Water Board has time schedules as an implementation tool. Generally, it may take sites several years and even up to a decade to come into compliance with a lower limit, which is why the Regional Water Board issues time schedules for compliance and considers time constraints in issuing orders or other regulatory actions such as TMDLs.

2. Staff acknowledges that the conclusion that “in many cases the use of best achievable technology has proven to prevent or remediate pollution” is general in nature. For clarification, with respect to groundwater, there have been 2,347 cleanup cases involving toxic compounds and chemical constituents that have been closed in the North Coast Region. These closures are evidence that the cleanup actions taken in each of these cases, reasonably remediated pollution. Please go to the state Geotracker website for further details at:

<https://geotracker.waterboards.ca.gov/>

With respect to surface water, there are very few waterbodies listed under section 303(d) of the Clean Water Act as impaired for toxic compounds or chemical constituents in the North Coast Region. Surface water impairments of this nature are generally related to legacy activities, such as mining; aerial deposition; or illegal disposal. For example, they include mercury listings within segments of the Eel River, Lake Shastina, Russian River, and Trinity River, as well as PCBs and Dioxin Toxic equivalents listing in Humboldt Bay. The lack of surface water impairments related to chemical constituents or toxicity indicates the success of the existing program implementation at controlling known pollutants. For more detail please see the 2010 impaired waterbodies list for the North Coast Region at:

[http://www.waterboards.ca.gov/northcoast/water\\_issues/programs/tmdls/303d/pdf/120524/Impaired Waterbodies 2010 Table 05242012.pdf](http://www.waterboards.ca.gov/northcoast/water_issues/programs/tmdls/303d/pdf/120524/Impaired%20Waterbodies%202010%20Table%2005242012.pdf)

These facts support the statement that in many cases the use of best achievable technology has proven to prevent or remediate pollution; and it is available in the public record.

**City of Santa Rosa****2013 CEQA-1 Comment**

The proposed amendments fail to comply with CEQA, including defining the appropriate baseline for the analysis, defining the project and considering alternatives, including the "no project" alternative. The "project" must include not just the Regional Board's proposed amendments, but also the physical improvements that any affected dischargers will need to make to comply. An environmental analysis will be found legally inadequate if it contains an overly narrow range of alternatives. (*See, e.g., Watsonville Pilots Ass 'n v. City of Watsonville* (2010) 183 Cal. App. 4th 1059, 1087.)

Further, the project's environmental effects have not been analyzed "in connection with... the effects of probable future projects." (CEQA Guidelines § 15065(a)(3)) The Regional Board has failed to analyze or even identify other present and/or future projects with which the Basin Plan amendments could have cumulative impacts. The environmental checklist's determination of "[n]o significant or potentially significant adverse impacts" and of no impact beyond baseline is not supported, given that the proposed amendments, including new or modified water quality objectives, will undoubtedly result in new or modified permit requirements that demand "on the ground" facility or operational modifications.

CEQA-1 Response

The Staff Report has been revised to expand the CEQA analysis as per the 2013 comment. The revised CEQA analysis complies with the requirements of CEQA for certified regulatory programs and addresses this previous concern with a more robust and better substantiated analysis. .

**2013 CEQA-2 Comment**

The Proposed Amendments Violate CEQA. In the case of *City of Sacto. v. SWRCB*, 2 Cal. App. 4th 960, 969 (3d Dt. 1992), the Court held that the purpose of CEQA is to "compel government at all levels to make decisions with environmental consequences in mind." The proposed amendment fails to consider all potential environmental consequences of the proposed changes.

In addition, because there is an assumption that no impacts will exist, there has also been no attempt to estimate the aggregate number of projects that would be undertaken as a result of the proposed Basin Plan amendments.

CEQA-2 Response

Based on public comment, the CEQA analysis as contained in the Staff Report has been revised.

**2013 CEQA-3 Comment**

The Regional Water Board also improperly uses "what is currently occurring under the Regional Water Board's regulatory programs" as the current and proper baseline since those "regulatory programs" are not based upon any adopted regulation and never underwent CEQA review, even though staff admits that it has been implementing the

process laid out in the Narrative Water Quality Objective Translation Policy for many years. (*See e.g.*, pgs. 5-5, and E-1.) The fact that the new objectives allow for the use of objectives or criteria far lower and more stringent than the current water quality objectives contained in the Basin Plan must be considered, not only under the Water Code's mandatory factors set forth in section 13241, but also under CEQA. The current numeric water quality objectives set forth in Table 3-1 and elsewhere in the Basin Plan are the baseline, not the unauthorized procedures that the Regional Board now characterizes as standard practice.

### CEQA-3 Response

The Regional Water Board issues orders and other regulatory actions to protect beneficial uses. Selecting the appropriate numeric value to translate narrative objectives has always been a necessary requirement of the existing regulation. The state is required to set limitations and levels for effluent discharge and cleanup if an existing pollutant is present and has the potential to cause or contribute to an excursion above the narrative criteria. The CWA mandates that effluent limitation be as stringent as necessary to meet water quality objectives. Additionally, the Antidegradation Policy provides the authority and responsibility to use the best practicable treatment controls to protect high-quality waters.

Water code section 13263 *(b)* *A regional board, in prescribing requirements, need not authorize the utilization of the full waste assimilation capacities of the receiving waters.* Therefore, in some cases with the appropriate considerations and findings the Regional Water Board may adopt effluent limitations and cleanup levels that are more stringent than necessary to protect the beneficial uses.

The existing regulation has always allowed the selection of an appropriate numeric criteria and the translation of narrative objective as well as the Antidegradation Policies. So, the addition of a groundwater toxicity objective and necessary translation of objectives can be viewed as existing practices. However, this characterization has proven to be confusing and contentious; therefore the Staff Report has been revised to describe the existing regulatory framework and includes a full CEQA and water code section 13241 analyses.

### **City of Santa Rosa**

#### **Comment: Water Quality Objective for Surface Water Toxicity**

The proposed amendments to the water quality objective for toxicity in surface waters has not been adequately explained or justified. For example, the changes to the last sentence entirely change the meaning and the requirements of that sentence.

“Where appropriate, additional numerical receiving water objectives for specific toxicants will be established as sufficient data become available, and source control of toxic substances will be encouraged.” (*See* Current BP at 3-4.00)

This sentence has two parts: 1) that “where appropriate, additional numerical receiving water objectives for specific toxicants will be established as sufficient data become available”; and 2) that “source control of toxic substances will be encouraged.”

The newly proposed language expands toxicity limitation that may be imposed under this objective by removing the word “acute” from the existing language. There is no guidance on how the objective will be applied, or confirmation that “reasonable potential” actually

exists to warrant the imposition of an effluent limit(s). Additionally, this discussion of effluent limits belongs in the Implementation Plan Section.

### Response

Proposed language:

“In addition, effluent limits based upon ~~acute~~ bioassays of effluents will be prescribed. ~~W~~where appropriate, ~~a~~Additional numerical receiving water objectives for specific toxicants will be established as sufficient data become available, and source control of toxic substances ~~will~~may be ~~encouraged~~ required.”

Chapters 2, 3 and 4 of the revised Staff Report provide support for amendments to the toxicity objective for surface waters. In summation, a punctuation error was made in the 1993 Basin Plan amendment which changes the interpretation of first sentence above. The proposed fix is meant to change the sentence to mean effluent limits based on bioassays will be required only if appropriate. The current version that reads “...effluent limits will be prescribed” based on bioassays. This change in punctuation relieves the potential for over application of the objective.

The word acute was removed from the objective as recognition that the *Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California*, commonly known as the State Implementation Policy (SIP), includes criteria and methods for both acute and chronic toxicity. Therefore, removing the word acute is proposed to avoid misinterpreting the toxicity to only acute affects.

As the city noted, the objective includes a discussion on effluent limitations, which indicates how the objective will be applied. The SIP is the implementation mechanism for developing effluent limits; however, on case-by-case basis and “as appropriate” implementation of the toxicity objective may be needed to protect beneficial uses, particularly in the absence of a specific numeric water quality objective. In general, discussions of effluent limitations should be within Section 4 of the Basin Plan; however, in this instance it already exists in Section 3 as guidance on how the toxicity objective will be applied. Staff sees no reason to cause further confusion by restructuring existing language unnecessarily.

The SIP establishes procedures for implementing water quality criteria contained in the NTR and CTR and for priority, toxic pollutant objectives established in the Basin Plan. The implementation procedures of the SIP include methods to determine reasonable potential (for pollutants to cause or contribute to excursions above state water quality standards) and to establish numeric effluent limitations, if necessary, for those pollutants showing reasonable potential. Section 1.3 of the SIP requires the Regional Water Board to use all available, valid, relevant, and representative receiving water and effluent data and information to conduct a reasonable potential analysis. Staff see no reason to add to or summarize these requirements within the body of the Basin Plan, as they already exist in the SIP.

However, to summarize here, the Code of Federal Regulations Part 122.44(d)(1)(i) mandates that permits include effluent limitations for all pollutants that are or may be discharged at levels that have the reasonable potential to cause or contribute to an exceedance of a water quality standard, including numeric and narrative objectives within a standard. Where reasonable potential has been established for a pollutant, but there is no numeric criterion or objective for the pollutant, water quality based effluent limitations must be established using: (1) USEPA criteria guidance under CWA section 304(a), supplemented where necessary by other relevant information; (2) an indicator parameter for the pollutant of concern; or (3) a calculated numeric water quality criterion, such as a proposed state criterion or policy interpreting the state's narrative criterion, supplemented with other relevant information, as provided in 122.44(d)(1)(vi).

### **City of Santa Rosa**

#### **Comment: The Newly Proposed Water Quality Objective for Toxicity in Groundwater**

1. It is inappropriate to base the justification in part on aquatic life when there is no aquatic life in groundwater and no native groundwater species to base toxicity test on to evaluate compliance with this objective.
2. Further such an objective is not needed as the chemical constituents objectives for surface waters and ground waters provide adequate protection for human health.
3. The Regional Water Board's justification is based on the fact the MCLs incorporated by reference do not include "consideration of other human health exposures (e.g., contact, recreation or fish consumption), aquatic life exposures (e.g., migration, feeding, and early development exposures), or agricultural crop impacts (e.g., plant growth interference or increased mortality), despite the fact that these other beneficial uses are designated for surface water and groundwater in the North Coast Region." These exposures or impacts do not exist in groundwater.
4. The City objects to the characterization by the Regional Water Board that "where groundwater and surface water are connected, the designated beneficial uses of the surface waters may also apply to groundwater." There is no tributary rule for groundwater-surface water connections. The City understands that the proposed groundwater toxicity objective is being designed as a mechanism by which inapplicable federal criteria for priority pollutants, not adopted for or relevant to groundwater conditions, will be imported as discharge limits for projects involving a discharge to groundwater. This is likely due to the fact that the criteria can be lower than associated MCLs, given the focus on potentially present sensitive aquatic life that exist in surface waters. (Staff explicitly state elsewhere that the list of constituents for which MCLs apply is much shorter than the list of toxic pollutants in the California Toxics Rule and National Toxics Rule, this justifying the need to pull in a "toxicity" objective to allow a more expansive suite of inapplicable criteria).
5. PHGs are not regulatory standards. They are necessary for making decisions about the levels of contaminants in drinking water; but, these guidance levels are just one element that the SWRCB must consider when maintaining the quality of drinking



water. As long as drinking water complies with all MCLs, it is considered safe to drink, even if some contaminants exceed PHG levels.

### Response

1. Staff agrees with the City that appropriate surface water objectives are applicable for the protection of surface water uses only. In response to the comment, we removed the word “aquatic” from the groundwater toxicity objective.
2. Chapters 2, 3 and 4 of the revised Staff Report provide support for amendments to the toxicity objective and justifications for the proposed groundwater toxicity objective. To summarize, the groundwater toxicity objective is designed to protect the municipal and domestic beneficial uses of groundwater, and to provide an explicit objective for groundwater cleanups and discharges of waste to land that threaten groundwater. While staff agrees that there is overlap with the Chemical Constituents objective, MCLs are often presumed to be the appropriate numeric criteria, even though MCLs are the minimum level of protection. The narrative toxicity objective ensures adequate consideration of toxicity, in all cases. It is useful in the absence of any MCL, and helps ensure that toxicity limits/requirements can be enforced.

The chemical constituents objective and the associated MCL values are the ceiling of allowable concentrations. MCLs are applied to treated water for municipal use. However, the MUN beneficial use also includes the use of raw water, for example by thousands of individual domestic users dependent on individual supply systems where no treatment exists. In some instances, it may not be appropriate or reasonable to allow the ambient water quality to be altered from natural background conditions up to the MCLs, especially where water is used untreated for either drinking water or even as irrigation water on sensitive crops. As noted, MCLs are developed based not only on potential adverse health effects, but on economic and technical factors associated with the treatment and delivery of municipal water supply, which, among other things, allows for the presence of residual contaminants derived from the treatment itself. The proposed narrative toxicity objective makes explicit the need to implement values that protect all uses of groundwater from toxicity.

3. The City has conflated the reasoning for expanding the applicability of the chemical constituents objectives to uses beyond MUN and AGR with the proposed language in the groundwater toxicity objective for the protection of aquatic life. As noted above, we recognize that appropriate surface water objectives are applicable for the protection of surface water uses only. Therefore, in response to the comment we removed the word “aquatic” from the groundwater toxicity objective.
4. Groundwater-surface water interactions exist throughout the North Coast Region. The recent studies of the Santa Rosa Plain by the U.S. Geological Survey confirm in great detail the hydrologic connection between surface water and shallow groundwater. Similarly, the Regional Water Board has found that discharges by the

City of Healdsburg to shallow groundwater in hydraulic connection with surface water constitute a surface water discharge and requires an NPDES permit. When a spill, leak, or discharge of waste to land degrades groundwater quality and requires cleanup, the appropriate cleanup level is determined based on the requirements of the most sensitive beneficial use. Where there is hydraulic connection and the spill, leak or discharge also affects surface water quality, the more sensitive beneficial use may be a use associated with the hydraulically connected surface water, such as aquatic life. State Water Board Resolution No. 92-49 sets the presumptive cleanup level at background. The narrative objective adds an additional layer of protection against toxicity to ensure proper consideration of the range of values between background and MCLs.

5. We acknowledge that the values provided by MCLs are often adequately protective in the many contexts in which they are applied, such as municipal water supply systems, case closures, discharges of waste to land and the role they play in considering risks to beneficial uses from discharges. However, in some instances MCLs may not be sufficiently protective. For example, MCLs do not exist for all chemicals. Additionally, MCLs take technical and economic factors for municipal water suppliers into consideration when establishing the numeric value; whereas Public Health Goals (PHGs) equate to *de minimis* (one in one million cases) level of risk for toxicity.

To date the Regional Water Board has relied on footnote 2 to Table 3-2 and the existing State Water Board policies to establish the most protective and attainable cleanup levels, often lower than the MCL. The Regional Water Board regularly adopts discharge permits and orders that implement taste and odor criteria as currently listed in Title 22, PHGs, and aquatic life criteria that are more stringent than current MCL values. Adopting a narrative groundwater toxicity objective will provide a more sound and more transparent regulatory standard to address the cleanup of toxic substances in groundwater for the protection of human health and the environment. However, adding the toxicity objective for groundwater will not fundamentally alter the limits that are included in future permits, orders, and other regulatory actions compared to the limits that have been included in existing permits to date using existing authorities and alternative justifications.

### **City of Santa Rosa**

#### **Comment: The Proposed Amendment to the Narrative Objective for Chemical Constituents**

Decoupling the objective from any particular beneficial use violates the water quality standard concept underlying both the federal Clean Water Act and the state Porter-Cologne Water Quality Control Act. Further, the Regional Water Board has not adequately justified or explained how the newly amended chemical constituents objectives will be applied or interpreted to protect beneficial uses not previously associated with these objectives, such as the COMM, SHELL, FISH, CUL, COLD, WARM, SPWN, WILD, and RARE beneficial uses, and what that might mean for those regulated entities that discharge into surface waters.

#### Response

The proposed changes to the chemical constituents objective is consistent with all other narrative objectives in the Basin Plan, which refer to adverse effect on beneficial uses and prevention of nuisance. A narrative objective structured in this way, provides that the Regional Water Board will establish on a case by case basis the most sensitive beneficial use and the appropriate effluent limitations/cleanup levels necessary to prevent adverse effect and nuisance. Similarly, the proposed changes are consistent with chemical constituents objectives in the basin plans of Regions 2, 3, 4, 5, 6, and 7. Only the numeric portion of the chemical constituents objective (i.e., a reference to the criteria contained in Title 22) need to be established for protection of a given beneficial use, as is the case here (i.e., MUN).

### **City of Santa Rosa**

#### **Comment: Prospective Incorporation of MCLs or Other Criteria**

The draft amendment attempts to prospectively incorporate by reference future changes to the California Toxic Rule, National Toxic Rule, State Water Board's Policy for the Implementation for Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP), and the drinking water MCLs contained in Title 22 of the California Code of Regulations. Such incorporation by reference of another agency's criteria is legally invalid, and fails to comply with water code, CEQA and administrative procedure act requirements.

#### Response

The prospective incorporation of MCLs and other criteria is appropriate, and adopted in the existing Basin Plans of Regions 2, 4, 5, 6 and 9. In *California Assn. of Sanitation Agencies v. State Water Resources Control Board* (2012) 208 Cal.App. 4th 1438, 1466 (CASA), the Fourth Appellate Court of California ruled in favor of the Central Valley Regional Water Board in regard to this matter. The Court found that the prospective changes in drinking water standards promulgated by the Department of Health Services (DHS) were properly incorporated by reference in the Basin Plan. The Court reasoned that DHS had statutory responsibility for drinking water standards that directly relate to the MUN beneficial use. Further, new standards are adopted through a public process pursuant to the Administrative Procedures Act (APA). In 2014, the Drinking Water Program moved from DHS to the State Water Board, establishing an even closer connection.

The same reasoning supports the prospective inclusion of the SIP, which is a policy of the State Water Resources Control Board (State Water Board). The State Water Board adopts policies through a public process pursuant to the APA. As such, prospective incorporation of future amendments to the SIP is allowable. However, this clarification is not legally necessary since the SIP and any revision thereto automatically supersede Basin Plan requirements.

### **City of Santa Rosa**

#### **Comment: Translation of Narrative Water Quality Objectives**

The Board appears to be abandoning the adoption of a specific water quality "translator" for narrative water quality objectives in favor of even more generalized guidance as to how narrative water quality objectives are to be interpreted and implemented in regulatory

orders. The city previously expressed concerns and favors clarity, not just as recommended, but required by applicable law.

In instances where numeric criteria are not available or cannot be ascertained from the EPA's guidance, states are allowed to establish narrative criteria sufficient to protect designated uses in the interim until numeric criteria are adopted. (*Id.*; 40 C.F.R. § 131.11(b)(2).) The requirement of a translator procedure is not only intended to give the public and regulated community fair notice of what is expected of them, but also to ensure that the narrative criteria have clear bounds and a rational basis for their implementation.

The Regional Board is proposing such a translator, but it fails to comply with state and federal law requirements. This translator must provide "information identifying the method by which the State intends to regulate point source discharges of toxic pollutants ... based on such narrative criteria."

#### Response

Title 40 of the Code of Federal Regulations, section 131.11(b)(2) provides: "Where a State adopts narrative criteria for toxic pollutants to protect designated uses, the State must provide information identifying the method by which the State intends to regulate point source discharges of toxic pollutants on water quality limited segments based on such narrative criteria. Such information may be included as part of the standards or may be included in documents generated by the State in response to the Water Quality Planning and Management Regulations (40 CFR part 35)."

There is no law requiring a translator policy for all narrative objectives.

Staff has proposed two versions of a translation policy for narrative water quality objectives; one in 2012 and another in 2013. In both cases, the draft translation policy appeared to cause increased confusion and the Regional Water Board received public comments to that effect; this, despite the fact that the intention of the draft translation policy was to provide greater clarity. As such, staff no longer proposes the adoption of a region-specific translation policy, and relies instead on the SIP as the mechanism to fulfill federal requirements. The current approach is simply to include a general explanation of water quality objectives and how they may be applied or considered in conjunction with antidegradation requirements in the wide array of regulatory and non-regulatory actions. The Staff Report contains a much more detailed description of various regulatory processes.

#### **City of Santa Rosa**

##### **Comment: Implementation Plan Requirements of Water Code Section 13242**

There is no implementation plan for the new objectives and a revised implementation plan must be considered. The proposed changes to the implementation plan chapter fail to satisfy the requirements of Water Code section 13242.

#### Response

A new or revised program of implementation is not necessary. As described in Chapter 2 of the Staff Report there are several programs, policies and plans in place to address chemical

constituents and toxic compounds. The cleanups, land disposals, WDR, and NPDES programs and orders in conjunction with the State Water Board Order No. 92-49 (as amended), Low Threat Closure Policy, OWTS Policy, State Implementation Policy, Policy for Compliance Schedules in NPDES Permits and the existing action plans within Section 4 of the existing Basin Plan all serve as components of the program of implementation. Additionally, the CEQA analysis and economic considerations in Chapter 4 and Chapter 5 of the revised Staff Report, respectively, outline a large list of compliance measures implemented through the existing regulatory framework.

The previous draft language for Section 4 of the Basin Plan described the basic existing authorities used to implement programs, policies and water quality objectives to protect beneficial uses. These authorities are the fundamental mechanisms of the program of implementation. This brief description was intended to be simply educational; however, it appears to have resulted in more confusion than clarity. As opposed to describing the authorities of the Regional Water Board we think it logical to simply address compliance with water quality objectives and retain the discussion on effluent limits and cleanup goals and other numeric criteria in Section 3 of the Basin Plan.

#### **City of Santa Rosa**

##### **Comment: Bacteria Objective for Surface Water**

Although requested by the City in 2013, the proposed amendments still do not propose modification to update the Basin Plan's current water quality objectives for bacteria. This is despite the fact that U.S. EPA recently modified the national water quality criteria guidance for bacterial indicators to protect recreational uses.

##### Response

The State Water Board is currently pursuing a statewide bacteria objective which will replace all regions' bacteria objectives. The current schedule for this effort is to be completed in spring 2016.

#### **City of Santa Rosa**

##### **Comment: The Term "Adversely Affect" Should Be Removed from Water Quality Objectives**

Many of the water quality objectives set forth in the proposed amendment, as well as existing water quality objectives set forth in the Basin Plan, state that waters should not contain substances that "cause nuisance or adversely affect beneficial uses." (See Current BP at 3-3.00 to 3-5.00). The term "adversely affect" is not defined in the Basin Plan and is inconsistent with state law, which requires "reasonable protection" of beneficial uses, and requires that uses are not "unreasonably" affected. (Cal. Wat. Code, §13241 (emphasis added).) Thus, the term "adversely affect" should be changed to "unreasonably affect" throughout Section 3 in order to achieve consistency with the Water Code.

##### Response

Staff acknowledges statutory provisions of the Porter-Cologne Water Quality Act that incorporate the concept of reasonable protection of beneficial uses. However, the phrase "shall not adversely affect beneficial uses or cause nuisance" is used in all nine water quality control plans approved by the Regional Water Boards and State Water Board as a

description of reasonable protection. The Regional Water Board proposes to maintain the words “adversely affect” as legal and appropriate. Further, we propose to use the term as appropriate in the groundwater toxicity objective for consistency with the existing Basin Plan.

### **City of Santa Rosa**

#### **Comment: Federal Antidegradation Policy**

The federal policy does not include a prohibition to discharges that would lower the quality of surface water that do not currently meet standards

#### Response

Thank you for your comments. Minor, nonsubstantive editorial changes are proposed by staff to improve the clarity and readability of the Antidegradation Policy section as part of this amendment. Substantive revisions to the Antidegradation Policy section were not scoped as part of this amendment project and must be addressed at a later time. A sentence has been added to clarify that the discussion does not in any way amend or alter state and federal law.

### **City of Santa Rosa**

#### **Comment: Footnote 2 in Table 3-2**

The footnote does not create carte blanche ability to use alternative cancer potency factors or other water quality goals as water quality objectives in lieu of those contained in Basin Plan Table 3-2.

#### Response

Footnote 2 to Table 3-2 was added in a 1993 Basin Plan amendment, intended to alert the reader to other policies that could apply, such as Res. No. 92-49. Chapters 2, 3 and 4 of the revised Staff Report provide expanded discussion on how the existing statewide policies relate to water quality objectives and the protection of beneficial uses; provide greater clarity on multiple occasions from which the Regional Water Board derives its authority to develop appropriate waste discharge controls.

### **City of Santa Rosa**

#### **Comment: Groundwater Definition**

The Groundwater Definition in Footnote 9 at page 3-11 is not consistent with the Water Code Definition Section 10721(g) and 10752 (a). The Regional Water Boards definition should not differ from the state law definition.

#### Response

The Groundwater Definition is an existing provision that is not changed by the proposed amendment. In addition, there is no legal requirement that the Basin Plan must have a definition of groundwater consistent with the definition under Water Code 10721. Definitions under Water Code section 10721 apply for the purpose of implementing the new Sustainable Groundwater Management Act adopted by the Legislature in 2014. It does not alter Water Board existing authority under current law. “Unless the context otherwise requires, the following definitions govern the construction of this part....” (Wat. Code, §

10721.) The Sustainable Groundwater Management Act is under Part 2.7, Division 6 of the Water Code, whereas the Porter-Cologne Water Quality Control Act is under Division 7.

Care has been taken by staff to include the appropriate definitions at the correct locations of the proposed amendment. In the context of the State and Regional Water Boards, the specific definitions are included in each of the respective Basin Plans. Section 2 of the Basin Plan states:

“Groundwater is defined as subsurface water in soils and geologic formations that are fully saturated all or part of the year. Groundwater does not include subterranean streams, which have the beneficial uses of surface water. It includes areas where saturation of the soils and geology fluctuate, including areas of capillary fringe. Groundwater bearing formations sufficiently permeable to transmit and yield significant quantities of water are called aquifers. A groundwater basin is defined as a hydrogeologic unit containing one large aquifer or several connected and interrelated aquifers.”

“Where an aquifer or a number of aquifers underlie a depression that is surrounded or nearly surrounded by hills or mountains, they make up a groundwater basin. Water-bearing geologic units that do not meet the exact definition of an aquifer occur throughout the Region within groundwater basins. For instance, there are shallow, low permeability zones throughout the Region that have extremely low water yields.”

“Therefore, for basin planning purposes, the term “groundwater” includes all subsurface waters, whether or not these waters meet the classic definition of an aquifer or occur within identified groundwater basins.”

Also, Section 3 of the Basin Plan states

“Groundwaters are any subsurface bodies of water which are beneficially used or usable. They include perched water if such water is used or usable or is hydraulically continuous with used or usable water.”

It is appropriate to maintain these definitions as they accurately reflect the physical properties and existing terminology that define groundwater in the Basin Plan.

### **City of Santa Rosa**

#### **Comment: Compliance Schedules in Nation Pollutant Discharge Elimination System Permits**

The changes to the Compliance with Water Quality Objectives and Schedules of Compliance sections in the Basin Plan ignore express language in the State Water Board Policy for Compliance Schedules in Nation Pollutant Discharge Elimination System Permits. This characterization ignores language which states “Nothing in this Policy precludes the Water Boards from authorizing compliance schedules as part of a new or revised standard that are longer than those authorized in the Policy, provide that the Water Boards adequately justify the compliance schedule length and that the State Water Board and U.S. EPA

approve the new or revised standard.” Thus the Basin Plan should continue to include independent authority for compliance schedules.

#### Response

Although the Compliance Schedule Policy does not preclude the North Coast Water Board from adding longer schedules of compliance for implementing new standards in NPDES permits, the longer schedules than authorized are subject to State Water Board and U.S.EPA approval. Staff has added language to reflect the current Policy.

#### **Comment: Page 5-30 uses the word publically instead of publicly**

#### Response

Thank you, comment noted.

#### **City of Santa Rosa**

#### **Comment: On page 3-13 of Appendix A, footnote 14, the phrase “may be” should be changed to “are only”**

#### Response

As noted above, by agreeing to remove aquatic life from the toxicity objective for clarity purposes the first sentence of the footnote will also be removed.

#### **City of Santa Rosa**

#### **Comment: Regulatory Clarity and Certainty**

Some level of regulatory certainty and predictability is crucial for the City to continue identifying and implementing novel and beneficial water-related projects, as well as undertaking long-range planning related to its collection, treatment, discharge, and reuse facilities.

These amendments are purportedly being pursued on the basis of ensuring regulatory transparency; however, as proposed, the modifications will actually obfuscate regulatory requirements and eliminate certainty in the regulatory process.

This sort of uncertainty is unreasonable, especially for public agencies currently facing economic strain and who must undertake long-term planning efforts to efficiently and effectively manage their infrastructure and operations.

#### Response

Clarity is a goal of the proposed Basin Plan amendment; however, it is not possible or prudent to specify numeric criteria outcomes for every possible regulatory scenario. Appropriate regulatory limits and assessment thresholds are necessarily derived based on a case-by-case evaluation and in accordance with the applicable law for that action. Currently the water quality objectives listed in Table 3-2 of the Basin Plan are not up to date and could be misleading to permit holders or municipalities attempting to plan future discharges to waters of the state. The proposed amendment seeks to remedy this particular issue by eliminating the outdated table. Compliance language is intended to clarify the applicability and implementation of water quality objectives under existing law. The proposed amendment does not seek to develop another list of numbers for chemical



constituents as this would perpetuate the existing problem of outdated numbers and still result in the issue of how to deal with numeric values not present in the table.

### **Russian Riverkeeper**

#### **Comment: Water Quality Objective for Toxicity in Surface Waters**

RRK thanks you for the revisions to the “Toxicity” Objective (Section 3.5.18) for surface waters where it was refined to clarify that the objective applies regardless of whether the toxicity is caused by a single substance or the interactive effect of multiple substances. This is a positive first step in recognizing the cumulative impacts of toxic substances in our environment. RRK recommends that the Toxicity Objective be further modified to recognize the biomagnification and bioaccumulative effects of toxic substances within the environment. As currently written, the Toxicity Objective ignores these impacts and only focuses on acute effects of toxics in the environment.

#### Response

The word “acute” was removed from the objective as recognition that the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California*, commonly known as the State Implementation Policy (SIP), includes criteria and methods for both acute and chronic toxicity. Therefore, removing the word acute is proposed to avoid misinterpreting the toxicity to apply only acute affects.

With regards to further modifications, the existing objective does implicitly encompass biomagnification and bioaccumulation.

“All waters shall be maintained free of toxic substances in concentration that are toxic to, or that produce detrimental physiological response in human, plant, animal, or aquatic life.”

Evidence of biomagnification and bioaccumulation would be viewed as detrimental physiological responses. Therefore, the objective is sufficient for addressing these potentially adverse effects.

### **Russian Riverkeeper**

#### **Comment: Groundwater Toxicity**

RRK agrees with your rationale for adopting a groundwater toxicity objective and clarifying how water quality objectives are implemented (Section 3.1, page 3-4)

#### Response

Thank you.

### **Russian Riverkeeper**

#### **Comment: Implementation of Narrative Water Quality Objectives**

RRK appreciates the inclusion of 6(c), on page 2-40, that states NCRWQCB Staff will use “the most appropriate numeric criteria derived from other relevant State or Federal laws, regulations, plans or policies, whichever provides the best and most appropriate protection of the most sensitive beneficial uses” and commends you for applying it elsewhere under

other existing programs of implementation particularly in cases where more stringent numerics developed by California Environmental Protection Agency (Cal/EPA) [California Public Health Goals (PHGs)] or USEPA [Integrated Risk Information System (IRIS)] are chosen over less stringent MCLs.

Response

Thank you.

**Russian Riverkeeper**

**Comment: Water Quality Objectives for Chemical Constituents**

RRK appreciates NCRWQCB Staff (1) “revising the narrative objectives for chemical constituents to clearly apply to the protection of all beneficial uses, not just AGR” and (2) “adding language regarding the prevention of nuisance, as required in Porter-Cologne”.

Response

Thank you.

**Russian Riverkeeper**

**Comment: Improved Clarity of Applications of Water Quality Objectives**

RRK commends the NCRWQCB for the clarity provided in this section as you described the regulatory tools by which the Regional Water Board achieves compliance with water quality objectives, particularly as it related to Appendix B 4.2, 4.3, 4.6 and 4.7.

With regards to comments on Chapters 5-7, RRK appreciates the thoroughness devoted to the discussions on CEQA, Economic Considerations, and Antidegradation.

Response

Thank you.

**Russian Riverkeeper**

**Comment: Groundwater Surface Water Hydrology**

RRK appreciates the high level of articulation given to surface water and groundwater issues that currently face the region, however, we found no mention of the relationship that exists between the two nor a discussion as to the interdependence between the two. On page 2-14, bottom of second paragraph, you state “Groundwater is likely to become an increasingly important source of domestic, municipal, and agricultural water supply, as a result of climate change and predicted effects on surface water discharge volumes and timing”, but you make no mention of the effect that increased groundwater pumping will have upon surface water.

Response

Staff would like to direct readers to the hydrology discussion (pages 2-15 through 2-17) of the revised Staff Report. The hydrology section discusses groundwater serving as base flows for streams throughout the region including the Russian River and mentions specific studies performed that indicate groundwater pumping impacts on stream flows in the Santa Rosa Plain and Scott Valley watersheds.

Additionally, the CEQA analysis in Chapter 5 (page 5-30) of the revised Staff Report states “Switching from surface water diversions to groundwater pumping could lower water table, reduce soil moisture, contribute to land subsidence and reduce aquifer storage capability” as potential impacts to agricultural and hydrology/water quality. In addition, potential impacts from pumping are evaluated in the CEQA checklist discussion sections for agriculture, greenhouse gases, hydrology/water quality, and noise.

### **Russian Riverkeeper**

#### **Comment: Table 3-2**

RRK appreciates NCRWQCB Staff (1) “revising the narrative objectives for chemical constituents to clearly apply to the protection of all beneficial uses, not just AGR” and (2) “adding language regarding the prevention of nuisance, as required in Porter-Cologne”. However, where the draft revisions specify (3) “deleting the outdated Table 3-2, Inorganic, Organic, and Fluoride Concentrations Not to be Exceeded in Domestic or Municipal Supply”, RRK advises staff to retain this table and reformat it along with updating it to reflect current numeric standards

#### Response

The State Water Board maintains webpages that link to title 22 of California Code of Regulations in addition to other current lists of federal MCLs, state MCLs and PHGs. Maintaining a table of values in the Basin Plan yet acknowledging that it may not be up to date would perpetuate the problem with outdated numbers that we are attempting to resolve through this amendment. As an alternative we propose adding weblinks to the State Water Board’s webpages on our Basin Plan website.

### **Sonoma County Water Agency**

#### **Comment: Pesticide Objective**

One page 3-9 the second sentence in the first paragraph reads:

“There shall be no bioaccumulation of pesticide concentration found in bottom sediments or aquatic life.”

Without knowing the existing conditions of the sediment or aquatic life, it is unclear how this narrative statement translates into a numeric value. The Water Agency suggest that this be rephrased to say

“Pesticide concentrations found in bottom sediments or aquatic life shall not contain any bioaccumulation that cause nuisance or adversely affect beneficial uses.”

#### Response

Staff agrees that the existing language is unclear with respect to its interpretation where legacy pesticide effects are present. Staff proposes revisions to the language to address the comments, as follows:

“There shall be no bioaccumulation of pesticide concentrations [found](#) in bottom sediments or aquatic life [that cause nuisance or adversely affect beneficial uses.](#)”