

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
9:00 a.m., Thursday, April 7, 2016
Eureka City Hall
Eureka Council Chambers
531 K Street, 2nd Floor
Eureka, CA 95501

- ITEM: 5
- SUBJECT: Public Hearing on Resolution No. R1-2016-0017 to consider adoption of an amendment to the *Water Quality Control Plan for the North Coast Region* to include the *Action Plan for Upper Elk River Sediment Total Maximum Daily Load* addressing sediment impairments in the Upper Elk River (*Alydda Mangelsdorf*)
- BOARD ACTION: The Regional Water Quality Control Board (Regional Water Board) will consider Resolution No. R1-2016-0017 (Resolution) adopting the *Action Plan for the Upper Elk River Sediment TMDL* (TMDL Action Plan). The Resolution and TMDL Action Plan together comprise the Sediment TMDL for Upper Elk River Watershed.
- BACKGROUND: Staff has developed a proposed TMDL Action Plan. The TMDL Action Plan draws from the *Upper Elk River: Technical Analysis for Sediment* (Technical Report) (Tetra Tech, October 2015), which is a comprehensive assessment of sediment conditions in the Upper Elk River Watershed. The Technical Report is a synthesis of all Regional Water Board documents, reports from stakeholders in Upper Elk River, and additional analyses conducted by Tetra Tech. It provides the technical basis for the TMDL Action Plan.
- At the November 18, 2015 Board meeting, staff presented an overview of the Technical Report, the elements of the sediment TMDL under development, and a draft Program of Implementation for the sediment TMDL. In particular, staff provided an overview and update of the Elk River Watershed Stewardship Program (Watershed Stewardship), a major element of the Program of Implementation.
- On December 23, 2015, the Regional Water Board staff released a public notice in the local newspapers, to its lyrics list subscribers, and on its website, announcing the availability of a draft TMDL Action Plan, Technical Report, and CEQA documentation with a written public comment period to close on February 15, 2016. The public notice also announced a public workshop to be held on February 5, 2016 in Humboldt County, as well as the Regional Water Board's hearing on April 7, 2016 to consider adoption of an amendment to the

Water Quality Control Plan for the North Coast Region to incorporate the TMDL Action Plan. The workshop has been held as planned. The comment period has closed. Attached to this document is a summary of the public comments and staff's responses along with copies of all original written comments.

The major elements of the proposed TMDL Action Plan are the Problem Statement, Source Analysis, Water Quality Indicators, Load Allocation, Watershed Efforts, and the Program of Implementation. The Program of Implementation has three major components: (1) regulatory actions in the form of Waste Discharge Requirements (WDR) for industrial timber activities and general permits and waivers for other upper watershed timber related activities, (2) the Elk River Recovery Assessment, and (3) the Watershed Stewardship Program.

Regarding the first component of the Program of Implementation, note that the TMDL Action Plan does not spell out specific provisions of a WDR or waiver, but is deferential to how a WDR may be crafted. (See TMDL Action Plan at 7 [“[t]he Regional Water Board has discretion in developing WDRs that can allow individual dischargers to tailor a compliance strategy”].) The TMDL Action Plan is clear that the zero load allocation is not a waste load allocation or an effluent limit, but is a regulatory construct that allows the Board to craft waste discharge requirements in a manner that reduces and eliminates nonpoint source waste discharges to the maximum extent practicable. The Regional Water Board's consideration of specific regulatory requirements for WDRs occurs in an independent agenda item.

Regarding the second component of the Program of Implementation, the State Water Resources Control Board is the primary funder of a contract with CalTrout to conduct the Elk River Recovery Assessment (Recovery Assessment). The Recovery Assessment is a project to conduct a system-wide analysis (from the top of the impacted reach to Humboldt Bay) of river hydraulics and sediment transport, assess a suite of sediment removal and restoration activities, implement pilot stream remediation projects, and develop remediation and restoration options that promote recovery of ecosystem functions and beneficial uses in Elk River.

Regarding the third component of the Program of Implementation, Humboldt County, University of California Cooperative Extension, Natural Resources Conservation Service, CalTrout, and the Regional Water Board have been coordinating since late 2014 to plan the initiation of the Elk River Watershed Stewardship Program (Watershed Stewardship Program) in 2016. The Watershed

Stewardship Program is envisioned as providing an organizational structure for residents, land managers, and other stakeholders to collaborate on projects to improve watershed conditions and provide input on sediment remediation efforts. A 319(h) grant to Humboldt County as the grant manager of the Watershed Stewardship Program is currently being processed, and implementation of the program is expected to begin this summer.

Today's item will feature three presentations. First, staff will present the elements of the proposed TMDL Action Plan and an overview of the Response to Comments, both of which are attached. Second, Hank Seemann representing Humboldt County will present an update on the current status of the Watershed Stewardship Program. Third, Darren Mierau representing CalTrout will provide an update on the Elk River Recovery Assessment.

DISCUSSION:

The public comment period for the draft TMDL Action Plan closed on February 15, 2016. The Regional Water Board received twenty (20) comment letters from federal, state, and local agencies, Elk River residents, industrial timber companies, the Environmental Protection Information Center (EPIC), the Pacific Coast Federation of Fishermen's Associations, and other interested parties. The comments cover the contents of the Technical Report and the draft TMDL Action Plan. Some comments were focused on the WDRs and are addressed in a separate section of the Response to Comments document. All commenters are generally in agreement with, or at least do not contest, the Technical Report's findings that high levels of fine sediment deposited in the impacted reach over the past 20 years are largely the result of ground disturbance from past logging and associated activities in combination with other systemic factors such as channel and floodplain constraints. As orientation, the impacted reach extends from the confluence of Brown's Gulch on the North Fork Elk and Tom's Gulch on the South Fork Elk to the mainstem Elk River at Berta Road and is contained within the delineated boundaries of the Upper Elk River Watershed. There also is no argument that the deposits in the impacted reach have resulted in channel aggradation, which continues to cause beneficial use impairment and flooding conditions that affect individual health and welfare, the lives and livelihood of a whole community, and private and public property and infrastructure.

Comments can generally be divided into 5 categories. These include comments related to the underlying science, the Human Right to Water, the contents of the TMDL Action Plan, a proposed alternative approach to beneficial use attainment, and comments of a legal nature.

Comment letters from timber companies, their legal representative, and technical consultant provided an extensive review of the sediment source analysis, stating that estimates by the Regional Water Board were not accurate with respect to natural background loading and anthropogenic loading. Comment letters from residents, Friends of the Elk River, Pacific Coast Federation of Fishermen's Association, EPIC, and an interested party (Nathan Madsen) expressed concern over the implementation of the proposed zero load allocation and desired that a prohibition on logging for all of the Upper Elk River Watershed be required. US Environmental Protection Agency (US EPA), Region IX provided comments on the elements required for TMDL approval from US EPA. Staff has summarized the comments and provided detailed written responses; the Response to Comments document has been released to the public and is provided as an attachment.

Also, some commenters expressed confusion over the official role of the Technical Report in relation to the draft TMDL Action Plan and WDRs. For clarification, the Technical Report is a supporting document informing the contents of the draft TMDL Action Plan and WDRs, but is not itself to be adopted by the Regional Water Board. All of the elements of the Upper Elk River Sediment TMDL to be considered for approval by the Board, are contained in Resolution No. R1-2016-0017 and the TMDL Action Plan.

CEQA

COMPLIANCE:

For the TMDL Action Plan, the Regional Water Board is relying on a previously prepared Substitute Environmental Document (SED) for the Temperature Policy Basin Plan amendment, and the subsequent addendum to the SED that was prepared for the Policy in Support of Restoration in the North Coast. This is consistent with the Resources Agency's approval of the basin planning process as a "certified regulatory program" that adequately satisfies CEQA requirements. (Cal. Code Regs., tit. 14, § 15251, subd. (g); Cal. Code Regs., tit. 23, § 3782.) The SED analyzes a variety of implementation actions to meet temperature objectives, which includes measures to control sedimentation and implement restoration actions. The mitigated negative declaration provides project-specific CEQA analysis for the HRC WDRs, and will be considered for adoption by the Regional Water Board in its hearing of that item (Item 6) on April 7th.

SIGNIFICANT CHANGES:

Staff has considered the comments and has revised the TMDL Action Plan in response to public comments, as appropriate. There are several additions to the proposed TMDL Action Plan; but, none of the revisions significantly alter the approach as described in the draft.

Primary changes include an expansion of the description in the problem statement, a footnote to explain application of the peak flow target, description of scientific uncertainty and adaptive management, and other minor revisions. Resolution R1-2016-0017 augments the TMDL Action Plan; together the two include all the necessary elements of an approvable TMDL.

RECOMMENDATION: Adopt Resolution R1-2016-0017 and the proposed TMDL Action Plan.

SUPPORTING
DOCUMENTS:

1. Resolution No. R1-2016-0017
2. Proposed TMDL Action Plan (“redline-strikethrough” version)
3. Proposed TMDL Action Plan (clean version)
4. Responses to Comments and copies of written public comments
5. Tetra Tech, Inc. *Upper Elk River: Technical Analysis for Sediment*. (Technical Report)
6. Notice of Public Comment Period, Public Workshop, and Hearing