

**California Regional Water Quality Control Board
North Coast Region**

RESOLUTION NO. R1-2009-0004

Resolution Amending *the Water Quality Control Plan for the North Coast Region* to Establish Exception Criteria to the Point Source Waste Discharge Prohibitions by Revising the Action Plan for Storm Water Discharges and Adding a New Action Plan for Low Threat Discharges

- WHEREAS,** In accordance with Section 13240 et seq. of the California Water Code, the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), caused to be developed a *Water Quality Control Plan for the North Coast Water Quality Control Region* (Basin Plan); and;
- WHEREAS,** The Regional Water Board, acting in accord with Section 13244 of the Water Code, adopted Basin Plans for the Klamath River Basin (1A) and the North Coastal Basin (1B) on March 20, 1975. The Klamath River Basin Plan (1A) was combined with the North Coastal Basin Plan (1B) to form the Basin Plan on April 28, 1988; and;
- WHEREAS,** Section 13243 of the Water Code authorizes the Regional Water Board in a Basin Plan, or waste discharge requirements, to specify certain conditions or areas where the discharge of waste, or certain types of waste will not be permitted, and;
- WHEREAS,** The Basin Plan prohibits point source waste discharges during the period of October 1 through May 14 in the Mad, Eel, and Russian Rivers and their tributaries and prohibits all point source waste discharges year-round in the rest of the North Coast region, except as stipulated in the action plans and policies in the Point Source measures section of the Basin Plan. Where discharges are limited to the period from October 1 through May 14, the discharge during that period is limited to less than one-percent of the receiving stream's flow (one-percent prohibition); and;
- WHEREAS,** A conflict currently exists between conditions in existing regional and statewide point source discharge permits that allow year-round low threat discharges, and the existing prohibitions in the Basin Plan which do not; and;
- WHEREAS,** The Regional Water Board has consistently directed staff to investigate alternatives to address the conflict between the regional and statewide permits and the Basin Plan prohibitions. Resolving this conflict has been ranked as a high priority by the Regional Water Board during adoption of the last two Triennial Review Priority Lists; and;

WHEREAS, In February 2009, the State Water Board adopted the Recycled Water Policy¹. The purpose of the Recycled Water Policy is to increase the use of recycled water from municipal wastewater sources that meets the definition in Water Code Section 13050(n), in a manner that implements state and federal water quality laws. The State Water Board also plans to adopt statewide general waste discharge requirements for landscape irrigation uses of municipal recycled water, satisfying the requirements of Water Code section 13552.5, which required the adoption of such a permit to streamline the permitting of most landscape irrigation uses of recycled water; and

WHEREAS, To address the conflict that exists between conditions in existing regional and statewide point source discharge permits that allow year-round low threat discharges, and the existing prohibitions in the Basin Plan which do not, and to be consistent with the State Water Board's Recycled Water Policy, staff drafted a proposed Amendment to the Basin Plan, which would provide criteria under which exceptions to the point source prohibitions could be granted. The proposed Amendment also allows for exceptions to the one-percent prohibition during the discharge prohibition period if a discharge meets the Basin Plan criteria for exceptions to the one-percent prohibition; and;

WHEREAS, The process of basin planning has been certified by the Secretary for Resources as exempt from the requirement of the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq.) to prepare an Environmental Impact Report or Negative Declaration, and the substitute environmental documents (SED) prepared under the State Water Board's own regulations, as set forth in Article 6 of title 23 of the California Code of Regulations, are used instead of the documents that would be required by CEQA and;

WHEREAS, On August 4, 2005 and on April 26, 2007, Regional Water Board staff held CEQA Scoping Meetings to provide information to the public on the proposed Amendment and to request comments from the public and other agencies regarding the scope of the environmental analysis and potential impacts associated with implementation of the proposed Amendment that should be included in the SED; and;

WHEREAS, On November 20, 2008, Regional Water Board staff prepared, posted to the Regional Water Board website and distributed a Notice of Filing, written report (Staff Report) which included the SED, and the proposed Amendment to interested individuals and public agencies for review and

¹ Recycled Water Policy, Staff Report and Certified Regulatory Program Environmental Analysis, State Water Resources Control Board, February 2009.
http://www.waterboards.ca.gov/water_issues/programs/water_recycling_policy/

comment in accordance with state and federal environmental regulations [Cal. Code Regs., title, 23, § 3775; 40 CFR 25 and 40 CFR 131]. The public comment period was open from November 20, 2008 until January 29, 2009; and;

WHEREAS, On January 8, 2009, Regional Water Board staff held a public workshop to inform the public about the proposed Amendment and to receive comments from the public and other agencies; and;

WHEREAS, The SED includes the Staff Report, the proposed Amendment language, and the environmental analysis and checklist. The SED for the proposed project includes alternatives and mitigation measures to reduce or avoid potential adverse impacts. In assessing the potential significant impacts of the proposed Amendment, the SED does not engage in speculation or conjecture. Mitigation measures to reduce to levels of insignificance any significant adverse environmental impacts of the project were identified; and;

WHEREAS, In evaluating the SED, the Regional Water Board has considered not only reasonable alternatives to the proposed Amendment and mitigation measures to minimize any significant adverse environmental impacts of the proposed Amendment, but also the requirements of Public Resources Code Section 21159 and Section 15187 of title 14 of the California Code of Regulations (CEQA Guidelines). Those sections apply when the Regional Water Board adopts a rule or regulations that require the installation of pollution control equipment, establish a performance standard, or establish a treatment requirement. To comply with the requirements set forth in Public Resources Code 21159 and Section 15187 of the CEQA Guidelines, the Regional Water Board analyzed the reasonably foreseeable environmental impacts of the methods of compliance with the proposed Amendment, the reasonably foreseeable feasible mitigation measures related to those potential impacts, and reasonably foreseeable alternative means of compliance with the proposed Amendment that would avoid or eliminate any identified impacts; and

WHEREAS, Regional Water Board staff received and responded to seventy-eight (78) comment letters in addition to 320 form letters received from Russian River Watershed Protection Council members. The majority of concerns voiced during the written public comment period were in regard to incidental runoff of recycled water and the potential effects on water quality from pathogens, constituents of emerging concern, and other pollutants. Staff has responded to all of these concerns in the Response to Comments document dated July 1, 2009.

WHEREAS, On July 23, 2009, the Regional Water Board held a public hearing to consider adoption of the proposed Amendment (including the SED and the comments received during the Basin Planning process). Notice of the Public Hearing was given to all interested persons and published on May 3, 2009 in the Eureka Times Standard, on May 11, 2009 in the Siskiyou Daily News, and in the Santa Rosa Press Democrat on June 13, 2009, in accordance with Water Code Section 13244; and;

WHEREAS, The Board's deliberative process reflects the Regional Water Board's independent judgment and analysis. After considering the documents and comments received during the public review process, the Regional Water Board hereby determines that the proposed project, with the identified mitigation measures, will not have a significant effect on the environment. The documents and other materials that constitute the record supporting the Regional Water Board's decision are located at the Regional Water Board office, maintained in a public file; and

WHEREAS, The proposed Amendment will be included in Chapter 4, Implementation Plans, of the Basin Plan. The Amendment consists of:

- 1) A new Low Threat Discharges "Action Plan" (Low Threat Action Plan) (Attachment 1) and
- 2) Modifications to the existing Action Plan for Storm Water Discharges (Storm Water Action Plan) (Attachment 2); and;

WHEREAS, The Regional Water Board has considered the costs of implementing the Amendment, and finds these costs to be reasonable and minimal relative to the benefits derived from implementing the Amendment; and;

WHEREAS, The Basin Plan Amendment must be submitted for review and approval by the State Water Resources Control Board (State Water Board), State's Office of Administrative Law (OAL) and the U.S. EPA. Once approved by the State Water Board, the Amendment is submitted to OAL and U.S. EPA. The Basin Plan amendment will become effective upon submittal of the CEQA filing fee to the California Department of Fish and Game. The Regional Water Board will file a Notice of Decision with the Secretary of Resources in compliance with section 21080.5 of the Public Resources Code.

THEREFORE, BE IT RESOLVED THAT:

1. The Regional Water Board, after considering the entire record, including written comments submitted to the Regional Water Board office and oral comments provided at the workshop on January 8, 2009, and at the adoption hearing held on July 23 2009, hereby adopts the proposed Basin Plan Amendment as set forth in Attachments 1 and 2 of this Resolution and as supported by the SED.

2. Mitigation measures identified as necessary to reduce or eliminate potential significant impacts on the environment must be implemented as conditions of approval of all permits that are given an exemption from the Basin Plan point source discharge and one-percent prohibitions. Best management practices must be identified to treat, control, minimize or avoid discharges, and be incorporated into, and made a condition of, any approval of an exemption from the Basin Plan point source and one-percent prohibitions. The Notice of Intent filed for enrollment under the general low threat permit and the monitoring and reporting requirements required of each permittee enrolled under that permit suffice as a monitoring and reporting requirement under section 15097 of the CEQA Guidelines and will provide assurance of compliance with mitigation requirements identified within the SED. Similarly, the application filed for coverage under a Phase I or Phase II MS4 Permit, the Regional Water Board or Executive Officer's approval of each permittee's storm water management plan, and the monitoring and reporting requirements required of each permittee suffice as a monitoring and reporting requirement under 15097 of the CEQA Guidelines, and will provide assurance of compliance with mitigation requirements identified within the SED.
3. The Executive Officer is directed to forward copies of the Basin Plan Amendment to the State Water Board, in accordance with the requirements of Water Code Section 13245.
4. The Regional Water Board requests that the State Water Board approve the Basin Plan Amendment in accordance with the requirements of Water Code sections 13245 and 13246, and forward it to the OAL and the U.S. EPA for approval.
5. If during its approval process, the State Water Board or OAL determines that minor, non-substantive corrections to the language of the Amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Regional Water Board of any such changes.
6. The Executive Officer is authorized to sign a Certificate of Fee Exemption Certification.

I, Catherine Kuhlman, 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 July 23, 2009.

Catherine Kuhlman