California Regional Water Quality Control Board
North Coast Region

Resolution No. R1-2015-0018

Amending the Water Quality Control Plan for the North Coast Region to Update Section 3 Water Quality Objectives

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

1. The proposed Water Quality Objective Update Amendment (amendment) to the Water Quality Control Plan for the North Coast Region (Basin Plan), Section 3 includes the following: revision to the water quality objectives for chemical constituents in surface waters and groundwaters; clarifying revisions to the water quality objectives for pesticide, radioactivity, taste and odor, and toxicity in surface waters; clarifying revisions to the toxicity objective for surface waters; addition of a narrative water quality objective for toxicity in groundwaters; revision to the water quality objective for dissolved oxygen (DO) in surface waters; and revisions to improve clarity on the implementation of water quality objectives, readability and organization through non-substantive editorial changes. A clean copy and strikeout/underline version of the revisions to Section 3 Water Quality Objectives are contained in Attachment 1 and Attachment 2, respectively.

2. The revisions to the surface and ground water objectives for chemical constituents include: applying the objectives to the protection of all relevant beneficial uses, not just Agricultural Supply (AGR); adding language regarding the prevention of nuisance, as required in Porter-Cologne; deleting the outdated Table 3-2, *Inorganic, Organic, and Fluoride Concentrations Not to be Exceeded in Domestic or Municipal Supply*; and prospectively incorporating the Maximum Contaminant Levels (MCLs) listed in California Code of Regulations, title 22 as the minimum water quality objectives for chemical constituents to protect the Municipal and Domestic Supply (MUN) beneficial use.

3. The narrative 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. The objective ensures adequate consideration of toxicity, in all cases, and it is also useful in the absence of any specific numeric water quality objectives.

4. The revisions to the water quality objective for DO are designed for the protection of sensitive aquatic organisms in fresh, free-flowing waters and include revision of the life cycle based DO objectives, and inclusion of a "natural conditions" clause.

5. The scientific basis of the revision to the DO water quality objective 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 April 2009 to two external scientific peer reviewers.

The following individuals provided scientific peer review of the Staff Report for the Revisions of Dissolved Oxygen Water Quality Objectives Peer Review Draft:

1) Daniel E. Schindler, Ph.D., Professor of School of Aquatic and Fishery Sciences, University of Washington
2) Michael T. Brett, Professor of Civil and Environmental Engineering, University of Washington

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.

Peer review was not required for the remainder of the amendment. MCLs are developed to protect public health by the agencies (formerly Department of Public Health, currently the State Water Board Division of Drinking Water) with primary expertise in that area. Relying on their expertise and public process rather than developing separate water quality objectives for drinking water is a policy decision and not a scientifically based rule that requires peer review. Moreover, MCLs are peer reviewed before they are established. The narrative objectives and implementation language are primarily management directives based on policy, and not underlying scientific principles subject to peer review. The amendment does not specify any specific numeric threshold that is to be used in any case to implement the narrative objectives; rather, it simply describes a process to identify and review applicable, relevant scientific information in specific permitting decisions in a wide array of regulatory actions.

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 existing regulatory plans, policies and programs to address surface water discharges and cleanups, and discharges to land and groundwater cleanups implement the necessary actions necessary for achieving the amend water quality objectives.

7. As specified in the proposed amendment, water quality objectives must be implemented in accordance with the applicable laws governing the regulated activity. Compliance with applicable water quality objectives is achieved through implementation of individual or general permits, orders and other regulatory actions in accordance with statute, regulation, and actions plans contained in Section 4 of the Basin Plan. It is not feasible to predetermine the circumstances and conditions that could be created by all discharges. Also, it is not practical to specify how water quality objectives are implemented as appropriate for all conditions which could be created by discharges and other controllable water quality factors.

8. In 2007, the Regional Water Board adopted Resolution No. R1-2007-0076, identifying the priorities of the 2007 Triennial Review of the Basin Plan. In 2015, the Regional Water Board adopted Resolution No. R1-2015-0012 identifying the

water quality objectives update amendment as priority 2 on the 2014 Triennial Review.

9. 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 amendment. Stakeholder involvement has occurred through numerous venues, including public and targeted stakeholder 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 2010.

   After consideration of public comments on the 2012 and 2013 public review drafts, Regional Water Board member comments and internal deliberation, staff made significant revisions to the draft amendment and associated Staff Report. Regional Water Board staff held a public workshop in March 2015 during the public comment period. Several targeted stakeholder meetings were also held to further understand the feedback from the commenters with concerns over the amendment. Staff has responded to all substantive comments and revised the proposed amendment to incorporate recommendations and clarifications, as appropriate.

10. 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.

11. 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 may need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2.

12. The adoption of the proposed 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 avoid or minimize those impacts, and alternative means of compliance that would avoid or mitigate 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.

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;
- Hazards and hazardous materials;
- Hydrology and water quality;
- Land use / planning;
- Noise;
- Public services;
- Transportation/traffic; and
- Utilities and service systems.

The Regional Water Board has identified potentially significant impacts that may be unavoidable to the following resources:

- Agricultural resource and forested lands; and
- Hydrology/water quality;

13. 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 potential impacts 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 may 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 cleanup action or within discharge permit or other context.

14. Consistent with Public Resources Code section 21081(b), specific overriding economic, legal, social, technological or other benefits may outweigh the unavoidable adverse environmental impacts. The CEQA findings pursuant to California Code of Regulations, tit. 14, § 15091 are presented in Attachment 3.

15. The proposed amendment is consistent with the provisions of Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality Waters in California." Further analysis of the proposed amendment and the Antidegrdation Policy is presented in Chapter 6 of the Staff Report. A full antidegradation analysis is appropriate during the development and adoption of orders for specific actions.

16. The proposed Basin Plan amendment meets the "Necessity" standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b). Water quality objectives are a necessary and required tool for the protection, enhancement, and recovery of beneficial uses. The proposed amendment includes language intended to clarify the implementation of narrative water quality objectives and the state Antidegradation Policy, when developing discharge limitations or cleanup levels.

17. The Regional Water Board has considered the costs of implementing the water quality objective for chemical constituents and DO in surface water and for chemical constituents and toxicity in groundwater, and finds these costs to be reasonable and minimal relative to the benefits derived from implementing the actions.

18. The proposed amendment must be submitted for review and approval by the State Water Resources Control Board, the State Office of Administrative Law, and U.S. EPA.

19. Following approval by the Office of Administrative Law, the water quality objectives update amendment will become effective upon submittal of the CEQA filing fee to the California Department of Fish and Wildlife.

20. Occasionally during its approval process, Regional Water Board staff, State Water 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 proposed 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 with the Secretary for Natural Resources after the WQO Update Amendment has been approved by the Office of Administrative Law to the 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 13241 of the Water Code, the Regional Water Board hereby adopts, as an amendment to the Basin Plan, the proposed amendment as set forth in Attachment 1 to this Resolution and as supported by the SED.

3. The Executive Officer is hereby directed to forward copies of the water quality objective update amendment and the administrative record to the State Water Resources Control Board in accordance with the requirements of section 13245 of the California Water Code.

4. The Regional Water Board hereby requests the State Water Resources Control Board approve the proposed amendment in accordance with sections 13245 and 13246 of the California Water Code. If approved, the Regional Water Board Executive Officer shall forward the water quality objective update amendment to the U.S. EPA and finally to the Office of Administrative Law.

5. If, during the approval process, the Regional Water Board, State Water Resources Control Board, U.S. EPA or the Office of Administrative Law determines that minor, non-substantive corrections to the language of the proposed amendment is 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 June 18, 2015.

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Matthias St. John
Executive Officer

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