

DRAFT

Measures to Reduce Excess Sediment

I. Purpose:

The Regional Board's intent is to establish a program that will be effective in controlling the discharge of excess sediment into the waters of the state in the North Coast Region by (1) adopting a Prohibition of Excess Sediment to the Basin Plan, and (2) developing an Implementation Plan for both landowners and the Regional Board staff. This Prohibition is intended to encourage application of protective measures that will control the discharge of human-caused (anthropogenic) excess sediment and help meet the Region's water quality standards.

II. Overview and Applicability:

Erosion occurs on the landscape as a natural process. That said, measures are needed that will control the discharge of excessive amounts of sediment to waters of the state by anthropogenic activities. The Regional Board's approach reflects the need for preventing, minimizing and controlling erosion **on a scale of cubic yards** based on a particular site or area (Option 1).

Or

Erosion occurs on the landscape as a natural process. That said, measures are needed that will control the discharge of excessive amounts of sediment to waters of the state by anthropogenic activities. The Regional Board's approach reflects the need for preventing, minimizing and controlling erosion **in an amount that could be deleterious to beneficial uses or causes nuisance** based on a particular site or area (Option 2).

This program creates no new administrative authorities. It provides landowners a path they can follow to achieve compliance with the State's Nonpoint Source Pollution (NPS) Control Program. It also gives Regional Board staff a framework to use to assess and respond appropriately to a discharge or threat of a discharge of excess sediment. The Regional Board's preference is to utilize the progressive enforcement option as outlined in the SWRCB's 2002 Enforcement Policy and the 2004 Nonpoint Source Implementation and Enforcement (NPS) Policy.

Types of anthropogenic activities that could result in a discharge of excess sediment from point or nonpoint sources include but are not limited to:

- Construction;
- Mining;

- Agriculture, including ranching, grazing, and farming;
- Dairies and other types of confined animal operation;
- Road construction, reconstruction, maintenance and decommissioning;
- Timber harvesting;
- Other earth-disturbing activities.

III. Prohibition:

The addition of an Excess Sediment Prohibition to the Basin Plan is necessary to comply with title 23, California Code of Regulations, section 2915, and the statewide *Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program (2004)* (NPS Policy).

The State Board's NPS Policy makes available three options or approaches to be used statewide to control nonpoint sources of pollution:

- 1) The use of a prohibition;
- 2) Waste discharge requirements (WDRs); or
- 3) A waiver of WDRs.

The Regional Board finds that Option # 1, a "Prohibition" offers the most workable approach for use in the North Coast Region for those activities not covered by waiver, WDR or other formal Board action.

Therefore, the following language is proposed as an amendment to the Basin Plan: "Prohibition of Excess Sediment". It would apply to all areas of the North Coast Region except for the Garcia River watershed which is regulated by the *Action Plan for the Garcia River Watershed Sediment TMDL*.

Prohibition of Excess Sediment:

The discharge or threatened discharge of excess sediment from human caused activities to waters of the state is prohibited.

Excess sediment is defined herein as soil, rock, and/or sediments (e.g. sand silt, or clay) discharged to waters of the state in an amount that could be deleterious to beneficial uses or cause a nuisance¹.

IV. Implementation Plan:

This Implementation Plan offers:

¹ Nuisance is defined in Water code section 13050.

- A. Landowners the most effective way(s) to comply when planning, designing and implementing new projects or when taking corrective measures to reduce erosion from existing sources.
- B. Instruction to Regional Water Board staff on procedures and actions they are to follow to implement the Prohibition.

IVa. Implementation Plan's Guidance for Landowners:

The Regional Board supports implementation of the following sequential elements by persons discharging or threatening to discharge excess sediment:

1. Prevent – Plan, design, and implement the project or activity in such a way that no excess sediment discharge occurs or could occur to waters of the state.
2. Minimize – If the discharge or threatened discharge of excess sediment cannot be fully prevented, then plan, design, and implement the project in such a way that discharges to waters of the state are minimized to the maximum extent possible.

Sediment control practices include, but are not limited to, project design, engineering and scheduling alternatives, and management measures, practices, and techniques that prevent and/or minimize discharges or threatened discharges of excess sediment.

Steps to be taken to address discharge of excess sediment from existing sources include:

1. Inventory: Identify sources of excess sediment or threatened discharge, and quantify the discharge or threatened discharge from the source(s).
2. Prioritize: Prioritize efforts to control discharge of excess sediment based on, but not limited to, severity of threat to water quality and beneficial uses, the feasibility of source control, and source site accessibility.
3. Implement: Develop, and implement feasible sediment control practices to prevent, minimize, and control the discharge.
4. Monitor and Adapt: Use monitoring results to direct adaptive management measures in order to refine and adjust erosion control practices and implementation schedules, until sediment discharges is reduced and no longer causes a violation of any sediment related narrative or numeric objective.

Landowners actively engaged in activities designed to come into compliance with the Prohibition will be considered on a path towards compliance.

IVa. Implementation Plan's Guidance for Regional Board and staff:

This policy recognizes the merits of progressive enforcement and encourages the Regional Board to take the most appropriate enforcement action based on circumstances of the case and Regional Board staff's workload. In cases where preventive or corrective action has not taken place, the Regional Water Board and/or staff will consider applying escalating series of actions as necessary.

Regional Board staff will develop and actively engage in education and outreach activities designed to inform the community of their responsibilities and obligations as well as to provide guidance on project design, implementation and monitoring.

For activities that may result in violation of the Prohibition, Regional Board staff may require a landowner to submit a ROWD. The ROWD shall include information demonstrating that the landowner has designed and will implement the proposed activities so as to minimize sediment discharge to the maximum extent possible

Guidance documents to aid landowners in coming into compliance with the Prohibition are available from a number of federal, state and local agencies, private stakeholder and interest groups and other non-governmental organizations. Guidance documents to help prevent and control sediment discharge are also available from the Natural Resource Conservation Service, University of California Cooperative Extension, local Resource Conservation Districts, and U.S. EPA sources.

Nothing in this Implementation Plan shall limit the Regional Water Board or the Executive Officer from using existing authorities to regulate, require the abatement of or take enforcement action on any existing or proposed discharge of excess sediment.

V. Monitoring

- A. The Regional Board considers monitoring to be an essential element of this Program, in order to identify the need for adaptive management changes and to demonstrate the effectiveness of sediment control practices.
- B. The Regional Water Board's Executive Officer may establish a Monitoring Program for a specified area or parcel utilizing one or more of the following strategies:
 1. Implementation monitoring to assess whether activities and control practices were carried out as planned.
 2. Assessment of upslope conditions and whether sediment control practices were effective at reducing discharge of excess sediment.
 3. Compliance monitoring: to determine whether specified criteria, such as water quality objectives, are being met.
 4. Trend monitoring to determine if water quality objectives are being met and to track progress.