California Regional Water Quality Control Board
North Coast Region

Resolution No. R1-2013-0058

Amending the Water Quality Control Plan for the North Coast Region to include the Policy for the Implementation of the Water Quality Objectives for Temperature, and Action Plans to Address Temperature Impairments in the Mattole, Navarro, and Eel River Watersheds

WHEREAS, the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), finds that:

1. The purpose of the *Policy for the Implementation of the Water Quality Objectives for Temperature* (Temperature Policy, Attachment 1) is to describe the range of tools available for protection against anthropogenically elevated water temperatures to remediate, restore, and protect temperature-impaired waterbodies and to control the cumulative impacts of elevated water temperature on other waterbodies. It affirms the need to address water temperatures region-wide, but on a case-by-case basis in the context of a given permit or other action to reduce impairments and prevent further impairment. It directs staff to continue implementing temperature Total Maximum Daily Loads (TMDL) through regional nonpoint source programs, permits, waivers, and enrollments as appropriate, and to work with other agencies to address elevated water temperatures.

2. In 2012, the Regional Water Board adopted Resolution No. R1-2012-0013, the *Policy Statement for the Implementation of the Water Quality Objective for Temperature* (Resolution, Attachment 2), which the Temperature Policy incorporates by reference. The Resolution describes in one cohesive document the Regional Water Board's efforts to date in implementing temperature objectives and guidance on the range of implementation tools to apply for temperature protection in future programs and permits, including coordination with other federal, state, and local agencies to the extent possible. The Resolution articulates in further detail ongoing and future efforts for implementing temperature controls in a site- or activity-specific context.

3. The Temperature Policy directs Staff to examine and address temperature when developing permits. At a minimum, any program or permit should implement temperature shade load allocations in areas subject to existing temperature TMDLs, including EPA-established temperature TMDLs. Any program or permit should implement riparian management measures, sediment controls, and stream flow considerations in coordination with the State Water Resources Control Board Division of Water Rights and other local, state, and federal agencies to the extent possible region-wide as appropriate and as necessary to address and prevent further impairments.

4. The *Action Plans to Address Elevated Water Temperature in the Eel River Watershed, Navarro River Watershed, and Mattole River Watershed* (Action Plans, Attachment 3) will implement the USEPA-established Eel River, Navarro River, and Mattole River

TMDLs.[1] The Action Plans each include a standalone implementation plan applicable to actions addressing temperature impairments in each watershed. The Action Plans are consistent with the more general Temperature Policy, but include more specificity on actions to take place in the individual watersheds.

5. Under Clean Water Act section 303(d)(2), once USEPA establishes a TMDL, the state must incorporate the TMDL into its water quality management plan, which includes the Basin Plan and other plans developed as part of the state's continuing planning process under Clean Water Act section 303(e). The Temperature Policy and Action Plans will become part of the Basin Plan, and be considered part of the continuing planning process under Clean Water Act section 303(e). The Temperature Policy not only implements existing temperature TMDLs, but is intended to implement future temperature TMDLs and prevent additional temperature impairments to avoid the need for further listings.

6. Water Code section 13242 requires that a program of implementation for achieving objectives include: 1) a description of actions necessary for achieving water quality objectives, including recommendations for appropriate action by any entity, public or private; 2) a time schedule for actions to be taken; and 3) surveillance to be undertaken to determine compliance with objectives. The Temperature Policy and Action Plans meet the requirements of section 13242. First, the Policy and Action Plans describe multiple actions that are necessary for achieving the water quality objectives for temperature. The Policy directs Regional Water Board staff to prevent, minimize, and mitigate temperature alterations associated with various factors through a combination of riparian management and other temperature controls as appropriate in nonpoint source control programs; permits and waivers, grants and loans, and enforcement actions; support of restoration projects; and coordination with other agencies with jurisdiction over controllable factors that influence water temperature. This sufficiently describes actions necessary for achieving water quality objectives and includes recommendations for appropriate actions by other entities.

7. Second, the Temperature Policy and Action Plans include a time schedule for actions to be taken, albeit somewhat less structured to accommodate the multi-faceted approach. Generally, the time schedule for the entire Temperature Policy can be summarized as "current and ongoing." Specific time schedules for certain activities vary depending on the action described. The Temperature Policy references the

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[1] The USEPA has established the following temperature TMDLs:

- *Lower Main Eel River* (December 18, 2007)
- *North Fork Eel River* (December 30, 2002)
- *Middle Fork Eel River* (December, 2003)
- *South Fork Eel River* (December 16, 1999)
- *Middle Main Eel River* (December, 2005)
- *Upper Main Eel River* (December 29, 2004)
- *Mattole River* (December 30, 2002)
- *Navarro River (*December, 2000)

development of future nonpoint source permitting programs, such as the Agricultural Lands Discharge Program. This Program and others like it have their own separate processes and time schedules. Other Policy components rely on the actions of other agencies, such as the Division of Water Rights, and cannot be specifically scheduled or otherwise dictated by the Regional Water Board.

8. Finally, the Temperature Policy includes a surveillance component to determine compliance with objectives. The temperature implementation work plan and associated three-year cycle of review allows for the actions taken by the Regional Water Board to be discussed and re-evaluated in a public manner, on a regular basis. In addition, the Policy directs the development of a regional temperature trend monitoring program to ensure the Temperature Policy is effective.

9. The language included in the Temperature Policy and Action Plans is necessarily broad to articulate a general strategy and to avoid the discussion of specific programs and permits. This structure eliminates the problem of antiquated language in the Basin Plan as programs and permits are developed and implemented over time. In contrast, the Resolution describes specifically how riparian management and other temperature controls are or will be incorporated into region-wide permits. Similarly, the temperature implementation work plan (Policy action #12) provides a vehicle to describe and update the specific actions to implement the Policy.

10. The approach articulated in the Policy is consistent with the Regional Water Board's existing approach to addressing temperature. It has been described as a "tool box" because it collects in one place all the tools available to the Regional Water Board to address temperature concerns. In recent years the Regional Water Board has been addressing temperature concerns consistent with this Policy; however, it is important for the Regional Water Board to describe its approach to temperature in one place in the Basin Plan for clarity and to ensure consistent implementation. It also incorporates TMDLs into the state's water quality management plan as required under Clean Water Act section 303(d)(2).

11. The Regional Water Board's planning jurisdiction is broader than its permitting jurisdiction. "Water Quality Control" means the regulation of any activity or factor which may affect the quality of the waters of the state…." (Wat. Code, § 13050, subd. (i).) The Temperature Policy is meant to be comprehensive, and thus describes a full range of temperature implementation actions, both within the Regional Water Board's permitting jurisdiction, and actions outside of the Regional Water Board's permitting jurisdiction. This includes voluntary measures, restoration grants, and actions that other agencies may take. This concept is consistent with the high-altitude and programmatic approach of the Policy. Again, additional specifics are better articulated via Resolution No. R1-2012-0013 and the temperature implementation work plan, considering the many components of the Policy and their ongoing implementation.

12. The Temperature Policy does not specify any prescriptions for any land use activity. The Resolution contains a detailed discussion of temperature protection measures in the context of region-wide nonpoint source programs including riparian management. The Resolution describes how in many instances the same management measures can address multiple sources of pollution, and how incorporating TMDL implementation into broad-based nonpoint source programs can increase efficiency and avoid overlapping water quality regulation. The Resolution includes an extensive discussion on how the Regional Water Board can, and often does rely on existing non-Water Board programs if those actions will result in attainment of water quality standards, with a focus on the significant progress made in this regard for timber harvesting.

13. The term "site potential effective shade" illustrates a general concept, but should not be construed as a hard and fast standard. Load allocations are not automatically enforceable; rather, they must be translated and implemented through some sort of permitting mechanism and for the Regional Water Board this is generally through implementation of best management practices for nonpoint source land use activities. Compliance is generally achieved by not removing or hindering vegetation that provides shade to a waterbody. This is accomplished by managing riparian areas differently than the surrounding land. Riparian buffers are also important for controlling sediment and other pollutants. The Resolution makes clear that relevant factors should be evaluated when determining shade controls and preserves the Regional Water Board's discretion to develop management measures as appropriate for a specific land use or geographic area. The Resolution and the *Staff Report Supporting the Policy for the Implementation of the Water Quality Objectives for Temperature and Action Plan to Address Temperature Impairment in the Mattole River Watershed, Action Plan to Address Temperature Impairment in the Navarro River Watershed, and Action Plan to Address Temperature Impairment in the Eel River Watershed* (Staff Report) provides more detail on how this term can be applied in a site- or activity-specific context. The Resolution states in its description of site potential effective shade that the "policy is not intended to predetermine precise parameters for effective shade for a specific location or land use." (Resolution at 6.)

14. The scientific basis of the Temperature Policy and Action Plans has been reviewed by external scientific peer reviewers in accordance with section 57004 of the California Health and Safety Code. Regional Water Board staff submitted a peer-review draft Staff Report in February 2013 to three external scientific peer reviewers. The following individuals provided scientific peer review of the Peer Review Draft Report:
    1) Sally E. Thompson, Ph.D., Department of Civil and Environmental Engineering University of California
    2) John C. Stella, Ph.D., Department of Forest and Natural Resource Management State University of New York
    3) Mark T. Stacey, Ph. D., Department of Civil and Environmental Engineering University of California

Regional Water Board staff revised the Staff Report in response to peer review comments, or provided a written response that explained the basis for not making the suggested revisions.

15. Consistent with the California Code of Regulations, title 23, sections 3778-80, the Regional Water Board has provided extensive outreach and opportunity for public comment on the proposed Basin Plan amendment. Stakeholder involvement has occurred through numerous venues, including public meetings, presentations to the Regional Water Board, presentations at other organization's meetings and conferences, an informational webpage, informational e-mails, correspondences, and public comment periods since 2011. Staff also organized meetings with environmental interested parties on June 26, 2013, Farm Bureau representatives on August 9, 2013, and forestry representatives on August 13, 2013. Additionally, the Regional Water Board held a workshop on the Temperature Policy and Action Plans during its regularly scheduled meeting on September 26, 2013.

16. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) requirements for preparing environmental documents. (Cal. Code Regs., tit. 14, § 15251, subd. (g); Cal. Code Regs., tit. 23, § 3782.) The Substitute Environmental Documents (SED) includes the Staff Report, the environmental checklist and analyses, the comments and responses to comments, and the Basin Plan amendment language.

17. In preparing the accompanying SED, the Regional Water Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and intends the SED to serve as a programmatic review. Many of the compliance obligations will be undertaken or approved by public agencies that will have separate obligations under CEQA. Project-level impacts will need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2.

18. The Regional Water Board has solicited comments from interested persons and governmental agencies regarding the scope and content of the environmental information included in the SED. On February 5th, 2013, the Regional Water Board circulated a Notice to Hold CEQA Scoping Meetings for a Proposed Amendment to the Water Quality Control Plan for the North Coast Region Incorporating a Policy for the Implementation of the Water Quality Objective for Temperature and Temperature TMDL Action Plans for the Navarro, Eel, and Mattole River Watersheds. On February 15th, 27th and 28th, 2013, Regional Water Board staff held scoping meetings in Santa Rosa, Bayside, and Yreka, California, respectively.

19. Drafts of the Temperature Policy, Action Plans and Staff Report were available for formal public review and comment. The complete versions of the draft Temperature Policy, Action Plans, and Staff Report (which constitute the SED), were

available for public review and comment on August 30, 2013. The public comment period closed on October 14, 2013, allowing a 45-day review and comment period. Regional Water Board staff received and responded to 17 comment letters on the draft documents. The documents and other materials that constitute the record of proceedings on which the Regional Water Board findings are based are maintained in a public file and are located at North Coast Regional Water Quality Control Board, 5550 Skylane Blvd., Suite A, Santa Rosa, California, 95403. This information is provided consistent with Public Resources Code §21081.6(a)(2) and title 14, California Code of Regulations, §15091(e).

20. The adoption of the Temperature Policy and Action Plans as a Basin Plan amendment is a regulatory action subject to the requirements of section 21159 of the Public Resources Code. Consistent with the requirements of that section, the CEQA Environmental Checklist includes an analysis of environmental impacts, mitigation measures to reduce or avoid those impacts, and alternative means of compliance that would avoid or eliminate environmental impacts (Pub. Resources Code, § 21159, subd. (a)(1)-(3); Cal. Code Regs., tit. 14, §§ 15187, subds. (b), (c)(1)-(3), 15189.) The analysis takes into account a reasonable range of environmental, economic, and technical factors.

21. The Regional Water Board has identified potentially significant impacts, including potentially significant cumulative impacts, that are less than significant with mitigation incorporated to the following resources:
    - Aesthetics;
    - Agriculture;
    - Air quality;
    - Biological resources;
    - Cultural resources;
    - Geology and soils;
    - Greenhouse gases (GHGs);
    - Hazards and hazardous materials;
    - Hydrology and water quality;
    - Land use / planning;
    - Noise;
    - Public services;
    - Recreation;
    - Transportation/traffic; and
    - Utilities and service systems.

22. The Regional Water Board has identified potentially significant impacts, that may be unavoidable to the following resources:
    - Agricultural resource and forested lands;
    - Cultural resource;
    - GHGs;
    - Hydrology/water quality;
    - Noise;
    - Recreation; and

- Utilities and service systems

23. Most of the potentially significant impacts would be expected to be short term. Individual project-specific CEQA review will be necessary in some cases, as appropriate. Many can and will be mitigated to less than significant levels with the implementation of specific mitigation measures. However, because of the programmatic nature of this CEQA analyses, it is not possible to say with certainty that all impacts will be mitigated to less than significant levels. Identified mitigation will become enforceable in permits and other orders by the Regional Water Board, but we cannot be certain that other agencies will adopt the recommended mitigation for activities under the jurisdiction of other agencies. As a result, even impacts identified as less than significant with mitigation incorporated must also be considered unavoidable at this time. In addition, as discussed below, an agency may approve a project that will have significant impacts even after all feasible mitigation if the agency finds that the benefits outweigh the adverse impacts. (Pub. Resources Code, § 21081, subd. (b).) This balancing requires consideration of specific overriding social, economic, legal, technical, or other beneficial aspects of the project that justify approving the project despite the unavoidable impacts. The findings should state the agency's rationale for its decision, and may be appropriate in a restoration or other context.

24. Consistent with Public Resources Code section 21081(b), specific overriding economic, legal, social, technological or other benefits may outweigh the unavoidable adverse environmental impacts. These benefits include improved aesthetic resources, biological resources, geology and soils, hydrology and water quality, and recreation. Attaining and sustaining stream temperatures that support the cold freshwater habitat beneficial use, the beneficial use most sensitive to temperature, is also vital to supporting the socioeconomic background of the region due to the role that cold freshwater streams play in supporting recreational, commercial and subsistence fishing. These benefits are not only supportive of several threatened and endangered species, but also of local economies, communities, and cultures throughout the North Coast. The Regional Water Board finds that the potentially significant, unavoidable environmental impacts could be acceptable in light of the benefits set forth above for the attainment and protection of beneficial uses, and that each of the benefits constitute an overriding benefit warranting approval of the Basin Plan amendment, independent of the other benefits. Of course, each site-specific activity must be evaluated on a project level to balance the factors in an individual given context.

25. The Regional Water Board has considered the costs of implementing the Temperature Policy and Action Plans, and finds these costs to be reasonable and minimal relative to the benefits derived from implementing the actions.

26. The Temperature Policy and Action Plans must be submitted for review and approval by the State Water Resources Control Board, then the State Office of Administrative Law.

27. The Temperature Policy and Action Plans will become effective upon submittal of the CEQA filing fee to the California Department of Fish and Wildlife, which will be submitted following approval by the Office of Administrative Law.

28. Occasionally during its approval process, Regional Water Board staff, State Board, or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity and consistency. Under such circumstances, the Executive Officer should be authorized to make such changes, provided that the Board is informed of any such changes.

THEREFORE, BE IT RESOLVED THAT:

The Regional Water Board:

1. Certifies the final Substitute Environmental Documents, which were prepared in accordance with the requirements of the State Water Board's certified regulatory CEQA process, and directs the Executive Officer or designee to file a Notice of Decision after the Temperature Policy and Action Plans are approved by the Office of Administrative Law to the Secretary for Natural Resources pursuant to the California Code of Regulations, title 23, section 3781, and Public Resources Code section 21080.5(d)(2)(E).

2. Pursuant to section 13240 and 13242 of the Water Code, the Regional Water Board hereby adopts, as an amendment to the Basin Plan, the *POLICY FOR THE IMPLEMENTATION OF THE WATER QUALITY OBJECTIVES FOR TEMPERATURE* as set forth in Attachment 1 to this Resolution and as supported by the Substitute Environmental Documents.

3. Pursuant to section 13240 and 13242 of the Water Code, the Regional Water Board hereby adopts, as an amendment to the Basin Plan, the *ACTION PLAN TO ADDRESS ELEVATED WATER TEMPERATURES IN THE EEL RIVER WATERSHED*, the *ACTION PLAN TO ADDRESS ELEVATED WATER TEMPERATURES IN THE NAVARRO RIVER WATERSHED* and the *ACTION PLAN TO ADDRESS ELEVATED WATER TEMPERATURES IN THE MATTOLE RIVER WATERSHED* as set forth in Attachment 3 to this Resolution and as supported by the Substitute Environmental Documents.

4. The Executive Officer is hereby directed to forward copies of the Temperature Policy, Action Plans, and the administrative record to the State Water Resources Control Board in accordance with the requirements of section 13245 of the California Water Code.

5. The Regional Water Board hereby requests the State Water Resources Control Board approve the Temperature Policy and Action Plans in accordance with sections 13245 and 13246 of the California Water Code. If approved, the Regional Water Board Executive Officer shall forward the Temperature Policy and Action Plans to the Office of Administrative Law.

6. If, during the approval process, the State Water Resources Control Board or the Office of Administrative Law determines that minor, non-substantive corrections to the language of the Temperature Policy and Action Plans are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Regional Water Board of any such changes.

Certification

I, Matthias St. John, Executive Officer,
do hereby certify that the foregoing is a
full, true, and correct copy of a
Resolution adopted by the California
Regional Water Quality Control Board,
North Coast Region, on November 20, 2013.

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Matthias St. John
Executive Officer