



Terry Tamminen
Secretary for
Environmental
Protection

California Regional Water Quality Control Board
North Coast Region

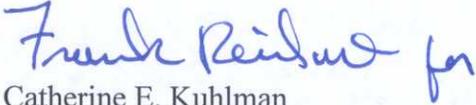
William R. Massey, Chairman

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Arnold
Schwarzenegger
Governor

TO: Stan Martinson, Chief
Division of Water Quality
State Water Resources Control Board

FROM: 
Catherine E. Kuhlman
Executive Officer
North Coast Regional Water Quality Control Board

DATE: February 27, 2004

SUBJECT: MINOR, NON-SUBSTANTIVE CORRECTIONS AND CLARIFICATIONS TO THE LANGUAGE OF THE BASIN PLAN AMENDMENT ADOPTED IN THE NORTH COAST REGIONAL BOARD RESOLUTION NO. R1 2003-0052 TO UPDATE THE BENEFICIAL USES CHAPTER (2).

At a Regional Water Board hearing on June 26, 2003, our Board members voted to amend the Basin Plan to update the Beneficial Uses Chapter (2). The Resolution, pursuant to Provision 4, permits the Regional Water Board Executive Officer to make minor, non-substantive corrections to the language of the Basin Plan Amendment if the Office of Administrative Law (OAL) or State Water Resources Control Board (State Water Board) determines during the approval process that the corrections are needed for clarity or consistency.

The explanations set forth below are provided for clarity. The items referred to in this letter numerically correspond to the document created by State Water Board entitled "Region 1 Beneficial Use Amendment," (Attachment A), which my staff received when they attended a meeting with your staff, and legal council Sheila Vassey, on February 4, 2004. Numbers 1-8 below correspond to the section entitled, "Critical Areas of Concern," on pages 1 - 2.

1. The Revised Staff Report dated July 2003 (following Regional Water Board adoption), was completed to incorporate the changes listed on the June 26, 2003 errata sheet (pg. 1261 of the record). The updated version serves the purpose of clarifying a few minor points that were presented at the last minute. No items of substance were changed in this updated version of the June 13, 2003 Staff Report.
2. At your suggestion, we have attached a separate Groundwater Table (Attachment B). This separate table is necessary as Table 2-1 is entitled "Surface Waters of the North Coast Region." The beneficial uses in the Groundwater Table 2-2, are identical to

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those previously identified at the end of Table 2-1, as adopted by the Regional Water Board on June 26, 2003.

3. We modified the Wetland Habitat (WET) description used by Region 4, and retained the Water Quality Enhancement (WQE) definition and the Flood Peak Attenuation/Flood Water Storage (FLD) definition adopted by Region 6.

WET is defined by Region 1 as "uses of waters that support natural and man-made wetland ecosystems, including but not limited to, preservation of unique wetland functions, vegetation, fish, shellfish, invertebrates, insects, and wildlife habitat." These unique wetland functions may include, but are not limited to FLD.

We believe that the WET definition developed by Region 4, by combining the existing definitions of FLD and WQE, fails to distinguish between the beneficial uses of waters and the beneficial uses of wetlands. Therefore, it loses the specificity that is necessary to differentiate these beneficial uses. For example, most but not all wetlands have the FLD beneficial use and the WQE beneficial use is not limited to wetlands. This differentiation between the three wetland beneficial uses is important when considering wetland mitigation for value and function. We have therefore, retained the FLD and WQE beneficial uses and modified the WET use to make it more specific than Region 4's definition.

6. A separate Native American Culture beneficial use is necessary for several reasons:
 - a. It is an existing use in the region and the Regional Water Board is required under Federal law to consider the water quality standards (including beneficial uses) of downstream waters (40 CFR 31.10). The Regional Water Board is proposing to designate this use in areas where information has been presented to support that the use exists currently or existed historically, thus meeting the definition of existing or potential.
 - b. The Cultural beneficial use has been approved by U.S. EPA in Water Quality Control Plans submitted by tribal entities, for common waterbodies in this region. U.S. EPA outlined their support for the proposed Beneficial Use Amendment, specifically the cultural and wetland beneficial uses, in a letter dated June 25, 2003 (p.p. 1279 - 1280 of the record).
 - c. Although the Cultural use has components that are similar to other beneficial uses, it should still be approved as a separate use. There are many beneficial uses that have overlapping components. For example, COLD, SPWN, MIGR and RARE all support salmonids. In addition, many of the beneficial uses support and are supported by the attributes of WILD.



7. We modified the Commercial and Sport Fishing (COMM) definition for clarity. The addition of the word "sport" was to clarify what is meant by the term "recreation," as it is present in the title "Commercial and Sport Fishing," but not in the definition. The word "aquatic" was added to the definition of the use to differentiate between aquatic organisms as compared to terrestrial organisms, as under the WILD beneficial use definition. These clarifications appear to have been overlooked by Regional and State Board staff during the statewide beneficial use reviews conducted in the early 1990's. In regard to the term "subsistence," we considered creating a separate use, but decided to incorporate the term "subsistence" into the existing use. We understand that State Board legal staff would prefer that it was a separate issue/use involving human health concerns and bioaccumulation and that State Board staff will begin working on this update to the statewide list of beneficial uses. When the State suggests an appropriate solution / definition for this use then, we will amend our Basin Plan to reflect this change.
8. State Board legal staff expressed concerns about controversy surrounding the Preservation of Areas of Special Biological Significance (BIOL) beneficial use update currently being heard at the State Board. This Statewide consistency issue recently reopened at the State Board hearings, and the issue has not yet been resolved. I understand that for these reasons, this item may be remanded back to us to be heard when this has been resolved. However, we request that State Board consider approval our modified definition of BIOL at this time. If after the conclusion of the hearings on the Ocean Plan, State Board finds that a change to our definition is necessary, we will make the appropriate revisions.

The SWRCB has determined that the corrections set forth below are necessary for clarity. Therefore, I hereby make the following minor, non-substantive corrections to the language of the Amendment. The following items (1 - 6 and A - D) correspond to the section of the State Board's summary document entitled "Beneficial Use Table 2-1 Inconsistencies," on pages 4 and 5. These inconsistencies were due to typographical errors and/or omissions, made during the drafting and copying process of several versions of the Beneficial Use Table.

1. **Pages of Table 2-1 are out of sequence.**

We concur. Pages 1237 - 40 of June 13, 2003 Staff Report and 1394 - 97 of July 2003 Revised Staff Report, should be rearranged to properly reflect the record.

2. **Middle Trinity HA (106.30)**

June 26, 2003 (adopted) version is correct with heading for the HA included. Heading missing from the May 15, 2003 Errata #2, June 13, 2003 Staff Report, and July 2003 Revised Staff Report. Add missing heading to May 15, 2003 Errata #2 (p. 1067), Staff Report (p. 1239), and the Revised Staff Report (p. 1396).



3. Ukiah HSA (114.31)

June 26, 2003 (adopted) version is correct, POW is E. POW proposed P to E in June 26, 2003 Errata #1 (p. 1261), correct the Revised Staff Report (p. 1395) to E.

4. Guerneville HSA

June 26, 2003 (adopted) version is correct, POW is P. POW proposed E to P in June 26, 2003 Errata #1 (p. 1261), correct the Revised Staff Report (p. 1395) to P.

5. Austin Creek HSA (114.12)

June 26, 2003 (adopted) version is correct, POW is P. POW proposed E to P in June 26, 2003 Errata #1 (p. 1261), correct the Revised Staff Report (p. 1395) to P.

6. Laguna HSA (114.21)

The designation for POW should be corrected to P (potential) as indicated in the May 15, 2003 Errata #2 (p. 1070) and June 13, 2003 Staff Report (p. 1238). This correction should have been made to the June 26, 2003 version of Table 2-1, but was inadvertently overlooked. Correct June 26, 2003 version of Table 2-1 to P on page 1301.

7. Laguna HSA (114.21)

June 26, 2003 (adopted) version is correct, BSA is E. BSA propose add E in June 26, 2003 Errata #1 (p. 1261). Correct the Revised Staff Report (p. 1395) to E.

8. Orleans HSA (105.12)

The June 26, 2003 (adopted) version of Table 2-1 is accurate as EST was correctly designated as blank. The draft versions of the Table (May 15, 2003 Errata #2 p. 1065, June 13, 2003 Staff Report p. 1240, and July 2003 Revised Staff Report p. 1397) were inadvertently designated E. EST should be blank as this HSA does not support the EST beneficial use, which is present in the HSA containing the Klamath River estuary (105.11). This use was previously designated to the entire Lower Klamath River HA (105.00) and we wish to now designate the use to a more refined area (HSA 105.11). Correct May Errata #2 (p. 1065), Staff Report (p. 1240), and Revised Staff Report (p. 1397) to blank.

- A. **Guerneville HSA (114.11)** The June 26, 2003 (adopted) version is correct, SHELL is P. SHELL proposed add as P in June 26, 2003 Errata #1 (p. 1261). Correct Revised Staff Report (p. 1395) to P.



- B. **Shasta Valley HA (105.5)** We purposefully divided this HA to a finer level (by waterbody), as there are not any Hydrologic Subareas (HSAs) within that particular Hydrologic Area (HA), and the beneficial uses differ somewhat within the HA. This information is contained within in the Calwater classification system, which is explained in the Staff Report dated June 13, 2003 (Exhibit B, p. 1168 of the record).
- C. **Eureka Plain Hydrologic Unit (110.00)** Similarly to B (above), we designated uses to the specific waterbodies within the HU as there are not any HAs or HSAs within this particular HU as defined by the Calwater classification system.
- D. **Eel River Hydrologic Unit (111.00)** We concur that the entire entry for this HU was inadvertently omitted from Table 2-1 in the draft Staff Report dated June 13, 2003 and in the July 2003 Revised Staff Report. This HU was however, present in adopted Amendment (Exhibit A, page 1299 of the record) and also included in the May 15, 2003 Errata Sheet #2 (p. 1068 of the record). Add the missing entry to June 13, 2003 Staff Report (p. 1237), and July, 2003 Revised Staff Report (p. 1394).

We appreciate the opportunity to clarify the above items and look forward to assisting your staff at the upcoming workshops and hearing in March and April.

(finaleoltrbua2-27)



Region 1 Beneficial Use Amendment

Critical areas of concern:

1. June 13, 2003 proposed amendment language (Exhibit A) pp 1292-1314, and staff report (Exhibit B) pp 1165-1246 are presented. June 26, 2003 Board Minutes pp 1316-1326 are presented. Then a revised July 2003 staff report (Exhibit B) pp 1328-1401 is included – it is not clear how this revised staff report was approved by the Regional Board as part of the resolution.
2. Revised beneficial use table in Exhibit A pp 1296-1302 is titled “2-1 Beneficial Uses of Surface Waters of the North Coast Region.” At the end of the table pp 1302, listed as a category under Hydrologic Unit, Groundwater needs to be listed in a separate table for clarity.

Background pertaining to the next three areas of concern (#3, 4, and 5). The standard definition for WET was approved in order to protect wetlands for the Region 4 Basin Plan (SWRCB, November 1994). The standard definitions for WQE, along with FLD were both approved in order to protect wetlands for the Region 6 Basin Plan (SWRCB, January 1995). Currently, no other Regional Basin Plans include these beneficial uses. The proposal here to adopt all three beneficial uses (WET, FLD, and WQE) is rather redundant and duplicative since the definition of WET includes all of the attributes cited in FLD and WQE (proposal lacks the OAL requirements of clarity and necessity, plus consistency by proposing to modify two of the definitions).

3. Modification of the Wetland Habitat (WET) beneficial use definition p 1334. For comparison, the Administrative Procedures Manual and proposed revision definitions are attached below for item #4. The existing definition is a clear, concise, and scientifically valid description that includes consideration of all attributes/functions of a wetland ecosystem. The proposed definition lacks clarity by not indicating what protection of “unique wetland functions” are (flood and erosion control, stream bank stabilization, and filtration and purification of naturally occurring contaminants to enhance downstream water quality). The proposed definition also increases the list of specific wetland animals (adding invertebrates and insects), but deletes the category “wildlife” included in the standard definition, which covers invertebrates, insects, bacteria, vertebrates including reptiles and amphibians, mammals, resident and migratory birds, etc. The proposed definition is unclear and inadequate, and no justification is provided for making these changes (the reason given is that the Regional Board has decided to separate the three definitions). If discussion of the wetland ‘man-made’ ecosystem is desired it could be included in Chapter 2 under the already proposed heading Wetland Identification, Delineation and Regulating p 1312 using the title ‘Constructed Wetlands for Mitigation’, in order to clarify the difference from Constructed Treatment Wetlands (heading and discussion proposed on p 1312).
4. Modification of the Water Quality Enhancement (WQE) beneficial use definition pp 1333-1334. Original intent of the definition was to describe wetlands, not “virtually all surface waters”, and is properly characterized by the justification description provided ‘to give special recognition to the value wetlands provide in improving the water quality of other surface waters. U.S. EPA cites water filtration as one of the many benefits wetlands provide...’ Thus the proposed insertion of including wetlands and other waterbodies is not appropriate, the use was never intended to apply to all waterbodies. For clarity and consistency there is no valid justification for inserting the language and other waterbodies.

Beneficial Use Table 2-1 Inconsistencies

1) Pages of Table 2-1 out of sequence

June 13, '03 Staff Report (Ex B)		rearrange	p. 1237-40
July '03 Revised Staff Report (Ex B)		rearrange	p. 1394-97

2) 106.30 Middle Trinity HA

June 13, '03 Staff Report (Ex B)	heading missing		<i>heading missing from MAY 15 03 ERRATA #2 (p.1067)</i>
June 26, '03 adoption (Ex A)	included		
July '03 Revised Staff Rpt (Ex B)	missing	correct by insertion ← ALL 3	

3) 114.31 Ukiah HSa

June 13, '03 Staff Report (Ex B)	POW is P		<i>POW proposed E to P May 15 03 ERRATA #1 (p.1060)</i>
June 26, '03 adoption (Ex A)	POW is E		
July '03 Revised Staff Rpt (Ex B)	POW is P	correct to E	

4) 114.11 Guerneville HSa

June 13, '03 Staff Report (Ex B)	POW is E		<i>POW proposed E to P June 26 03 ERRATA #1 (p.1261)</i>
June 26, '03 adoption (Ex A)	POW is P		
July '03 Revised Staff Rpt (Ex B)	POW is E	correct to P	

5) 114.12 Austin Creek HSa

June 13, '03 Staff Report (Ex B)	POW is E		<i>POW proposed E to P June 26 03 ERRATA #1 (p.1261)</i>
June 26, '03 adoption (Ex A)	POW is P		
July '03 Revised Staff Rpt (Ex B)	POW is E	correct to P	

6) 114.21 Laguna HSa

June 13, '03 Staff Report (Ex B)	POW is P		<i>POW listed P May 15, 03 ERRATA #2 (p.1070)</i>
June 26, '03 adoption (Ex A)	POW is E		
July '03 Revised Staff Rpt (Ex B)	POW is P	correct to E P	

7) 114.21 Laguna HSa

June 13, '03 Staff Report (Ex B)	BSA is blank		<i>BSA propose add E June 26 03 ERRATA #1 (p.1261)</i>
June 26, '03 adoption (Ex A)	BSA is E		
July '03 Revised Staff Rpt (Ex B)	BSA is blank	correct to E	

8) 105.12 Orleans HSa

June 13, '03 Staff Report (Ex B)	EST is E		<i>EST designated E May 15.03 ERRATA #2 (p.1063)</i>
June 26, '03 adoption (Ex A)	EST is blank		
July '03 Revised Staff Rpt (Ex B)	EST is E	correct to blank	

A) 114.11 Guerneville HSa

June 13, '03 Staff Report (Ex B)	SHELL is blank		<i>SHELL propose add P June 26 03 ERRATA #1 (p.1261)</i>
June 26, '03 adoption (Ex A)	SHELL is P		
July '03 Revised Staff Rpt (Ex B)	SHELL is blank	correct to P	

Table 2-3 Beneficial Uses of Groundwater
in the North Coast Region

BENEFICIAL USES																											
MUN	AGR	IND	PRO	GWR	FRSH	NAV	POW	REC1	REC2	COMM	WARM	COLD	BSA	SAL	WILD	RARE	MAR	MIGR	SPWN	SHELL	EST	AQUA	CUL	FLD	WET	WQE	
☐	☐	☐	☐																			☐	☐				



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

RWQCB
REGION 1

JUN 30 2003

June 25, 2003

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ANC 7-1-03

Lauren Clyde
North Coast Regional Water Quality Control Board
Planning Unit
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95403

Re: Comments in support of the proposed Beneficial Use amendments to the Water Quality Control Plan for the North Coast Region regarding wetlands and cultural uses.

Dear Ms. Clyde:

The U.S. Environmental Protection Agency (EPA) Region 9 has been coordinating with you and others of the North Coast Regional Water Quality Control Board (NCRWQCB) on the subject beneficial use amendments to the Water Quality Control Plan. In this letter, we focus only on the new beneficial uses proposed for wetlands and cultural uses. EPA continues to review the other provisions of the proposed amendment.

WETLANDS

The NCRWQCB's proposal of the addition of three beneficial uses regarding wetlands is a step in the right direction toward the protection of these valuable, functional and unique water bodies. EPA strongly supports the proposed designation of beneficial uses to protect wetlands. We recommend that the Board adopt these changes.

The goal of the Clean Water Act (CWA) is to restore the chemical, physical and biological integrity of waters of the United States. Properly functioning wetlands are critical for achieving this goal. Hence, protection of wetlands and their functions has to be an essential element of an effective water quality control program. EPA has, thus, encouraged states to adopt water quality standards, i.e., assign beneficial uses and establish criteria to protect those uses, to protect wetlands. The current proposal to designate uses for wetlands is an important step and is consistent with EPA's national guidance set forth in *Water Quality Standards for Wetlands* issued in 1990.

The proposed beneficial use "Water Quality Enhancement" (WQE) recognizes and addresses important functions of wetlands that increase the quality of water and habitat: erosion control, filtration and purification of water pollutants, thermal modification and siltation control. These are all functions of wetlands that increase the water quality of adjacent water bodies.

The addition of Flood Peak Attenuation/Flood Water Storage (FLD) proposed beneficial use recognizes the important function of wetlands of water storage and buffering of passage of water from uplands through the wetlands to receiving water bodies. This function is a valuable use of wetlands, without which might lead to water quality degradation of adjacent water bodies.

The proposed changes to the beneficial use "Wetland Habitat" (WET) reflects the refinement of beneficial uses that allow for protections where they are relevant. This use recognizes that wetlands serve as vital habitat for the protection and propagation of aquatic life and wildlife.

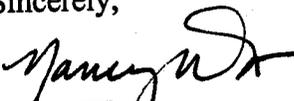
CULTURAL USE

EPA supports the addition of the beneficial use "Cultural" (CUL) to the specified water bodies in the amendments to the NCRWQCB Water Quality Control Plan. We recognize the rights of Native Americans, as well as States to designate uses and protect water quality for those uses within their jurisdiction. Tribes have adopted such uses on water bodies shared, and downstream from, the NCRWQCB. To adopt the CUL use reflects, and is a reminder of, the importance of protecting downstream water quality standards and the varied uses by Native Americans. This is consistent with the regulations (40 CFR 131.10(b)) which provides that "the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters."

EPA recognizes that the action currently being considered is to establish the CUL beneficial use and to rely on existing water quality objectives to protect the use. No new water quality objectives designed specifically to protect the CUL use is being proposed, or deemed necessary at this time. As such, and as noted previously, the designation of CUL serves to remind everyone that there are important downstream uses that must be considered when approving or authorizing any upstream activity.

In summary, we reiterate our strong encouragement to adopt the wetland and CUL uses as proposed. We believe this will strengthen the NCRWQCB water quality program and its ability to protect these vital resources. We look forward to continuing to work with the NCRWQCB to protect and improve water quality in the North Coast. If you have any questions or would like to discuss this matter further, please contact Suesan Saucerman at 415.972.3522 or saucerman.suesan@epa.gov.

Sincerely,



Nancy Woo
Acting Associate Director