

Policy for
Aquatic Ecosystem Restoration
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Introduction and Project Description

The North Coast Regional Water Quality Control Board (Regional Water Board) has adopted the Water Quality Control Plan for the North Coast Region (Basin Plan) which it amends from time to time. The Basin Plan establishes the regulatory framework within which the Regional Water Board exercises its responsibility to implement the Porter-Cologne Water Quality Control Act (Porter-Cologne) in the North Coast Region. The Basin Plan designates the beneficial uses of surface and groundwater in the region. It establishes the water quality objectives (WQOs) deemed necessary to protect the beneficial uses. It establishes the pollutant control actions to be implemented for the purpose of meeting the WQOs and protecting beneficial uses, including discharge prohibitions. In addition, it identifies the surveillance and monitoring actions to be implemented to determine if the goals of the Basin Plan are being met.

Restoration is an important tool for achieving water quality conditions sufficient to protect and restore beneficial uses. The Regional Water Board currently supports restoration through grant funding, permitting, monitoring, and technical and regulatory assistance, primarily on a project-by-project basis.

This document describes a proposed action by the Regional Water Board to amend the Basin Plan to include a “Policy for Aquatic Ecosystem Restoration” (Restoration Policy).¹ The goal of the proposed Restoration Policy is to provide greater permitting certainty to those qualifying Aquatic Ecosystem Restoration Projects (AERP) that result in a temporary discharge of waste to waters of the State. The Restoration Policy would codify Regional Water Board support for AERPs that are designed to eliminate, reduce or ameliorate existing sources of soil erosion, water pollution, or other impairment of beneficial uses of water. A Restoration Policy is proposed which recognizes that discharges of waste from AERPs may result in temporary exceedances of WQOs and/or violate Basin Plan prohibitions. It clarifies that time schedules may be appropriate for the attainment of WQOs and provides a process for granting an exemption from discharge prohibitions, as necessary. To qualify for the exemption, an AERP must meet certain criteria, including that the project will result in long-term water quality benefits and protection of beneficial uses. The proposed policy is intended to provide transparency, clarity, and better compliance certainty by voicing the Regional Water Board’s support for restoration as a water quality protection tool and articulating a program for the review and authorization of qualifying projects.

This document summarizes factors that will be considered in the analysis of potential significant environmental impacts under the California Environmental Quality Act (CEQA). This CEQA scoping document is provided to the public for the purposes of receiving input on the scope of the Regional Water Board’s proposed policy and the accompanying CEQA analysis. Regional Water Board

¹ The Regional Water Board identified the development of “Exemption Criteria for Restoration Projects” as Task #11 in the 2007 Triennial Review of the Basin Plan.

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staff is holding scoping meeting(s) to assist in identifying the issues relevant to stakeholders during the environmental review process.²

AERPs can result in potentially significant impacts, including aesthetics impacts, air quality impacts from blasting and heavy equipment use, and biological and water quality impacts from release of turbid water or other pollutants. In some cases, impacts may be unavoidable. Under CEQA, an agency must reject a project that will have significant impacts even considering all proposed feasible mitigation, unless the agency finds that the benefits of the project 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 significant impacts. The CEQA findings should state the agency's rationale for its decision.

Adoption of a Restoration Policy is a discretionary action subject to CEQA; however, basin planning is certified as exempt from the requirement to prepare an environmental impact report (EIR), or negative declaration and initial study. (Cal. Code Regs., tit.14, § 15251, subd.(g).) To include a Restoration Policy in the Basin Plan requires the amendment of the Basin Plan and compliance with the basin planning requirements of Porter-Cologne, as well as CEQA. In lieu of an EIR or negative declaration and initial study, a substitute environmental document (SED) will be prepared which simultaneously complies with both these environmental laws. It will be circulated at a later date followed by a public hearing before the Regional Water Board.

With the benefit of public input on the scope of the Restoration Policy, the SED will evaluate: reasonably foreseeable methods of compliance, significant impacts, cumulative impacts, mitigation measures to reduce impacts to less than significant levels, and other CEQA-related concerns. (See Cal. Code Regs., tit. 23, § 3777 [guidelines for exempt regulatory programs].) The CEQA review will necessarily be programmatic in nature, and may include a programmatic statement of overriding considerations. The Restoration Policy would not authorize any AERP to proceed without site-specific review and approval; rather, it would establish a process by which individual AERPs would receive site-specific review and authorization if they meet specified criteria. Any AERP which does not otherwise

² California Code of Regulations, title 23, section 3775.5, subdivision (b) provides: The purpose of a scoping meeting is to seek input from public agencies and members of the public on the range of project actions, alternatives, reasonably foreseeable methods of compliance, significant impacts to be analyzed, cumulative impacts if any, and mitigation measures that will reduce impacts to a less than significant level; and to eliminate from detailed study issues found not to be important. Scoping may also assist in resolving concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons.

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qualify for a general permit³ will likely be subject to site-specific CEQA analyses. The analyses contained in an EIR (or EIS under NEPA requirements) will help inform the Regional Water Board in making individual determinations under a proposed Restoration Policy.

Purpose of Restoration Policy

Most of the waterbodies of the North Coast Region are listed by State and Federal resource agencies as habitat for a number of threatened and endangered aquatic species. Water quality conditions are one of many factors potentially limiting the success of these species and include, but are not limited to: temperature impairment, sediment impairment, flow impairment, reduction in the quality and/or diversity of habitat, reduction in and/or loss of access to habitat, increase in biostimulatory conditions, and reduction in and/or loss of hydrologic functioning. The Regional Water Board has designated 98% of the North Coast Region's waterbodies as providing beneficial uses of water for rare, threatened, or endangered species (RARE).

Over the years, numerous watershed assessments have been conducted in the region to assess water quality and identify corrective measures in those watersheds identified as impaired. These assessments have generally concluded that aquatic ecosystem restoration is a critical component of any water quality attainment program and is particularly important as an immediate strategy to promote the survival of threatened and endangered species while those factors fundamentally limiting water quality are addressed in the long-term. Restoration may also be a necessary component of long-term solutions for achieving WQOs.

Further, the restoration of the structures and functions of aquatic ecosystems often results in an increase in the assimilative capacity of waterbodies to pollutants, thereby improving a system's resilience and recovery from stressors (USEPA 1995). In this way, the design and implementation of AERPs can be seen as critically and immediately important to the mission of the Regional Water Board and the resources it protects.

Typical AERPs in the North Coast Region include: hillslope and bank stabilization, removal of aquatic species migration barriers, instream flow enhancement, habitat enhancement, exotic species removal, and native species plantings. The modification of aquatic ecosystems as a result of global climate change may more generally call for AERPs which improve the resilience of aquatic ecosystems to perturbations. For example, the predicted increase in the amount of precipitation which falls as rain (and reduction in winter snow pack) may suggest the need for AERPs which improve the ecological functioning of floodplains so as to slow floodwaters, reduce the potential for catastrophic human and ecological damage, and increase the potential of flood waters to be stored as groundwater from where it can be metered out slowly over the year. Like other projects, the implementation of AERPs sometimes results in the temporary discharge of waste to waters of the State. These discharges are typically short-term

³ See page 6 for a list of some of the general permits which sometimes apply to AERPs.

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(during the course of AERP construction and/or as a result of the first storm); but, they sometimes exceed WQOs and/or violate discharge prohibitions. In the past, the potential for such exceedances or violations has been perceived by AERP proponents as a barrier to the successful permitting or certifying of their projects.

The long term water quality benefits resulting from aquatic ecosystem restoration clearly distinguish AERPs from other waste discharging activities. Because of the importance of restoration activities to the accomplishment of the Regional Water Board's water quality protection mission and, in particular, the need to remove any real or perceived barriers to their permitting, the Regional Water Board identified the development of an Exemption Criteria for Restoration Projects as Task #11 in the 2007 Triennial Review of the Basin Plan. This proposed policy is the product of that task.

Discussion

The term *restoration* is used in several locations in the Basin Plan, as well as the California Code of Regulations. But, its use with respect to water quality and aquatic habitat protection is not very precise. The term *restoration* is variously used to refer to actions which:

- Increase the populations of listed species;
- Improve, enhance, or rehabilitate the functionality of habitat for listed species;
- Mitigate the loss of species, habitat or ecosystem function; and
- Return the functionality of habitat to a natural condition.

The California Code of Regulations uses the term *restoration* in relation to numerous resources managed by State agencies. With respect to water resources, terms such as habitat restoration, ecological restoration, stream restoration, and wetland restoration are often used.

In 1992, A Committee on Restoration of Aquatic Ecosystems was established by the National Research Council (NRC) to review the science, technology, and public policy issues associated with aquatic ecosystem restoration. The result of its research and deliberation was published by the National Academy of Sciences. The Lahontan Regional Water Board includes in its Basin Plan a definition for the term *restoration* which is largely taken from this report. The NRC report (1992) defines restoration as follows:

Restoration is ... the return of an ecosystem to a close approximation of its condition prior to disturbance. In restoration, ecological damage to the resource is repaired. Both the structures and the functions of the ecosystem are recreated....The goal is to emulate a natural, functioning, self-regulating system that is integrated with the ecological landscape in which it occurs.

NRC (1992) distinguishes the term *restoration* from the terms *creation*, *reclamation*, and *rehabilitation*. As defined by NRC (1992), these terms refer to activities which put a

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landscape to a new or altered use to serve a particular human purpose. NRC (1992) identifies the term *mitigation* as appropriate when describing a project which is designed to alleviate the detrimental environmental effects arising from another action.

In 1995, USEPA published a guidance document on ecological restoration with the specific goal of providing tools to manage stream quality through restoration. USEPA (1995) defines ecological restoration as the restoration of the chemical, physical, and/or biological components of a degraded system to a pre-disturbance condition. USEPA (1995) indicates that strengthening structural or functional aquatic elements (e.g., instream, riparian, and upland ecological elements) through restoration can help increase a stream system's tolerance to those stressors which otherwise lead to water quality degradation. In the language of global climate change research, the term often used to describe this phenomenon is *resilience*.

Staff proposes utilizing a term which is specific to the aquatic ecosystems under its purview, but broadly captures activities designed with the primary objective of ecosystem restoration. Staff proposes for public review and Regional Water Board consideration the following definition of aquatic ecosystem restoration:

Aquatic ecosystem restoration is the return of the chemical, physical, and biological components of an aquatic ecosystem to a close approximation of their condition prior to disturbance by recreating the ecosystem's natural structures and functions. Aquatic ecosystem restoration should result in the reestablishment of a self-regulating, resilient aquatic ecosystem that is integrated with the larger landscape in which it is located.

AERPs are designed to eliminate, reduce or ameliorate existing sources of soil erosion, water pollution, or other impairment of beneficial uses of water. It is understood that a whole host of water quality attainment activities are often necessary to fully restore an aquatic ecosystem in a manner as described above. The definition of aquatic ecosystem restoration is not intended to limit the types of restoration projects that may apply for permitting, and the definition is not intended to serve as an additional exemption criterion. No single AERP is expected to result in complete aquatic ecosystem restoration. The definition is intended to serve as a goal towards which coordination of watershed activities can aim. It is also suggested for the purpose of encouraging the development of individual AERPs which incorporate these ecological concepts.

Requirements of the Basin Plan

One of the primary functions of the Regional Water Board is to review applications for the privilege to discharge waste into waters of the Region.⁴ Before authorizing discharge, the Regional Water Board ensures that all reasonable controls are employed so

⁴ Water Code section 13263, subdivision (g) provides that “[a]ll discharges of waste into waters of the state are privileges; not rights.”

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that the discharge achieves WQOs and does not violate discharge prohibitions, or adversely affect beneficial uses. Chapter 3 (WQOs) of the Basin Plan states:

“Controllable water quality factors shall conform to the water quality objectives contained herein...Controllable water quality factors are those actions, conditions, or circumstances resulting from man’s activities that may influence the quality of the waters of the State and that may be reasonably controlled. Water quality objectives form the basis for establishment of waste discharge requirements... These water quality objectives are considered to be necessary to protect those present and probable future beneficial uses enumerated in Table 2-1⁵ and to protect existing high quality waters of the State.”

By definition, an AERP is an effort to improve water quality conditions, usually for a waterbody that is already experiencing some impairment. Many AERPs, however, result in a short-term or temporary discharge of waste to a water of the State (for example, as a result of construction activities) and require review and authorization prior to their implementation. Because of the water quality benefits associated with aquatic ecosystem restoration, various efforts have been undertaken to simplify and streamline the permitting process for AERPs. For example:

- The Army Corps of Engineers has established a nationwide permit for Aquatic Habitat Restoration, Establishment, and Enhancement (Federal Register/Vol. 72, No. 47, March 12, 2007) which allows certain qualifying projects to enroll under the nationwide 404 dredge and fill permit rather than apply for an individual permit.
- The California Code of Regulations, title 14, section 15333 describes a categorical exemption for small habitat restoration projects (less than 5 acres or 500 lineal feet of stream) which allows certain qualifying projects to proceed without conducting a CEQA analysis.
- The State Water Resources Control Board (State Water Board) has adopted a General 401 Water Quality Certification Order for Small Habitat Restoration Projects (dated August 10, 2007) which certifies certain restoration projects that qualify for the categorical CEQA exemption as also complying with applicable provisions of the Clean Water Act and requirements of state law. It also pre-authorizes discharge.
- The State Water Board has adopted a General Waste Discharge Requirement (WDR) for qualifying dredge or fill discharges, including small habitat restoration projects (less than 0.2 acres or 400 lineal feet of stream, which the U.S. Army Corps of Engineers deems to be outside of federal jurisdiction (Water Quality Order No. 2004-0004-DWQ). These are projects that discharge waste to a water of the State, but not to a water of the U.S.

⁵ Table 2-1 of the Basin Plan lists the existing and potential designated beneficial uses for each waterbody in the North Coast Region.

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The Regional Water Board makes regular use of these permitting tools, particularly for smaller AERPs. The goal of this proposed Basin Plan Amendment is to expand the permitting tool box to provide greater permitting certainty to those qualifying AERPs that result in a temporary discharge of waste to waters of the State and for which the existing streamlined permitting tools may not be appropriate (e.g., an AERP affecting more than 500 lineal feet of stream). The Regional Water Board has authority to certify or permit AERPs that may result in significant and sometimes unavoidable temporary impacts if it is shown that the AERP will result in long-term improvements of beneficial uses and water quality. Even with a permit authorizing an AERP, however, dischargers have sometimes expressed uncertainty about compliance with WQOs and prohibitions.

While many AERPs focus on minimizing sediment and other discharges ancillary to project construction, the primary purpose of some AERPs is to actually introduce sediment or other discharge. For example, a channel rehabilitation and sediment management program on the Trinity River alters the river channel in order to reverse adverse geomorphic impacts caused by years of flow diversion and regulation by Trinity and Lewiston Dams. These AERPs are specifically designed to discharge sediment to the river that when combined with increased flows released from the dams will restore fluvial processes and improve ecologic function. In that case, the Regional Water Board issued a water quality certification (pursuant to Clean Water Act section 401) that included a dilution zone as allowed in the turbidity WQO.

The Regional Water Board staff proposes the adoption of criteria by which to identify those AERPs which, though temporarily discharging waste in violation of a prohibition or in exceedance of a WQO, will nonetheless provide long-term water quality benefits that outweigh the short-term impacts. This is intended to help those dischargers who may be uncertain about what discharged waste (commonly sediment) is prohibited and are uncomfortable about risking noncompliance with the Basin Plan provisions. The Restoration Policy is proposed to provide a temporary exemption from discharge prohibitions removing any disincentive that the prohibitions present to AERPs. In addition, the proposed Restoration Policy highlights the Regional Water Board's existing authority to permit time schedules for compliance for those projects that temporarily exceed WQOs.

Water Quality Objectives

The WQOs generally of most concern to AERPs are those related to sediment, including WQOs for suspended material, settleable material, sediment, and turbidity (collectively summarized as "sediment WQOs"). Other relevant WQOs include temperature, biostimulatory substances (e.g., nitrogen, phosphorus, organic matter), pH, dissolved oxygen (DO), and, depending on the type of AERP, toxicity and pesticides. With the

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exception of turbidity, the sediment-related WQOs are in narrative form and are crafted to prevent nuisance⁶ or adverse affect on any beneficial use⁷.

WQOs apply to the waterbody as a whole. They describe the ambient water quality conditions necessary to support the beneficial uses designated for a given waterbody. A waterbody is identified as impaired if there is a sustained exceedance of ambient WQOs. Based on the assimilative capacity of a given waterbody, the Regional Water Board determines the Total Maximum Daily Loads (TMDLs) of those pollutants exceeding the WQOs and distributes the allowable loads to waste dischargers throughout the watershed. One of the primary functions of aquatic ecosystem restoration is to increase the assimilative capacity of the given waterbody over the long term. In this manner, AERPs can serve the dual purpose of physically restoring a beneficial use (e.g., cold water aquatic habitat) and increasing a system's resilience to other stressors.

The Regional Water Board has the authority to establish a time schedule for the attainment of requirements, including WQOs. For example, a program to achieve WQOs must describe actions necessary to achieve WQOs and a time schedule for actions to be taken. (Wat. Code, §13242.) In issuing waste discharge requirements that implement the Basin Plan, Water Code section 13263, subdivision (c) provides the Regional Water Board with the authority to include a time schedule by which to meet the specified requirements, including WQOs. Similarly, water quality certifications pursuant to Clean Water Act section 401 may include time schedules in the permit conditions. Also, section 13300 allows the Regional Water Board to require the discharger to submit for approval a detailed time schedule in order to correct or prevent a violation.

Prohibitions

The Basin Plan includes several discharge prohibitions potentially relevant to AERPs proposed in the North Coast. A fundamental tool for the protection of water quality in the North Coast Region is the Basin Plan's point source discharge prohibition in all waterbodies of the North Coast except the Mad, Eel, and Russian rivers. Point source discharge is allowed in these waterbodies only during winter months and only up to 1%

⁶ Water Code section 13050, subdivision (m) defines "nuisance" as "anything which meets all of the following:

- (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
- (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
- (3) Occurs during, or as a result of, the treatment or disposal of wastes."

⁷ The term *adversely affect* is interpreted varyingly by the Regional Water Board depending upon many factors, including, for example, the sensitivity of the beneficial uses present and the temporal extent of effect.

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of the receiving water flow. AERPs, however, very rarely results in a point source discharge.⁸

Specific to nonpoint source control, and more generally relevant to AERPs, is the Action Plan for Logging, Construction, and Associated Activities which includes two discharge prohibitions affecting the discharge of soil, silt, slash, sawdust and other organic and earthen materials. This discharge prohibition applies throughout the region, but is specifically reiterated for the Garcia River watershed. Notably, these discharge prohibitions relate only to the discharge of organic and earthen materials (sediment)⁹ and seek to prevent the discharge of amounts which cause deleterious effect on beneficial uses. They read as follows:

1. The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.
2. The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.

Finally, a prohibition specific to the Klamath River watershed (including the Lost River, Trinity River, and all other major and minor tributaries to the Klamath River) makes unlawful any discharge which is in violation of any narrative or numerical WQO that is not otherwise authorized by the Regional or State Water Board.

Authorizing Discharge from AERPs

Both the State Water Board and Regional Water Board have developed various means by which to make more efficient the permitting of AERPs, including the development of general WDRs, general 401 certification orders, and waivers of requirements as described above. For the majority of AERPs currently authorized by the Regional Water Board, these tools are sufficient to ensure appropriate clarity and timeliness. Staff anticipates that very few AERPs will require the exemption from prohibitions contained in the proposed policy.

Also as described above, the Regional (and State) Water Board already has authority to certify or permit an AERP that threatens to discharge waste in exceedance of WQOs if it

⁸ If an AERP produced a point source discharge subject to a National Pollutant Discharge Elimination System (NPDES) permit, additional federal regulations would control. (See e.g. 40 Code of Federal Regulations, section 124.62 [decision on variances].)

⁹ The term *sediment* is used here to refer to the organic and earthen material that enters a waterbody from the surrounding landscape, either directly or indirectly.

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results in improvements to water quality or protection of beneficial uses. This is especially applicable to AERPs which produce long term water quality benefits that can not be achieved in any other way but for the AERP.

AERP-proponents have requested greater permitting certainty than the current approach offers, particularly with respect to compliance with the narrative sediment prohibitions. For this reason, the Regional Water Board has requested that staff develop criteria for exempting certain AERPs from discharge prohibitions. Staff has turned to the Lahontan Regional Water Board as the only Basin Plan in the state which includes an exemption from prohibitions specific to restoration projects.

Lahontan Region's Restoration Policy

The Lahontan Region's Basin Plan differs from the North Coast Region's Basin Plan in that it includes region wide prohibitions against the discharge of waste which causes violation of any WQO (narrative or numeric) or the nondegradation objective. In addition, it prohibits the discharge of waste which causes further degradation or pollution in those waterbodies where WQOs are already violated.¹⁰ As above, the North Coast Basin Plan prohibits the discharge of waste in the Klamath River watershed (including its tributaries) which causes violation of WQOs when the Regional Water Board has not already authorized the discharge. For waters outside of the Klamath River watershed, discharge prohibitions only apply to sediment.

With the caveat of these differences, staff has found the example of the Lahontan Basin Plan exemption language instructive. It says:

“The Regional Board encourages restoration projects that are intended to reduce or mitigate existing sources of soil erosion, water pollution, or impairment of beneficial uses. For waste earthen materials discharged as a result of restoration projects, exemption to the above prohibitions, and all other prohibitions contained in this Basin Plan, may be granted by the Regional Board whenever it finds that a specific project meets all of the following criteria:

1. The project will eliminate, reduce or mitigate existing sources of soil erosion, water pollution, and/or impairment of beneficial uses of water, *and*
2. There is no feasible alternative to the project that would comply with provisions of this Basin Plan, precluding the need for an exemption, *and*
3. Land disturbance will be limited to the absolute minimum necessary to correct or mitigate existing sources of soil erosion, water pollution, and/or impairment of beneficial uses of water, *and*
4. All applicable Best Management Practices and mitigation measures have been incorporated into the project to minimize soil erosion, surface runoff, and other potential adverse environmental impacts, *and*

¹⁰ The Lahontan Region includes Lake Tahoe which is one of two Outstanding National Resource Waters (ONRWs) designated in California.

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5. The project complies with all applicable laws, regulations, plans, and policies. (Region 6 Basin Plan, page 4.1-2)”

Proposed Basin Plan Amendment

Staff recommends for inclusion in the North Coast Basin Plan language similar to that used in the Lahontan Region, but with certain modifications. Staff proposes the following for discussion and consideration:

Aquatic ecosystem restoration is an important tool for achieving water quality conditions sufficient to protect and restore beneficial uses. The Regional Water Board supports and encourages aquatic ecosystem restoration projects (AERPs) that are designed to eliminate, reduce or ameliorate existing sources of soil erosion, water pollution, or other impairment of beneficial uses of water. Discharges of waste from AERPs may result in temporary exceedances of water quality objectives and temporarily violate Basin Plan prohibitions. The Regional Water Board may grant an exemption from the prohibitions contained in this Basin Plan for discharges of waste associated with an AERP whenever it finds that a specific AERP meets the following qualifying criteria.

1. The AERP eliminates, reduces or ameliorates existing sources of soil erosion, water pollution, and/or impairment of beneficial uses of water; *and*
2. The long-term water quality benefits of the AERP exceed the temporary impacts, including cumulative impacts; *and*
3. Water quality impacts resulting from the AERP are determined: 1) to be consistent with the maximum benefit to the people of the state; 2) to not unreasonably affect beneficial uses of water or cause a permanent nuisance; and, 3) to not, after an AERP is completed, result in a discharge of waste from the AERP with water quality less than that prescribed in state policies, including but not limited to the Basin Plan, Bays and Estuaries Plan, and Ocean Plan; *and*
4. Water quality objectives will be achieved within the shortest amount of time possible; *and*
5. There is no reasonable alternative to the AERP which would accomplish the same environmental goals while avoiding water quality impacts; *and*
6. Waterbody and landscape disturbance is limited to the absolute minimum necessary to accomplish the AERP and to correct or ameliorate existing sources of soil erosion, water pollution or impairment of beneficial uses of water; *and*
7. Disturbance to beneficial uses is limited to the absolute minimum by controlling the timing, character, and volume of discharge in accordance with the needs of the most sensitive beneficial uses and/or creating refugia or access to existing refugia, as necessary; *and*

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8. All applicable and feasible Best Management Practices and mitigation measures are incorporated into the AERP to minimize soil erosion, surface runoff, and other potential adverse environmental impacts, including cumulative impacts; *and*
9. Monitoring data must be collected to demonstrate reasonable progress toward meeting the water quality objectives.

Procedure

The process for permitting specific AERPs is proposed to remain the same as currently exists. Exemption criteria will be considered at the time the Regional Water Board is processing a permit application for a specific AERP. AERPs seeking exemption will be accompanied by an environmental assessment (e.g., EIR or similar environmental assessment), which will contain information sufficient to analyze whether the AERP meets the criteria or not. If the environmental assessment identifies significant and unavoidable impacts, including water quality impacts, the agency must decide, based on all available information, whether the benefits of the specific AERP outweigh the adverse impacts, with consideration of social, economic, legal, technical, or other beneficial aspects of the AERP. If approved, the permit must incorporate all feasible mitigation measures identified in the environmental document that are within the agency's jurisdiction to require, including standard terms and conditions, and other conditions necessary to effectuate the policy.

Consideration of the exemption criteria shall be done by the decision-making authority for the permit, including any delegated body for that particular permit. For example, if the State Water Board is responsible for issuing water quality certification, the State Water Board shall apply the policy, in consultation with the Regional Water Board, pursuant to California Code of Regulations, title 23, section 3855.

Compliance with CEQA

As described throughout this document, the Regional Water Board currently has authority to certify or permit various AERPs that will result in improvements to water quality or protection of beneficial uses, even if there are associated temporary significant water quality impacts. As such, adoption of the proposed policy is not strictly necessary nor should it alter staff's assessment of individual AERPs or its recommendations to the Regional Water Board or State Water Board. The proposed policy is recommended primarily as a tool for better informing the public of the Regional Water Board's view of aquatic ecosystem restoration as a tool for water quality protection and to provide greater clarity, transparency, and assurance with respect to how AERPs achieve compliance with the Basin Plan.

Both the State Water Board and Regional Water Board have developed various means by which to make more efficient the permitting of AERPs, including the development of general WDRs, general 401 certification orders, and waivers of requirements. For the

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majority of AERPs currently authorized by the Regional Water Board, these tools are sufficient to ensure appropriate clarity and timeliness. As such, staff anticipates that very few AERPs will require the implementation of the exemption from prohibitions contained in the proposed policy.

Reasonably Foreseeable Compliance Measures

For larger and more complicated AERPs (e.g., dam removals, large-scale channel reconstruction), these proposed policy provisions will better reduce the complexity and uncertainty otherwise potentially associated with the permitting of such AERPs (this is an outcome encouraged by the California Resources Agency in its 2003 review of the barriers to the implementation of restoration projects). Staff does not foresee that any additional compliance measures will be necessary to comply with this policy than would be expected of AERPs in the absence of the policy.

Significant Impacts

As is the existing case, there is the potential for significant impacts to be associated with the implementation of an AERP which is authorized by the Regional Water Board using the provisions of the proposed policy; however, the potentially significant impacts are no different than those which would be expected in the absence of the policy (i.e., impacts associated with implementing an AERP will be present whether a policy is in place or not). Under the policy, as is the case now, staff would require all applicable mitigation measures to avoid and reduce significant impacts. Where significant impacts still existed and could not be mitigated, staff would weigh the impacts of temporary discharge from the construction of an AERP against the long-term environmental benefits of restoration. For those large, complex AERPs which result in discharges with significant impacts, the Regional Water Board sometimes now, as under the policy, determines that the benefits outweigh the impacts and issues a statement of overriding considerations. With respect to potentially significant impacts, the proposed policy improves upon the existing situation by articulating up front (in the form of criteria to qualify for the exemption) those issues the Regional Water Board believes an AERP proponent must address prior to project authorization.

Cumulative Impacts and Mitigation Measures

The proposed policy will not create any additional rules or procedures with respect to cumulative impacts or mitigation measures than currently exist.

Conclusions

In short, staff believes the proposed policy does not fundamentally alter the kinds of AERPs that the Regional Water Board already authorizes under the existing Basin Plan. It only provides transparency, clarity, and better compliance certainty by articulating the Regional Water Board's support for restoration as a water quality protection tool and a program for the review and authorization of qualifying projects.

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Future

A functionally equivalent environmental analysis in accordance with CEQA and the California Code of Regulations will be presented in a staff report to accompany the draft proposed “Policy for Aquatic Ecosystem Restoration” prior to its presentation to the Regional Water Board for its consideration. With the benefit of public input on the scope of the Restoration Policy and CEQA analysis, the staff report will more fully evaluate: reasonably foreseeable methods of compliance, significant impacts, cumulative impacts, mitigation measures to reduce impacts to less than significant levels, and other CEQA-related concerns.