

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2017-0046**

APPROVING AN AMENDMENT OF THE WATER QUALITY CONTROL PLAN
FOR THE NORTH COAST REGION (BASIN PLAN) INCORPORATING THE ACTION PLAN
FOR THE UPPER ELK RIVER SEDIMENT TOTAL MAXIMUM DAILY LOAD (TMDL) IN
CHAPTER 4 (IMPLEMENTATION PLANS)

WHEREAS:

1. On May 12, 2016, the North Coast Regional Water Quality Control Board (North Coast Water Board) adopted [Resolution No. R1-2016-0017](#), amending the Water Quality Control Plan for the North Coast Region (Basin Plan) to incorporate the Action Plan for the Upper Elk River Sediment TMDL (TMDL Action Plan) in Chapter 4 (Implementation Plans) of the Basin Plan.
2. The framework and information for the TMDL Action Plan are contained in the [Upper Elk River: Technical Analysis for Sediment](#) (Technical Report) (Tetra Tech, October 2015), which provides a concise synthesis of the data, analyses, results, and conclusions from the [2013 Staff Report to Support the Technical Sediment Total Maximum Daily Load for the Upper Elk River](#) and other reports, including those received from dischargers (e.g., Reports of Waste Discharge). The Technical Report provides the scientific basis for the sediment TMDL for the Upper Elk River Watershed.
3. The proposed Basin Plan amendment, adopted by the North Coast Water Board by Resolution No. R1-2016-0017, is an action subject to the requirements of the California Environmental Quality Act (CEQA). The North Coast Water Board previously prepared a "substitute environmental document" (SED) for the Temperature Policy (North Coast Water Board [Resolution No. R1-2014-0006](#)) and prepared an addendum to the SED to support the Policy for the Implementation of the Water Quality Objectives for Temperature (North Coast Water Board [Resolution No. R1-2015-0004](#)). The North Coast Water Board found that the analysis contained in the Temperature Policy SED, and addendum to the SED prepared for the Restoration Policy, satisfied CEQA requirements for the proposed Basin Plan amendment and complied with the requirements of the State Water Resources Control Board's (State Water Board's) certified regulatory process as set forth in California Code of Regulations title 23, section 3775 et seq. The North Coast Water Board found that the Basin Plan amendment did not alter the environmental analysis that was prepared for the Temperature Policy and Restoration Policy as it would not result in different implementation actions, mitigation measures, or reasonably foreseeable methods of compliance to warrant additional environmental analysis pursuant to Public Resources Code section 21159 and California Code of Regulations, title 14 section 15187. The North Coast Water Board found that because the Basin Plan amendment was consistent with the prior CEQA documentation it was not required to prepare subsequent or supplemental CEQA documentation for the TMDL Action Plan pursuant to California Code of Regulations title 14, sections 15162 and 15163. The State Water Board has reviewed the Substitute Environmental Documents for the Basin Plan amendment and concurs with the North Coast Water Board's findings and determinations, including its Statement of Overriding Considerations.

4. The North Coast Water Board adopted the Basin Plan amendment pursuant to the “Necessity” standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b).
5. The North Coast Water Board found that the Basin Plan amendment is consistent with the Statement of Policy with Respect to Maintaining High Quality of Waters in California (State Water Board [Resolution No. 68-16](#)) and the federal Antidegradation Policy (40 C.F.R. section 131.12), in that it does not allow degradation of water quality, but requires restoration of water quality and control of the discharge necessary to assure that pollution or nuisance will not occur, and water quality standards will be met.
6. On July 14, 2017, the Executive Officer of the North Coast Water Board made minor, non-substantive amendments to the TMDL Action Plan, as authorized by North Coast Water Board Resolution No. R1-2016-0017.
7. The TMDL Action Plan identifies the primary sources of anthropogenic sediment loading in Table 1, and includes several key requirements for addressing that sediment loading. Those requirements identify waste discharge requirements (WDRs) or waivers of WDRs as “applicable regulatory programs to minimize sediment loads from new and existing sediment sources on lands in the Upper Elk River Watershed, so as to reduce sediment loading toward the load allocation,” and require the two major upstream landowners to “implement ... a zero load allocation.”
8. The TMDL Action Plan also includes the following statements: “the zero load allocation does not constitute an effluent limitation or a waste load allocation, and the Board has discretion on how to implement it in waste discharge requirements (WDRs), waivers of WDRs (waivers) or other actions to minimize and eliminate waste discharges,” “the hillslope indicators and numeric targets in Table 2 are designed to inform Board actions and can be incorporated into orders, as appropriate and to the maximum extent feasible,” and “by 2031, the Regional Water Board shall evaluate the available information to assess the degree to which water quality objectives are attained and beneficial uses are restored throughout the watershed, and nuisance flooding conditions are abated.”
9. The State Water Board’s understandings of the TMDL Action Plan’s requirements and statements described above are (1) that hillslope indicators and numeric targets in Table 2 apply throughout a discharger’s area of land ownership and not solely in areas of active harvest, (2) that the North Coast Water Board’s WDRs and any other orders for the two major landowners that conduct timber harvesting will incorporate specific provisions that implement all of the hillslope indicators and numeric targets in Table 2, unless the regional board makes specific findings about why any omitted hillslope indicators or numeric targets are not appropriate or feasible, (3) the WDRs and any other orders for the two major landowners will also contain any additional specific provisions to ensure that all anthropogenic discharges of sediment are minimized and eliminated, and (4) in the absence of a future amendment to the TMDL Action Plan, including an amendment based on successful implementation of the Watershed Stewardship Program resulting in expanded sediment loading capacity in the impacted reach, the WDRs and any other orders will require the landowners to achieve the zero load allocation for all anthropogenic discharges of sediment as soon as feasible, but no later than 2031.

10. The State Water Board finds that the Basin Plan amendment is in conformance with California Water Code section 13240, which specifies that regional water quality control boards may revise basin plans, and section 13242, which requires a program of implementation for achieving water quality objectives. The State Water Board also finds that the TMDL as reflected in the Basin Plan amendment is consistent with the requirements of section 303(d) of the federal Clean Water Act.
11. A Basin Plan amendment does not become effective until approved by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law (OAL). The TMDL must also receive approval from the U.S. Environmental Protection Agency (U.S. EPA).

THEREFORE, BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendment to the Basin Plan adopted under North Coast Water Board Resolution No. R1-2016-0017, as amended by the Executive Officer of the North Coast Water Board on July 14, 2017.
2. Directs the North Coast Water Board to review its WDRs for the two major landowners in the Upper Elk River Watershed that conduct timber harvesting and revise the WDRs and adopt any additional orders as necessary to make them consistent with the State Water Board's understandings of how the TMDL Action Plan will be implemented as described in finding no. 9, above. The WDRs and any other orders must include interim milestones and earlier compliance requirements than 2031 where appropriate and to the maximum extent feasible. The revisions to the WDRs and the adoption of any additional orders shall be completed as expeditiously as possible, but no later than January 2019, and the North Coast Water Board shall submit written updates on its progress and the progress of the Watershed Stewardship Program to the Executive Director every six months until the revisions to the WDRs and the adoption of any additional orders are completed.
3. Recognizes the value of the Watershed Stewardship Program and its opportunity to restore natural river functions and improve assimilative capacity, and encourages full participation by all stakeholders in the Watershed Stewardship Program.

4. Authorizes the Executive Director or designee to submit the amendment adopted under North Coast Water Board Resolution No. R1-2016-0017 as approved and the administrative record for this action to the Office of Administrative Law for approval of the regulatory provisions and to U.S. Environmental Protection Agency for approval of the TMDL.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 1, 2017.

AYE: Chair Felicia Marcus
 Board Member Tam M. Doduc
 Board Member Dorene D'Adamo
 Board Member E. Joaquin Esquivel

NAY: None

ABSENT: Vice Chair Steven Moore

ABSTAIN: None



Jeanine Townsend
Clerk to the Board