

State of California
North Coast Regional Water Quality Control Board

**PUBLIC COMMENTS &
RESPONSES TO PUBLIC COMMENTS**

FOR THE

**TOTAL MAXIMUM DAILY LOAD IMPLEMENTATION POLICY
STATEMENT FOR SEDIMENT IMPAIRED RECEIVING WATERS**

November 23, 2004



State Water Resources Control Board
North Coast Region
5550 Skylane Boulevard, Suite A
Santa Rosa, California 95403
707-576-2220



TABLE OF CONTENTS

Introduction.....	1
-------------------	---

The comments are grouped into the following categories. Within these categories, comments made by more than one individual are listed first. The remaining comments are organized alphabetically by the commentator’s surname.

• General Comments of Support or Non-Support	2
--	---

Process Comments

• Requests for Postponement of the Adoption Hearing.....	5
• Basin Plan Amendment Process	6
• State Water Board’s “Draft Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options”	9

Overall Scope Comments

• Need for the Proposed policy statement	10
• Intent of Proposed policy statement.....	11
• Geographic Scope of the Proposed policy statement.....	12
• Watershed-Specificity	13

Policy Specific Comments

• Workplan & Staff Resources	13
• Scope and Use of Existing Programs, Authorities, and Tools.....	16
• Sediment Waste Discharge Prohibitions and Action Plan.....	19
• Memoranda of Understanding	20
• Education, Outreach, and Collaborative Approach	21
• Guidance Document.....	22
• Monitoring Strategy	24
• Salmonid Freshwater Habitat Targets.....	27
• Policy Comments Relating to the U.S. EPA Established TMDLs	29
• Technical Comments Relating to TMDL Analyses.....	30

Miscellaneous Comments

• Burden of Proof.....	32
• Determination of Compliance.....	32
• Command and Control Regulations.....	33
• Potential Economic Burden	33
• Wet Season Sediment Discharges.....	34
• Upslope Hazards	34
• Three-Tiered Approach.....	35
• Timber Harvest Plan Process	35
• Equality Issues	36

INTRODUCTION

The North Coast Regional Water Quality Control Board (Regional Water Board) released the draft Total Maximum Daily Load Implementation Policy for Sediment Impaired Receiving Waters in the North Coast Region (TMDL Implementation Policy Statement) on October 29, 2004, and opened the public comment period. All written comments received by November 12, 2004, are summarized in this document and responded to by Regional Water Board staff. All other comments, such as those received orally at the workshops¹ and written comments received after November 12, 2004, will be inserted into the record and considered by the Regional Water Board and staff.²

The comments are grouped into categories. Within these categories, comments made by more than one individual are listed first. The remaining comments are organized alphabetically by the commentator's surname.

¹ The comments pertaining to the "Sediment Waste Discharge Prohibitions and Action Plan," that were made orally at the public workshops will be responded to in writing, in accordance with the basin plan amendment process.

² The more formal process for public comment that is required for Basin Plan amendments does not apply to the proposed TMDL Implementation Policy Statement, which is not regulatory and not subject to the basin plan amendment process.

GENERAL STATEMENTS OF SUPPORT OR NON-SUPPORT

(1) Comment(s)

- The proposed TMDL Implementation Policy Statement really has nothing to do with implementing TMDLs.

Commentator(s)

- David A. Bischel, California Forestry Association

Response

Regional Water Board staff do not concur. The proposed TMDL Implementation Policy Statement has everything to do with implementing TMDLs, as indicated by the title and the content of the proposed policy statement.

(2) Comment(s)

- The proposed TMDL Implementation Policy Statement needs strengthening to accomplish goals set out in the TMDLs.

Commentator(s)

- Joseph Bower

Response

Comment noted. This comment appears to be an over-arching statement which is expanded upon in comments 69 and 70. Please see the response of Regional Water Board staff to those comments.

(3) Comment(s)

- For a number of reasons, it would be unlawful for the Regional Water Board to adopt the TMDL Implementation Policy Statement. Its inconsistencies with law and policy are set forth in subsequent sections of this letter. However, the Regional Water Board need not now confront these legal impediments to adoption of the Policy if it delays action on the Policy.

Commentator(s)

- Christopher J. Carr, Stoel Rives LLP

Response

Regional Water Board staff have determined that adoption of the proposed TMDL Implementation Policy Statement is legal. This comment appears to be an over-arching statement which is expanded upon in comments 18, 36, 43, and 54. Please see the response of Regional Water Board staff to those comments.

(4) Comment(s)

- The Ad Hoc Committee objects to adoption of the proposed TMDL Implementation Policy Statement, and urges the Regional Water Board to proceed with TMDL implementation through the basin plan amendment process.

Commentator(s)

- Christopher J. Carr, Stoel Rives LLP

Response

Comment noted. Please see the response of Regional Water Board staff to comment number 13.

(5) Comment(s)

- I urge the Regional Water Board's full support of the TMDL Implementation Policy Statement developed to protect and improve Ten Mile River's recovery. I have worked for many years to protect the Ten Mile River Watershed from commercial development and have helped to monitor the river's health. I am relieved and delighted that you have developed a proposal that, when implemented, will significantly improve what I have seen in the watershed.

Commentator(s)

- Erica Fielder, Friends of the Ten Mile

Response

Comment noted.

(6) Comment(s)

- "Please take effective action. The draft Resolution and the recited complexities of corrective measures and procedures coupled with past history gives me no confidence in attaining water quality in the near or distant future."

Commentator(s)

- Richard Gienger

Response

Comment noted. Regional Water Board staff have determined that the proposed TMDL Implementation Policy Statement will be an effective and efficient step for controlling sediment waste discharges to sediment impaired water bodies throughout the North Coast Region. The requirement for a workplan will help to ensure that action is taken and evaluated for effectiveness. The proposed policy statement is intended to result in immediate action, using existing tools, to control sediment waste discharges. This approach will be monitored to determine effectiveness.

(7) Comment(s)

- The proposed TMDL Implementation Policy Statement should be revised to (1) rely on the scientific analysis of a water body prior to implementing regulatory framework, (2) allow time to assess the efficacy of recently adopted programs relating to timber harvesting, and (3) focus on education, outreach, and collaboration as a primary tool to achieve landscape wide goals with a wide variety of landowners and land uses.

Commentator(s)

- Chris Quirmbach, California Licensed Foresters Association

Response

Regional Water Board staff have determined that the proposed TMDL Implementation Policy Statement does indeed rely upon the scientific analysis of established TMDLs, does rely upon recently adopted programs related to timber harvesting activities, and does focus on education, outreach, and collaboration. Please see the response of staff to comments numbered 23, 32, and 41, respectively, for more information.

(8) Comment(s)

- The regulatory effect of the proposed TMDL Implementation Policy Statement and the Salmonid Freshwater Habitat Targets for Sediment-Related Parameters in conjunction with their proposed linkage is problematic and the Board should take no further action until these concerns can be addressed.

Commentator(s)

- Peter F. Ribar, Campbell Timberland Management, LLC

Response

Comment noted. Please see the response of Regional Water Board staff to comment number 54 in regards to the Salmonid Freshwater Habitat Targets.

(9) Comment(s)

- We strongly recommend that the Regional Water Board not adopt the resolution at this time unless it can be made totally non-regulatory.

Commentator(s)

- Peter F. Ribar, Campbell Timberland Management, LLC

Response

Comment noted. Regional Water Board staff believes the commentator misapprehends the effects of the proposed TMDL Implementation Policy Statement. The proposed policy statement is non-regulatory. It simply states a Regional Water Board policy that sediment impairments should be promptly, effectively, and efficiently addressed as much as possible by the use of existing authorities and tools (both those that are permit and enforcement based and those that are cooperation based). The policy statement creates no new water quality standards, objectives,

prohibitions, or any other type of regulation or rule. The policy statement simply directs staff to pursue prompt, effective, and efficient implementation of existing rules and standards, using existing authorities, and to report back to the Regional Water Board on the progress toward addressing sediment impairments in the North Coast Region.

(10) Comment(s)

- Adoption of the proposed TMDL Implementation Policy Statement is the best hope for recovery of the beneficial uses of the Ten Mile River as well as all watercourses in the North Coast Region.
- We are very pleased that Regional Water Board staff has come up with a strategy that will be effective without being punitive – and can be applied to all streams and rivers.
- We urge the Regional Water Board’s full support of the proposed TMDL Implementation Policy Statement. They are well thought out, based on the best available science and practical.

Commentator(s)

- Judith Vidaver, Friends of the Ten Mile

Response

Comment noted.

REQUESTS FOR POSTPONEMENT OF ADOPTION HEARING

(11) Comment(s)

- (1) Bearing in mind the volume of material being submitted with these comments (which will require a written response), (2) the revision of the proposed TMDL Implementation Policy Statement as recently as October 29, 2004, (3) the release of the peer review and comment on November 12, 2004, (4) the significance of this issue for the North Coast Region, (5) the possibility of new Board members being seated prior to November 29, 2004, (6) the complexity of the issues in this item, and (7) the minimal time allotted for public comment on this item at the hearing, Farm Bureau hereby requests that this item be put over from the November 29, 2004 Hearing and be rescheduled for a later hearing date. Absent such additional time, it is difficult to see at a minimum how the staff can meaningfully review all comments and respond to them, or allow the Board members to assimilate this information.

Commentator(s)

- Anthony L. François, California Farm Bureau Federation

Response

The November 29, 2004 hearing date is appropriate for consideration of the proposed TMDL Implementation Policy Statement. In regards to (1), Regional Water Board staff have reviewed the material submitted with these comments in conjunction with existing water quality data in Regional Water Board files, and have determined that the beneficial uses associated with the cold water fishery have been and remain negatively impacted by excessive sediment in the water bodies that are listed as sediment impaired on the Clean Water Act 303(d) list. Please consider this

document staff's written response, though there is no legal requirement to provide one. In regards to (2), there has been adequate opportunity for public comment. The public had the opportunity to review the proposed policy statement for fifty-five days prior to the Haring. Staff held four public workshops on the proposed policy statement throughout the North Coast Region to inform the public and solicit comment. Staff also presented information on the proposed policy statement, and received feedback from the Regional Water Board and the public, at regularly scheduled public Board meetings in August and October 2004. In regards to (3), the peer review was limited to the scientific aspects of the proposed policy statement, with primary focus on the "Salmonid Freshwater Habitat Targets for Sediment-Related Parameters." As explained in the response of staff to comment 54, however, staff is recommending at this time that the targets not be considered as part of the proposed policy statement. Furthermore, any comments you or other members of the public may wish to express on the peer review are welcome. In regards to (4) and (6), recognizing the breadth and variety of views regarding sediment controls, staff held the public workshops described above, though they were not required by law. In regards to (5), staff are not aware of any new Board appointment. Regardless, this comment is not applicable until a new Board member is appointed prior to the November 29, 2004 Hearing. In regards to (7), interested parties will also have an opportunity to provide oral comments at the November 29, 2004 Hearing. The timeframe of twenty minutes on the agenda was an estimate by administrative staff and can be extended as agenda demands permit and at the discretion of the Board Chair.

(12) Comment(s)

- PALCO requests that you please refrain from adopting the resolution during your November 29, 2004, meeting.

Commentator(s)

- Stephen R. Horner, Scotia Pacific Company LLC

Response

Comment noted.

COMMENTS RELATING TO THE BASIN PLAN AMENDMENT PROCESS

(13) Comment(s)

- The proposed policy statement circumvents the TMDL development and Basin Plan amendment process, seeking to achieve the substantive regulatory controls and objectives that might be obtained through that process, without providing the requisite opportunity for public participation required by the Administrative Procedures Act and without taking into account economic considerations as required by the California Water Code.
- The proposed TMDL Implementation Policy Statement is an attempted substitute for a properly developed and approved Basin Plan amendment. It is the Farm Bureau's position that such substitution is not legal and must be abandoned in favor of a proper basin planning process.

- The proposed TMDL Implementation Policy Statement seeks to achieve the objectives of a TMDL implementation plan and will have regulatory bite. It directs the Executive Officer to use existing permitting and enforcement tools to address impairment.
- The requirement of the California Water Code to consider the costs of agricultural water quality programs, which is part of the basin plan amendment process, should not be circumvented.
- The proposed TMDL Implementation Policy Statement does not carry the same legal weight as a Basin Plan amendment. It is clear that all relevant statute, regulation, and policy specify that TMDLS and their implementation plans be adopted through Basin Plan amendments.
- We believe the use of the resolution approach, including incorporation of the “Salmonid Freshwater Habitat Targets for Sediment-Related Parameters,” while flexible in application, is not the appropriate mechanism and appears to circumvent normal regulatory rule making and the basin plan amendment process.

Commentator(s)

- David A. Bischel, California Forestry Association
- Christopher J. Carr, Stoel Rives LLP
- Anthony L. François, California Farm Bureau Federation
- Richard Gienger
- Alan Levine, Coast Action Group
- Peter F. Ribar, Campbell Timberland Management, LLC

Response

The proposed TMDL Implementation Policy Statement states a policy for more efficient, prompt, and effective use of existing authorities and tools; it does not create any new objectives, prohibitions, or result in any other form of regulation or rule-making. Please see the more general response of Regional Water Board staff to comment number 9. In regards to the Salmonid Freshwater Habitat Targets, please see the response of staff to comment number 54.

(14) Comment(s)

- Regulations require that amendments to a Basin Plan comply with the CEQA-functional equivalent process, including analysis of environmental impacts, preparation of a CEQA checklist, preparation of a functional equivalent document, and holding a scoping meeting to assess the potential environmental scope of the CEQA analysis. This did not happen for the proposed TMDL Implementation Policy Statement.

Commentator(s)

- David A. Bischel, California Forestry Association
- Christopher J. Carr, Stoel Rives LLP

Response

The proposed TMDL Implementation Policy Statement is not a Basin Plan Amendment. Please see the response of Regional Water Board staff to comments numbered 9 and 13 for more information on this subject. Because an amendment to the Basin Plan is not necessary nor

proposed, the formal analysis of environmental impacts, preparation of a CEQA checklist, preparation of a functional equivalent document, and a scoping meeting is also not necessary.

(15) Comment(s)

- The proposed TMDL Implementation Policy Statement represents a wholesale effort to change the entire water quality regulatory process.
- The proposed policy statement essentially jettisons the existing standards and substitutes entirely new ones.
- The proposed policy statement simply discards the narrative, sediment-related water quality standards.
- The proposed policy statement establishes new water quality standards, but without the Regional Water Board accountability, public participation, and State Water Board approval that the regular basin plan amendment process requires.
- Any process that replaces or redefines the existing water quality objectives is wholly inconsistent with the purpose of a TMDL and a TMDL implementation plan.

Commentator(s)

- David A. Bischel, California Forestry Association

Response

Regional Water Board staff do not concur. The proposed TMDL Implementation Policy Statement is not a Basin Plan amendment, and the process for adopting (by Resolution) the proposed policy statement is appropriate and legal. The process also does not replace or redefine existing water quality objectives, but directs Board resources toward more effectively implementing and obtaining existing objectives. Please see the response of staff to comments numbered 9 and 13 for more information. Additionally, the “Salmonid Freshwater Habitat Targets for Sediment-Related Parameters” in no way jettisons, discards, redefines, adds to, detracts from, or changes water quality standards. The targets are also no longer proposed to be part of the policy statement. Please see the response of staff to comment number 54 for more information on the targets.

(16) Comment(s)

- Since the proposed TMDL Implementation Policy Statement has a potential or significant adverse impact on California businesses and individuals, the Administrative Procedures Act requires the Regional Water Board to avoid “the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements” (Gov’t Code 11346.3(a)).

Commentator(s)

- David A. Bischel, California Forestry Association

Response

The Government Code section cited governs rulemaking. Again, the proposed TMDL Implementation Policy Statement is not rulemaking. Please see the response of Regional Water Board staff to comments number 9 and 13.

(17) Comment(s)

- Regional Water Board staff stated that the proposed TMDL Implementation Policy Statement “is a proposal to implement TMDLs without changing the Basin Plan” and “sediment waste discharge reduction and attainment of the goals may be more effectively achieved without amending the Basin Plan.” Therefore, a basin plan amendment is necessary.

Commentator(s)

- Anthony L. François, California Farm Bureau Federation

Response

The use of existing authorities, under existing law and regulations, to work toward achieving existing water quality standards in sediment-impaired water bodies does not require a Basin Plan amendment. Please see the response of Regional Water Board staff to comments number 9 and 13.

COMMENTS RELATING TO THE STATE WATER BOARD’S “DRAFT WATER QUALITY CONTROL POLICY FOR ADDRESSING IMPAIRED WATERS: REGULATORY STRUCTURE AND OPTIONS”

(18) Comment(s)

- The “Draft Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options” will soon be subject to a public comment period that may result in substantive changes to it. The Regional Water Board’s efforts to develop a TMDL Implementation Policy Statement would surely benefit from the State Board’s Guidance, once it is adopted. Accordingly, the Regional Water Board should wait until after the State Board has adopted its TMDL Guidance before further developing, and thereafter adopting, a TMDL Implementation Policy Statement.
- We must express concern that the proposed TMDL Implementation Policy Statement would move forward prior to public comment and subsequent deliberation on the “Draft Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options.” We therefore urge you to hold in abeyance any action on the proposed TMDL Implementation Policy Statement while the State Water Board proceeds with development of a uniform TMDL policy applicable statewide.

Commentator(s)

- David A. Bischel, California Forestry Association
- Bernie Bush, Green Diamond Resource Company
- Christopher J. Carr, Stoel Rives LLP

Response

The proposed TMDL Implementation Policy Statement has been developed in conjunction with the State Water Board’s “Draft Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options,” and in consultation with State Water Board staff. The proposed policy statement is consistent with the intent of the State Water Board’s draft Policy. Additionally, it is the understanding of Regional Water Board staff that the State Water Board’s

Policy is not intended and shall not be construed as limiting the authority of the Regional Water Boards.

COMMENTS RELATING TO THE NEED FOR THE PROPOSED POLICY STATEMENT

(19) Comment(s)

- The proposed TMDL Implementation Policy Statement does not establish the necessity of adopting the proposed policy statement. It is not sufficient that the Regional Water Board find simply that waters in the North Coast Region are impaired for sediment – the Regional Water Board also must find that the proposed policy statement and its stark departure from the current implementation planning approach is “necessary.” Cites Gov’t Code Section 11349.1.

Commentator(s)

- David A. Bischel, California Forestry Association

Response

Again, the cited Government Code provisions regarding rulemaking do not apply. Please see the response of Regional Water Board staff to comments number 9 and 16. There is no requirement to establish a legal “necessity” for this policy statement. However, on a policy level, because sediment is not easily removed from the rivers once deposited, and because established TMDLs for fifteen rivers shows serious sediment-impairments and continued sediment discharges, there is an immediate need to begin public outreach and focus staff on more effectively using existing authorities and tools to control sediment waste discharges.

(20) Comment(s)

- The data and analysis included in the two volumes addressing the condition and history of the coho fishery in the North Coast Region shows that the fishery related beneficial uses are supported to a far greater extent than stated in the Executive Officer’s Summary Report.

Commentator(s)

- Anthony L. François, California Farm Bureau Federation

Response

Regional Water Board staff thank the commentator for the submission of the two binders, especially the information that is pertinent to water bodies within the North Coast Region. However, the information and data contained in the binders does not refute the conclusions of staff that (1) excessive sedimentation negatively affects beneficial uses. For example, populations of chinook, coho, and steelhead throughout the North Coast Region have substantially declined, and continue to do so. These conclusions are based in part on the following: North Coast fishery counting stations showed declines of 66% in steelhead, 65% in coho, and 64% in chinook from the 1940s, 50s, and 60s to the 1970s³. Coho populations in the 1990s were probably less than 6% of

³ United States Department of Agriculture, Soil Conservation Service, United States Forest Service, and California Department of Water Resources. 1972. Water, Land, and Related Resources. North Coastal Area of California and Portions of Southern Oregon. Main Report. Sediment Yield and Land Treatment.

what they were in the 1940s, and there has been at least a 70% decline just since the 1960s⁴. These are significant declines. Additionally, throughout much of the North Coast Region, chinook, coho, and steelhead are listed as threatened species under the federal Endangered Species Act. Additionally, the California Fish and Game Commission has determined that coho salmon south of Punta Gorda are endangered.

(21) Comment(s)

- In the resolution, Finding 3 present information regarding the extent of sediment impairment in the North Coast Region. Please include with this finding some measure of the amount and detail of scientifically derived data that supported the original listings.
- What is the current level of impairment of each of these listed water bodies?

Commentator(s)

- Stephen R. Horner, Scotia Pacific Company LLC

Response

Finding 3 of the proposed TMDL Implementation Policy Statement states that approximately fifty-nine percent of the area of the North Coast Region is “listed” as impaired due to sediment under Section 303(d) of the Clean Water Act. Specifically, fifty-nine percent of the land in the North Coast Region is drained by water bodies that are listed as sediment-impaired according to the 2002 303(d) List. The 303(d) List has been adopted by the State Water Control Board and approved by the United States Environmental Protection Agency (U.S. EPA). Please see the files for the 303(d) listing process for supporting information and data. Additionally, the sediment TMDLs completed to date have confirmed the sediment impairment of those water bodies and include sediment source analyses.

COMMENTS RELATED TO THE INTENT OF THE PROPOSED POLICY STATEMENT

(22) Comment(s)

- What does the proposed TMDL Implementation Policy Statement really mean for control of controllable sources in impaired water bodies?

Commentator(s)

- Richard Gienger

Response

The purpose of the proposed TMDL Implementation Policy Statement is to refocus staff efforts on sediment waste discharges on a watershed basis, for both existing regulatory and non-regulatory programs, to develop a monitoring strategy, and to develop watershed-specific workplans to attain sediment-related water quality standards. The proposed policy statement is intended to ensure that

⁴ Brown, L.R., Moyle, P.B., and Yoshiyama, R.M. 1994. Historical Decline and current Status of Coho Salmon in California. North American Journal of Fisheries Management 14:237-261, 1994.

Regional Water Board staff are more effectively addressing sediment waste discharges using existing authorities and programs.

COMMENTS RELATING TO THE GEOGRAPHIC SCOPE OF THE PROPOSED POLICY STATEMENT

(23) Comment(s)

- It is entirely plausible that the proposed TMDL Implementation Policy Statement will be carried out on water bodies that, under scientific scrutiny, are not impaired significantly from anthropogenic causes.
- This blanket Policy could cause considerable financial and regulatory burden to address a problem that does not exist.
- By adopting the proposed policy statement, the Regional Water Board would, in effect, be potentially setting up the scenario in which additional regulations such as the proposed Regional Sediment Amendment are promulgated on water bodies which ultimately get de-listed for the sediment stressor after the TMDL analysis is completed.
- The implementation of TMDL regulations prior to the supporting scientific analysis seems inappropriate, as does the circumvention of the TMDL process merely because it is inherently complex and involved.

Commentator(s)

- Chris Quirnbach, California Licensed Foresters Association

Response

First, the proposed TMDL Implementation Policy Statement is intended to be applicable to all sediment-impaired water bodies and the watersheds that drain to those water bodies. Regional Water Board staff recognize the possibility that the early stages of a TMDL analysis will find that sediment impairment does not exist, or the impairment is naturally-caused. However, given the declining condition of beneficial uses affected by sediment across the North Coast Region, for the purposes of the proposed policy statement, if the water body is listed as sediment impaired on the Clean Water Act 303(d) List, it warrants careful scrutiny and monitoring for more effective regulatory efforts, at a minimum. Both the Clean Water Act and the Porter-Cologne Water Quality Control Act require the application of existing regulations consistent with water quality standards, and this includes the protection of beneficial uses.

Again, however, the proposed policy statement does not include any new regulation, but primarily directs staff to more effectively address sediment waste discharges through the use of existing authorities and tools. The proposed policy statement will not result in any increase to the financial and regulatory burden of dischargers.

Second, the promulgation of the “Sediment Waste Discharge Prohibitions and Action Plan” will not occur unless it is fully approved as a Basin Plan amendment. Please see the response of Regional Water Board staff to comment number 36 for more information on the relation of the proposed policy statement and the “Sediment Waste Discharge Prohibitions and Action Plan.”

Third, the TMDL process will not be circumvented by the adoption of the TMDL Implementation Policy Statement. TMDLs will be developed for any sediment-impaired water body that does not already have an established TMDL. Basin Plan amendments will be prepared for each TMDL as necessary to implement the waste load allocations and load allocations.

COMMENTS RELATING TO WATERSHED-SPECIFICITY

(24) Comment(s)

- Just as each water body was listed for site-specific reasons, the plan for getting its water quality into compliance must be site- or watershed-specific.
- Would like to see a watershed-specific implementation plan.

Commentator(s)

- David A. Bischel, California Forestry Association
- Cathleen Morgan

Response

Regional Water Board staff concur that each watershed is unique. The proposed TMDL Implementation Policy Statement does not hinder watershed-specific sediment control or TMDL implementation. The workplan, as described in Directive 2 of the proposed policy statement, will illustrate how and when the directives of the proposed policy statement will occur throughout the North Coast Region, and staff will do so on a watershed-specific level. Furthermore, with out without the proposed policy statement, staff will address sediment waste discharges using site-specific approaches to limit discharges.

COMMENTS RELATING TO THE WORKPLAN & STAFF RESOURCES

(25) Comment(s)

- Development of a workplan describing how and when a list of actions will be taken is proposed. Is there some reason that such a workplan requires a resolution on part of the Regional Water Board? Perhaps it would be more appropriate to develop this workplan and have it as part of the resolution prior to its adoption.

Commentator(s)

- Stephen R. Horner, Scotia Pacific Company LLC

Response

The proposed TMDL Implementation Policy Statement is not required to develop a workplan, and a workplan is not required in order to take the actions proposed. These are administrative tools for implementing the Regional Water Board's staff resource management priorities. The requirement for a workplan has been included in the proposed policy statement in order to provide assurance that such activities will occur, to place a schedule on their occurrence, and as a feedback loop to allow the Regional Water Board to assess these efforts. Since the proposed policy statement will

primarily serve to state a Regional Water Board policy preference for staff efforts, there is no need to have the workplan developed before the resolution is adopted.

(26) Comment(s)

- What level of redirection of staff and additional staff resources are anticipated as suggested in the EOSR?
- Would such redirection have an impact on other sediment control activities of the Regional Water Board?

Commentator(s)

- Stephen R. Horner, Scotia Pacific Company LLC

Response

The proposed TMDL Implementation Policy Statement directs Regional Water Board staff to pursue an integrated approach to sediment control. The actual staff deployment will be proposed in the workplan (please see Directive 2 of the proposed TMDL Implementation Policy Statement). However, it is envisioned that adoption of the proposed policy statement will allow staff resources to be diverted from developing unnecessarily redundant or unneeded regulatory Basin Plan amendments for each sediment impaired watershed to on-the-ground implementation of the proposed policy statement.

(27) Comment(s)

- The relative rank of sediment production by each watershed and each activity should be the basis for corrective actions. The Klamath River or Eel River produces more fish and make more sediment than some of the small watersheds such as Freshwater or Jacoby Creeks. The corrective actions should be prioritized to be most cost effective.

Commentator(s)

- Denver Nelson

Response

Comment noted. Regional Water Board staff will take this comment into consideration when developing workplans, which are described in Directive 2 of the proposed TMDL Implementation Policy Statement. Please be aware, however, that all water bodies have value and Regional Water Board staff are obligated to consider the beneficial uses of all water bodies and work toward protecting, restoring, and enhancing all beneficial uses.

(28) Comment(s)

- It is unclear whether the workplan (as specified in Directive 2 of the proposed TMDL Implementation Policy Statement) will be regulatory in nature.

Commentator(s)

- Peter F. Ribar, Campbell Timberland Management, LLC

Response

The workplan will not be regulatory in nature. The workplan will describe how the Regional Water Board will allocate its staff resources to accomplish the tasks listed in Directives 2A through 2J.

(29) Comment(s)

- It is not clear whether or not Regional Water Board approval of the workplan is contemplated or not.

Commentator(s)

- Peter F. Ribar, Campbell Timberland Management, LLC

Response

As stated in Directive 2 of the proposed TMDL Implementation Policy Statement, the workplan shall be presented to the Regional Water Board as an informational item in order to incorporate feedback from the Board and members of the public. However, the workplan will not require formal approval by the Regional Water Board.

(30) Comment(s)

- The Regional Water Board should undertake normal rule making or formal Board approval of such a workplan brought to it by the Executive Officer.

Commentator(s)

- Peter F. Ribar, Campbell Timberland Management, LLC

Response

Comment noted.

(31) Comment(s)

- We further encourage the Regional Water Board to seek the funding necessary to implement the proposed TMDL Implementation Policy Statement on the ground.

Commentator(s)

- Judith Vidaver, Friends of the Ten Mile

Response

Comment noted.

COMMENTS RELATING TO THE SCOPE AND USE OF EXISTING PROGRAMS, AUTHORITIES, AND TOOLS

(32) Comment(s)

- Finding 10 of the proposed TMDL Implementation Policy Statement disregards and discounts the many programs and policies administered by federal, state, and local agencies, as well as non-regulatory efforts of landowners, in the North Coast Region, which provide a robust system to address non-point source discharges resulting from land-use activities and the impacts of sediment on water quality. Examples of such programs are listed. Because so much of this system – involving an enhanced role for the Regional Water Board in regulation of the water quality impacts of timber harvesting – has only recently been put into place, it should be given an opportunity to work before the Regional Water Board concludes that it has failed. Therefore, the need for the TMDL Implementation Policy Statement has not been established.
- We believe that current practices and actions (both project based and pro-actively by landowners) to address sediment delivery are having a positive influence on beneficial uses of water. We do not agree that the current programs are ineffective. The efficacy of waivers, general waste discharge requirements, and Senate Bill 810 should be given an opportunity to function as intended and evaluated after an appropriate time of implementation. The proposed TMDL Implementation Policy Statement contains a list of existing enforcement tools, which in conjunction with the actions discussed above will continue to function as comprehensive and effective approaches for addressing sediment control and discharges until basin plan amendments have been adopted, approved, and become effective. Therefore, we are not convinced that the adoption of the proposed TMDL Implementation Policy Statement is warranted.
- Insufficient time has passed to allow the assessment of the performance of the general timber waste discharge requirements and waivers thereof to meet stated goals. Adopting the proposed TMDL Implementation Policy Statement will be duplicative in nature given significant overlap in targeted land use activities.
- The proposed TMDL Implementation Policy Statement disregards and discounts the comprehensive regime for the regulation of timber harvesting and its water quality impacts established by the Forest Practice Act and Forest Practice Rules, but also fails to consider recent legislation enhancing the authority of the Regional Water board with respect to regulation of water quality within the timber harvest plan review and approved process.

Commentator(s)

- David A. Bischel, California Forestry Association
- Christopher J. Carr, Stoel Rives LLP
- Chris Quirnbach, California Licensed Foresters Association
- Peter F. Ribar, Campbell Timberland Management, LLC

Response

Regional Water Board staff concur that the existing authorities and tools available to the Regional Water Board provide a valuable mechanism for addressing sediment waste discharges throughout the North Coast Region. The existence of these tools, some of which are relatively new in nature and extent, in fact highlight the desirability of focusing on seeing what kinds of results the better

use of existing tools can produce, as directed by the proposed TMDL Implementation Policy Statement. This is expected to produce more significant and rapid water quality improvement than that which would result from continuing to focus so much of staff resources and time on developing entirely new sets of possibly redundant rules in Basin Plan amendments. These tools are both permitting/enforcement based (such as waste discharge requirements, timber harvest plan review, and stormwater permits) and cooperation based (such as working with Resource Conservation Districts, the University of California Cooperative Extension, landowners, and watershed groups to conduct education, outreach, and assistance), as noted by the commentators. Indeed, Directive 2 of the proposed TMDL Implementation Policy Statement specifically directs the Executive Officer to use existing authorities and tools to address sediment waste discharges, including waste discharge requirements, waivers thereof, and Senate Bill 810.

(33) Comment(s)

- Has the Regional Water Board examined the existing programs and determined to what extent they are forcing recovery of sediment-impaired watersheds? If so, what are the results?
- Please list all of the existing programs that are in place to protect and enhance water quality that you apparently believe have been a failure.
- The Board needs to direct staff to develop a report documenting the sediment control projects and pro-active efforts that have been implemented in the fifteen watersheds since U.S. EPA TMDL approval in order to establish a current baseline from which to make informed regulatory decisions.

Commentator(s)

- Stephen R. Horner, Scotia Pacific Company LLC
- Peter F. Ribar, Campbell Timberland Management, LLC

Response

A brief review of sediment inputs from established TMDLs, and conditions that Regional Water Board staff have observed, clearly indicate a need to refocus efforts to the field and to improving existing voluntary and educational efforts. The gap between the volume of anthropogenic sediment discharges and efforts to control such discharges remains sufficiently large that any further refinement to the numbers does not appear warranted at this time. The documented sediment impairment of the majority of the North Coast Region, under Section 303(d) of the Clean Water Act, is evidence that existing programs and the implementation of those programs have not been adequate to protect, remediate, restore, and enhance sediment impaired water bodies. Eleven existing programs are listed in Directive 2A of the proposed TMDL Implementation Policy Statement. Regional Water Board staff will consider the documentation of sediment control projects and other pro-active efforts when developing work plans, as described in Directive 2 of the proposed TMDL Implementation Policy Statement.

(34) Comment(s)

- What would be the expectation of the Regional Water Board for “existing programs” to have rectified impairment from legacy sources and to what level?

Commentator(s)

- Stephen R. Horner, Scotia Pacific Company LLC

Response

It is unclear what the commentator means by the use of term “legacy sources.” Any landowner or project operator with an existing sediment waste discharge can legally be held responsible for the abatement of that source. The expectation of Regional Water Board staff, for existing programs, is seeing that water quality protects, restores, and enhances beneficial uses, and attains and maintains water quality standards.

(35) Comment(s)

- The Executive Officer’s Summary Report (EOSR) states that there is an immediate need to refocus staff efforts to rely on existing regulatory tools to address sediment impairments. In what ways have the existing regulatory tools of Regional Water Board staff been unable to implement existing regulatory tools to control sediment? PALCO has certainly been subject to the use of many of these tools, and it seems that the NCRWQB staff has been able to focus on those efforts without the proposed TMDL Implementation Policy Statement.

Commentators

- Stephen R. Horner, Scotia Pacific Company LLC

Response

Existing programs can be used to control sediment waste discharges if staff resources are focused on using these programs and dischargers understand the link between land disturbing activities and excess sediment in water bodies. The proposed TMDL Implementation Policy Statement provides direction to, and policy support for, staff by making it clear that effective use of the existing authorities is needed to address widespread sediment-related impairments throughout the Region. The proposed TMDL Implementation Policy Statement is also an effective way to provide notice to dischargers about the Regional Water Board’s focus on anthropogenic sediment waste discharges. Although existing programs provide authority to control sediment, additional resources and tools (such as the guidance document on sediment control and the targets document, and, if appropriate, a regional sediment Basin Plan amendment) may make existing programs, staff efforts, and discharger efforts to control sediment waste more effective. In the meantime, the proposed policy statement endorses making better use of limited staff resources.

COMMENTS RELATING TO THE “SEDIMENT WASTE DISCHARGE PROHIBITIONS AND ACTION PLAN”

(36) Comment(s)

- The “Sediment Waste Discharge Prohibitions and Action Plan,” which is referenced in the proposed TMDL Implementation Policy Statement, has been withdrawn from the Regional Water Board’s consideration on November 29, 2004, and is not available for review by the public.
- Because the resolution was linked to another item that was to be discussed and considered for adoption during the same meeting but has since been removed from consideration, it is necessary to remove the TMDL Implementation Policy Statement resolution from consideration also.
- The “Sediment Waste Discharge Prohibitions and Action Plan” is not being considered by the Regional Water Board, and therefore should not be anticipated in conjunction with the proposed TMDL Implementation Policy Statement.
- The proposed TMDL Implementation Policy Statement references and relies upon other plans and documents that have yet to be developed or adopted. This is the case with the “Sediment Waste Discharge Prohibitions and Action Plan.” This document will have important implications for implementation of the TMDL Implementation Policy Statement and, particularly, the impacts of the TMDL Implementation Policy Statement on landowners in the North Coast Region.
- Especially troubling is the incorporation by reference of the “Sediment Waste Discharge Prohibitions and Action Plan.” If such action takes place, the proposed TMDL Implementation Policy Statement can be amended to reflect such a change.
- Concern about the proposed TMDL Implementation Policy Statement that refers to the “Sediment Waste Discharge Prohibitions and Action Plan.” This document will provide the detail that will be necessary to determine the benefits and costs of the proposed policy statement for landowners, operators, and local governments.

Commentator(s)

- David A. Bischel, California Forestry Association
- Bernie Bush, Green Diamond Resource Company
- Christopher J. Carr, Stoel Rives LLP
- Stephen R. Horner, Scotia Pacific Company LLC
- Peter F. Ribar, Campbell Timberland Management, LLC

Response

Comments noted. Finding 11 of the proposed TMDL Implementation Policy Statement has been revised to specify that Regional Water Board staff are currently drafting an amendment to the Basin Plan for the “Sediment Waste Discharge Prohibitions and Action Plan.” The proposed policy statement is a stand-alone policy that is not dependent on the “Sediment Waste Discharge Prohibitions and Action Plan.” Additionally, when the draft “Sediment Waste Discharge Prohibitions and Action Plan” is developed, staff will proceed with the complete basin plan amendment process. The main direction of the proposed policy statement is to use existing regulations, increase public outreach, encourage volunteer efforts, and refocus staff resources.

This does not require the completion of the “Sediment Waste Discharge Prohibitions and Action Plan.”

(37) Comment(s)

- What are the “additional specific tools” from the “Sediment Waste Discharge Prohibitions and Action Plan” that are referred to that will address sediment waste discharges? How do these specific tools differ from existing tools for controlling sediment waste discharge?

Commentators

- Stephen R. Horner, Scotia Pacific Company LLC

Response

The “Sediment Waste Discharge Prohibitions and Action Plan” is still under development and will be subject to further changes through the public review and Board adoption process. As currently envisioned by Regional Water Board staff, however, the amendment will improve the Regional Water Board’s ability to address cumulative impacts, will emphasize prevention, and will extend beyond current confines to all land use activities and all water bodies. As the amendment or other new programs or tools are developed and proposed, they will be available for public review and comment.

COMMENTS RELATING TO MEMORANDA OF UNDERSTANDING

(38) Comment

- The EOSR proposes to pursue “Memoranda of Understanding” with other agencies. What specific agencies does the Regional Water Board have in mind? Given that the Regional Water Board has experience with Memoranda of Understanding with other agencies, including CDF, please describe each existing Memoranda of Understanding and the successes or failures of each.

Commentators

- Stephen R. Horner, Scotia Pacific Company LLC

Response

A description and analysis of each existing MOU, and the “successes or failures of each” is beyond the scope of the proposed TMDL Implementation Policy Statement. The proposed policy statement refers to possible methods that may be used to implement TMDLs, which will vary depending on watershed-specific factors. In some watersheds, for example where an agency may manage a large portion of a watershed or an agency may regulate a land use activity that is a significant source of sediment waste discharges, the use of a MOU may be the most effective way to implement a TMDL. This may entail adopting a new MOU or modifying an existing MOU. The use of an MOU is simply one of the various options for “cooperative” efforts to obtain compliance with sediment-related standards.

COMMENTS RELATING TO THE EDUCATION, OUTREACH, AND COLLABORATIVE APPROACH

(39) Comment(s)

- There needs to be vivid, elementary, and effective educational outreach in the schools and in North Coast media to clearly explain erosion and sediment prevention in combination with related permitting and enforcement.

Commentator(s)

- Richard Gienger

Response

Comment noted. Directive 2G of the proposed TMDL Implementation Policy Statement directs the Executive Officer to redirect and seek additional staff resources for public outreach, education, permitting, and enforcement of water quality standards.

(40) Comment(s)

- In the resolution, landowners are encouraged to work with the Regional Water Board to ensure protection of water quality. What outreach programs are currently offered or available for landowners from the Regional Water Board?
- Rather than only encouraging landowners to approach the Regional Water Board to initiate consultations, perhaps you should also include guidance to your staff as to how cooperative offers both from landowners and to landowners are dealt with and encouraged in your region.

Commentator(s)

- Stephen R. Horner, Scotia Pacific Company LLC

Response

These comments are noted. The Regional Water Board recognizes the need for public outreach and for ensuring that staff receives training and guidance. The Regional Water Board works with watershed groups, administers grants, and coordinates efforts with the University of California Cooperative Extension and Resources Conservation Districts throughout the North Coast Region in sediment-related activities. The proposed TMDL Implementation Policy Statement directs the Executive Officer to seek additional resources for public outreach and education. One of the additional education/outreach tools will be the development of a guidance document to assist dischargers and land managers in effective sediment control and to guide Regional Water Board staff in sediment-related work.

(41) Comment(s)

- The pursuit of non-regulatory actions and the undertaking of public outreach and education should be emphasized more throughout the proposed TMDL Implementation Policy Statement. Collaborative and cooperative efforts could be an effective methodology to address current water quality issues. These issues are basin wide and, as noted, have not been dealt with adequately to protect water quality in some cases. A large number of landowners willingly

participate in cooperative efforts to improve land management techniques and strategies. This willingness should be capitalized upon.

Commentator(s)

- Chris Quirnbach, California Licensed Foresters Association

Response

Comment noted. Regional Water Board staff certainly commend those landowners who are working to improve land management techniques and strategies to prevent, minimize, and control sediment waste discharges. Staff concur with the commentator's last statement and look forward to working in a cooperative manner with willing landowners throughout the North Coast Region.

(42) Comment(s)

- We applaud expanded outreach by Regional Water Board staff, provided it is conducted in a non-regulatory cooperative manner.

Commentator(s)

- Peter F. Ribar, Campbell Timberland Management, LLC

Response

Comment noted.

COMMENTS RELATING TO THE GUIDANCE DOCUMENT

(43) Comment(s)

- The proposed TMDL Implementation Policy Statement refers to a guidance document for the control of sediment waste discharges (Directive 2H). Please withhold consideration for adoption of this resolution until the guidance document is prepared.
- The guidance document is a very key and "unreviewable" part of the proposed TMDL Implementation Policy Statement.
- The guidance document will have important implications for implementation of the TMDL Implementation Policy Statement and, particularly, the impacts of the TMDL Implementation Policy Statement on landowners in the North Coast Region.
- The guidance document, promised for release in October 2004, has not yet been released for public review. Consequently, we are not able to review it or provide comment. The California Department of Forestry and Fire Protection (CDF) requests the Regional Water Board postpone any final action on the proposed TMDL Implementation Policy Statement until the draft guidance document is released and the public and agencies are afforded forty-five days to comment on the document.
- Concern about the adoption of a TMDL Implementation Policy Statement that refers to the guidance document. This document will provide the detail that will be necessary to determine the benefits and costs of the proposed policy statement for landowners, operators, and local governments.

Commentator(s)

- David A. Bischel, California Forestry Association
- Christopher J. Carr, Stoel Rives LLP
- Dale T. Geldert, California Department of Forestry and Fire Protection
- Richard Gienger
- Bernie Bush, Green Diamond Resource Company
- Stephen R. Horner, Scotia Pacific Company LLC

Response

It is important to note that the guidance document will not have any regulatory effect, but is intended to “de-mystify” sediment control options and serve as a technical reference to assist Regional Water Board staff and the public in finding appropriate solutions to sediment waste discharges. It will, in effect, simply be the “best available information” in staff’s view regarding sediment control. The guidance document will be inherently “organic” or evolving in nature, as with any scientific or technical information base. As staff has worked on the draft guidance document, the scope expanded and it is, therefore, not complete. Regional Water Board staff recognize the importance of the guidance document, and the proposed TMDL Implementation Policy Statement directs the Executive Officer to prepare the guidance document by December 31, 2005, as stated in Directive 2H. It is also important to note that the proposed TMDL Implementation Policy Statement serves to refocus staff efforts to use existing tools to address sediment waste discharges in watersheds that have been listed as sediment-impaired. Like the proposed policy statement, the guidance document, true to its title, will contain guidance only, will not be directly enforceable, and will not have a regulatory effect. As a non-regulatory compendium of technical information, Regional Water Board approval is not required. Staff will, however, present the guidance document to the Regional Water Board to receive comment and feedback from the Board, members of the public, and agencies when the draft is complete.

(44) Comment(s)

- The adoption of the guidance document can only be adopted through a basin plan amendment.

Commentator(s)

- Anthony L. François, California Farm Bureau Federation

Response

Regional Water Board do not concur. First, the proposed TMDL Implementation Policy Statement does not adopt a guidance document but directs Regional Water Board staff to develop one. Second, the guidance document will not be regulatory in nature, but will consist of available information on the control of sediment waste discharges, and will therefore not necessitate a Basin Plan amendment.

(45) Comment(s)

- The guidance document should be developed in cooperation with landowners.
- The guidance document should be developed with the expressed direction to Regional Water Board staff that its use be solely informational and not function as regulatory conditions or requirements.

Commentator(s)

- Peter F. Ribar, Campbell Timberland Management, LLC

Response

Regional Water Board staff concur that the guidance document described in Directive 2H should be developed with the input of landowners and stakeholders throughout the North Coast Region. It is staff's intention to do so. Additionally, the guidance document will not be regulatory in nature, but will consist of available information on the control of sediment waste discharges. The information contained in the guidance document would only be used in a regulatory manner if appropriate for and specifically incorporated into a permit or enforcement order. It should be noted that the same technical information could be used with or in a permit or enforcement order with out without the guidance document. It is envisioned that the guidance document will facilitate dialogue on effective sediment control strategies, and it is hoped that the document will make sediment control a little easier for the regulated public, as a compendium of known strategies.

COMMENTS RELATING TO THE MONITORING STRATEGY

(46) Comment(s)

- Please describe what monitoring strategies are available for the various sediment producing activities that would be effective in describing quantitatively the impacts of past, present and future projects in the region.
- The Regional Water Board should explain their monitoring intentions.

Commentator(s)

- Stephen R. Horner, Scotia Pacific Company LLC
- Cathleen Morgan

Response

The proposed TMDL Implementation Policy Statement directs Regional Water Board staff to develop a monitoring strategy (see Directive 2I for more information), and consequently, the monitoring strategy has not yet been completed. The monitoring strategy will not have regulatory effect and will not require landowners to monitor water quality conditions. Instead, the monitoring strategy is intended to provide the Regional Water Board with feedback on whether the use of existing authorities and tools is working, measured by the recovery of sediment impaired water bodies in the North Coast Region. The monitoring strategy will do this, in part, by defining monitoring objectives, identifying the locations of trend monitoring stations, describing parameters to monitor, analyzing available data for benchmark conditions, developing measurable milestones, and specifying due dates for monitoring and data analysis.

(47) Comment(s)

- The TMDL implementation monitoring strategy will have important implications for implementation of the TMDL Implementation Policy Statement and, particularly, the impacts of the TMDL Implementation Policy Statement on landowners in the North Coast Region.

Commentator(s)

- David A. Bischel, California Forestry Association
- Christopher J, Carr, Stoel Rives LLP

Response

The monitoring strategy will not have regulatory effect, does not require public review, and will not require landowners to monitor water quality conditions. Instead, the monitoring strategy is intended to provide the Regional Water Board with feedback on the recovery of sediment impaired water bodies in the North Coast Region and aid the implementation of adaptive management. The monitoring strategy will do this, in part, by defining monitoring objectives, identifying the locations of trend monitoring stations, describing parameters to monitor, analyzing available data for benchmark conditions, developing measurable milestones, and specifying due dates for monitoring and data analysis.

(48) Comment(s)

- What is the baseline that you will use to determine whether efforts are “more” effective or less effective? The point being, so much of how water quality is described is subjective, making it very difficult for dischargers and the public to truly understand the current state of water quality and its protection measures.

Commentators

- Stephen R. Horner, Scotia Pacific Company LLC

Response

Baseline water quality conditions and changes in water quality over time is often best determined through trend monitoring of instream conditions, and by assessing whether the water bodies support, or do not support, beneficial uses. Please see Finding 21 and Directive 2I in the proposed TMDL Implementation Policy Statement for a discussion on monitoring.

(49) Comment(s)

- The Regional Water Board has required monitoring of PALCO for various reasons over the last several years. Has the Regional Water Board analyzed that monitoring data and developed any conclusions? PALCO feels that the monitoring data it has provided will provide valuable insight into the effectiveness of various existing sediment control programs in place.

Commentator(s)

- Stephen R. Horner, Scotia Pacific Company LLC

Response

The data and results of PALCO's specific monitoring efforts are beyond the scope of the proposed TMDL Implementation Policy Statement. However, Regional Water Board staff will take into account any appropriate and applicable data collected by PALCO when staff assess the effectiveness of the proposed policy statement.

(50) Comment(s)

- The proposed TMDL Implementation Policy Statement may improve the streams where enacted, but there is no provision to determine these measures' effects on the sediment number calculated in the TMDL technical reports.

Commentator(s)

- Denver Nelson

Response

The assessment of the effectiveness of the proposed TMDL Implementation Policy Statement is one of the goals of the monitoring strategy, which is described in Directive 2I of the proposed policy statement.

(51) Comment(s)

- The need for a monitoring implementation strategy has not been established. Existing processes and efforts appear to adequately cover the monitoring "landscape."
- The Regional Water Board should work with the Board of Forestry's Monitoring Study Group (MSG) on cooperative water quality monitoring projects.

Commentator(s)

- Peter F. Ribar, Campbell Timberland Management, LLC

Response

Monitoring is needed to establish baseline conditions, to measure the effects of the sediment control practices currently being used, to measure the effectiveness of the proposed TMDL Implementation Policy Statement, and to enable the implementation of adaptive management. Sediment assessment data are needed to be able to assess the effectiveness of existing controls vs. the need for new controls. The Regional Water Board will examine the work of monitoring groups, including the MSG, but a Region-wide approach to monitoring that incorporates all land use activities, not just timber, will require a broad perspective that cannot be found in most (if not all) of the existing monitoring groups of which staff are aware. Regional Water Board staff do not concur that the existing processes and efforts adequately cover the "monitoring landscape" at least in part because they do not fully encompass the variety of land use activities and sites that are found in the North Coast Region. The MSG, for example, is focused on monitoring timber harvest activities under the California Forest Practice Rules, whereas, the proposed policy statement will affect other land use activities, such as grazing and rural residential construction.

(52) Comment(s)

- The requirement to conduct monitoring should not be undertaken lightly. Instream monitoring is a costly endeavor (personnel costs, equipment costs, QA/AC costs, data management and analysis costs, reporting costs).

Commentator(s)

- Peter F. Ribar, Campbell Timberland Management, LLC

Response

Regional Water Board staff concur that some monitoring can be expensive and monitoring plans should be designed and implemented so that well thought-out questions are answered, and not just for the exercise of collecting data. Staff recognize that in order for the data to be useful, accurate, and reliable, the purpose, parameters, sites, methodologies, and QA must be understood and specified. Staff also recognize that in order for any monitoring burden to be imposed, the burden must bear a reasonable relationship to the benefits to be derived from the burden.

(53) Comment(s)

- It is inappropriate to adopt the proposed TMDL Implementation Policy Statement that incorporates a monitoring strategy that is not fully described.

Commentator(s)

- Peter F. Ribar, Campbell Timberland Management, LLC

Response

The proposed TMDL Implementation Policy Statement does not adopt a monitoring strategy, but specifically directs Regional Water Board staff to develop one. Members of the public will have the opportunity to review and comment on the monitoring strategy before it is finalized.

COMMENTS RELATING TO THE SALMONID FRESHWATER HABITAT TARGETS

(54) Comment(s)

- The California Geological Survey (CGS) prepared a review of the “Salmonid Freshwater Habitat Targets for Sediment-Related Parameters” as requested by the California Department of Forestry and Fire Protection. The focus of the comments is on the applicability of the numeric sediment-related targets when considered in the context of the variability of the geology and geomorphology of the northern California Coast Ranges.
- The California Department of Forestry and Fire Protection requests the Regional Water Board postpone any final action on the proposed TMDL Implementation Policy Statement until the technical problems with the targets are addressed. These problems are described in the technical review of the document conducted recently by the California Geological Survey.
- Christopher G. Surfleet and several staff from Mendocino Redwood Company submitted a comment letter on the “Salmonid Freshwater Habitat Targets for Sediment-Related Parameter,” at the request of Mendocino Redwood Company. Collectively, they submitted

recommendations and urge the Regional Water Board to consider revisions to the draft targets document.

- Comments on the targets in general, the use of the targets, validity of targets as indicators of protection of beneficial uses, enforceability of the targets, aquatic insect assemblage, embeddedness, thalweg profile, large woody debris, pools, percent fines, D_{50} , monitoring methodologies, and peer review.
- Comments on the use of targets versus water quality objectives and the need to proceed through the basin plan amendment process.

Commentator(s)

- David A. Bischel, California Forestry Association
- Bernie Bush, Green Diamond Resource Company
- Christopher J. Carr, Stoel Rives LLP
- Anthony L. François, California Farm Bureau Federation
- Dale T. Geldert, California Department of Forestry and Fire Protection
- Denver Nelson
- Cathleen Morgan
- Peter F. Ribar, Campbell Timberland Management, LLC
- Thomas E. Spittler, California Geological Survey
- Christopher G. Surfleet, Hydrologist, Comments sent at the request of Mendocino Redwood Company

Response

Comments noted, and changes to the “Salmonid Freshwater Habitat Targets for Sediment-Related Parameters” will be made as appropriate. Additionally, the targets will not be considered by the Regional Water Board as part of the proposed TMDL Implementation Policy Statement. Regional Water Board staff will respond in detail to all the comments made by the above commentators in a separate document.

(55) Comment(s)

- The “Salmonid Freshwater Habitat Targets for Sediment-Related Parameters” should be peer reviewed and subject to scientific critique.
- All peer review comments need to be publicly available for consideration and critique.

Commentator(s)

- David A. Bischel, California Forestry Association
- Christopher J. Carr, Stoel Rives LLP
- Peter F. Ribar, Campbell Timberland Management, LLC

Response

The “Salmonid Freshwater Habitat Targets for Sediment-Related Parameters” have been peer reviewed and were subject to scientific critique. Additionally, the peer review comments and the responses of Regional Water Board staff to the comments are publicly available. Please see the

response of Regional Water Board staff to comment number 54 for more information on the targets.

(56) Comment(s)

- Regulatory action extended to achieve attainment of the turbidity objective would present the question whether that water quality objective could properly form the basis for regulatory action.
- The turbidity water quality objective is plagued with interpretive difficulties that would make its use as a basis for regulatory action problematic and, perhaps, illegal. Most obviously, there is the issue of what is meant by “naturally occurring background levels.”

Commentator(s)

- David A. Bischel, California Forestry Association
- Christopher J. Carr, Stoel Rives LLP

Response

The water quality objective for turbidity, as with all water quality objectives contained in the Basin Plan, form the basis of regulatory action when made a condition of a permit or a prohibition. The discussion of the pros and cons of the existing turbidity water quality objective is beyond the scope of the proposed TMDL Implementation Policy Statement, for the Policy does not proposed to add to, detract from, or modify the existing turbidity objective.

POLICY COMMENTS RELATING TO THE U.S. EPA ESTABLISHED TMDLS

(57) Comment(s)

- Using the proposed TMDL Implementation Policy Statement to formally “accept” all of the fifteen sediment TMDLs established by the U.S. EPA is inappropriate.
- The adoption of existing TMDLs established by the U.S. EPA can only be adopted through a basin plan amendment.
- The adoption of the existing U.S. EPA established TMDLs requires the Regional Water Board to consider all the factors enumerated in the California Water Code, sections 13241 and 13242, and implementing regulations of the State Water Board.

Commentator(s)

- Anthony L. François, California Farm Bureau Federation
- Peter F. Ribar, Campbell Timberland Management, LLC

Response

Regional Water Board staff do not concur, but have determined that it is appropriate for the proposed TMDL Implementation Policy Statement to direct staff to consider the fifteen sediment TMDLs established by the U.S. EPA as foundational technical documents upon which to based implementation actions. Doing so imposes no new water quality standards or objectives and does not involve a Basin Plan amendment at this time, though Basin Plan amendments will be pursued as necessary to implement the waste load allocations and load allocations in the U.S. EPA

established TMDLs. In the meantime, the proposed policy statement only intends to use these documents as appropriate and available technical information, while acknowledging that new information and data may exist to improve the sediment source analyses.

(58) Comment(s)

- PALCO believes that Regional Water Board acceptance of the fifteen sediment TMDLs established by EPA is a positive message.
- Is there some existing policy that prevents Regional Water Board staff from “accepting” EPA’s sediment TMDLs within the region?
- Is there a reason why Regional Water Board staff would not accept an existing, adopted TMDL?
- Specifically, is there some element of the EPA’s Van Duzen River TMDL that the Regional Water Board finds unacceptable?

Commentator(s)

- Stephen R. Horner, Scotia Pacific Company LLC

Response

There is no existing policy that prevents the Regional Water Board from accepting the TMDLs established by the U.S. EPA. Discussion of specific TMDLs is beyond the scope of the proposed TMDL Implementation Policy Statement.

(59) Comment(s)

- Under the proposed TMDL Implementation Policy Statement, the assessment and analysis phases of the process are skipped and the process is taken directly to implementation without the specific information needed to guide that implementation.

Commentator(s)

- Chris Quirmbach, California Licensed Foresters Association

Response

The assessment and analysis phases of the fifteen sediment TMDLs established by the U.S. EPA have occurred and have been documented. As stated in Determination 4 of the proposed TMDL Implementation Policy Statement, the Regional Water Board accepts the established sediment TMDLs as foundational technical documents upon which to base implementation actions, as appropriate, and as may be updated with new information and data.

TECHNICAL COMMENTS RELATING TO TMDL ANALYSES

(60) Comment(s)

- The findings state that the “majority” of sediment TMDLs established have identified roads and timber harvest activities as the predominant reason for impairment. Please summarize the

timing of the road and harvesting activities that caused impairment, and indicate what regulatory sediment control programs were in place at the time the activities were conducted.

Commentators

- Stephen R. Horner, Scotia Pacific Company LLC

Response

First, many of the completed sediment TMDLs specify sources of sediment discharges (by type), and give a rough estimate of the time in which the discharge occurred (usually within ten to fifteen years). The TMDLs vary by watershed and Regional Water Board staff suggest the commentator refer to the TMDLs for each watershed of interest (where completed) for the timing of the road and harvesting activities that caused impairment. Second, it is beyond the scope of the proposed TMDL Implementation Policy Statement to specify what the applicable regulatory programs were in place over the period of time that sediment waste discharges occurred.

(61) Comment(s)

- Standardization of the TMDL units in the North Coast Region should be done.
- TMDLs, other than those for Redwood Creek and Van Duzen River, were based on extrapolated data and cannot measure the effect of upslope activities and sediment control.

Commentator(s)

- Denver Nelson

Response

It is beyond the scope of the proposed TMDL Implementation Policy Statement to discuss details of each sediment TMDL established in the North Coast Region. However, the standardization of most, if not all, of the established sediment TMDLs has occurred. Additionally, measuring changes in instream water quality due to changes in upslope activities is one of goals of the monitoring strategy described in Directive 2I of the proposed TMDL Implementation Policy Statement.

(62) Comment(s)

- Why isn't the Klamath River on the Clean Water Act Section 303(d) List for sediment? If the Klamath River is not sediment impaired, why are we spending millions of dollars to remove roads?

Commentator(s)

- Denver Nelson

Response

The determination of 303(d) listed water bodies is beyond the scope of the proposed TMDL Implementation Policy Statement. The commentator is encouraged to participate in the next round of 303(d) listing in furtherance of this inquiry.

(63) Comment(s)

- The sediment TMDLs are based upon a coarse scale sediment source analysis. We have taken strong issue with using a coarse scale analysis as the primary driver in determining allocations and therefore subsequent compliance.

Commentator(s)

- Peter F. Ribar, Campbell Timberland Management, LLC

Response

Although it is beyond the scope of the proposed TMDL Implementation Policy to discuss the details of the TMDL development and analysis, Regional Water Board staff are aware that the sediment source analyses are estimates that are based on the best available information at the time of TMDL development. In many watersheds, however, the sediment source analyses associated with the sediment TMDLs remain the best estimates of sediment discharges. Furthermore, staff do not intend to determine sediment waste discharge compliance by relying upon the load allocations included in the sediment TMDLs.

COMMENTS RELATING TO THE BURDEN OF PROOF

(64) Comment(s)

- The proposed TMDL Implementation Policy Statement seems to place the burden of proof for demonstrating lack of discharge impact entirely upon the discharger.

Commentator(s)

- Stephen R. Horner, Scotia Pacific Company LLC

Response

Porter-Cologne Act Section 13260 states that any person discharging waste, or proposing to discharge waste, that could affect the quality of waters of the state shall file a report of discharge. The burden of proof is clearly on the discharger

COMMENTS RELATING TO THE DETERMINATION OF COMPLIANCE

(65) Comment(s)

- Please provide as an attachment to the resolution the clear criteria that a discharger can follow and be judged against to ensure that their project will not contribute to a Basin Plan violation.
- Does the Regional Water Board have guidance documents available for dischargers and Regional Water Board staff to determine whether a discharge will in fact contribute to the impairment of water? If not, why not?
- What are the criteria for what constitutes a discharge that would result in a violation?

Commentator(s)

- Stephen R. Horner, Scotia Pacific Company LLC

Response

According to the Porter-Cologne Water Quality Control Act, discharges of waste must comply with the water quality objectives contained in the Basin Plan. Additionally, the proposed TMDL Implementation Policy Statement directs the Executive Officer to develop a guidance document on sediment waste discharge control. Please see directive 2H of the proposed policy statement for more information.

COMMENTS RELATING TO COMMAND AND CONTROL REGULATIONS

(66) Comment(s)

- The proposed TMDL Implementation Policy Statement's re-commitment to command and control regulation is discouraging/disheartening.

Commentator(s)

- David A. Bischel, California Forestry Association
- Christopher J. Carr, Stoel Rives LLP

Response

While the proposed TMDL Implementation Policy Statement does refer to the permitting and enforcement based tools in Directive 2A, the proposed policy statement also directs the Executive Officer to rely upon the use of tools that are based on cooperative efforts with landowners, organizations, watershed groups, and other agencies. Regional Water Board staff understand the importance and benefit of cooperation, encouragement, education, outreach, and guidance. Such actions are often very effective means of preventing, minimizing, and controlling sediment waste discharges. Such actions are, in fact, essential to reaching the goals, as no command and control structure could fully address such a broadly distributed waste discharge problem. The proposed policy statement in fact reflects a recognition of, and a renewed commitment to, such efforts.

COMMENTS RELATING TO POTENTIAL ECONOMIC BURDEN

(67) Comment(s)

- The regulatory burdens and costs of implementing the proposed TMDL Implementation Policy Statement would far exceed reason and have not been considered, let alone justified. Accordingly, it would be arbitrary and capricious to adopt the proposed TMDL Implementation Policy Statement.

Commentator(s)

- David A. Bischel, California Forestry Association

Response

First, the proposed TMDL Implementation Policy Statement does not require any new regulation or rule-making. Any regulatory burden and/or cost associated with the proposed policy statement already exists under the Porter-Cologne Water Quality Control Act, the Clean Water Act, and the

Basin Plan. Second, the proposed policy statement is not arbitrary, as it is not subject to individual will, but must be exercised within the existing authorities and constraints of the laws noted, and where permitting or enforcement authorities are used, upon approval of the Regional Water Board as specified under the Porter-Cologne Water Quality Control Act. Third, the proposed policy statement is not capricious, as it is has not been changed erratically without apparent or adequate motive, but has been developed by Regional Water Board staff with much thought and design, and is based on a documented need for more effective sediment control strategies.

COMMENTS RELATING TO WET SEASON SEDIMENT DISCHARGES

(68) Comment(s)

- What is the purpose of Finding 8 stating that an increased threat of sediment discharges exists in the wet season? This seems out of place and could be taken out of context by many individuals if it remains in the resolution.

Commentator(s)

- Stephen R. Horner, Scotia Pacific Company LLC

Response

That statement was placed in the draft resolution because it provides support, along with the other findings, for the resolution. The geology, steep slopes, and types of land-disturbing activities in the North Coast Region make wet weather activities especially prone to discharge sediment waste. This statement is not out of place.

COMMENTS RELATING TO UPSLOPE HAZARDS

(69) Comment(s)

- Nothing in the Basin Plan or the proposed TMDL Implementation Policy Statement requires landowners or agencies to pro-actively pursue the reduction of upslope hazards, such as undersized culverts and un-maintained roads.

Commentator(s)

- Joseph Bower

Response

Regional Water Board staff do not concur. Directive 2 of the proposed TMDL Implementation Policy Statement directs the Executive Officer to do several things, including relying upon the use of available authorities and tools to address sediment waste discharges, such as upslope hazards.

(70) Comment(s)

- The proposed TMDL Implementation Policy Statement could be amended to state that it is the Regional Water Board's intent to require the targets for reduction of sediment from upslope sources, as set forth in [the load allocations of] the completed TMDLs, be met. This would

assist Regional Water Board staff in convincing landowners and agencies that they must make meaningful progress toward the upslope goals [i.e., load allocations] set out in the TMDLs.

Commentator(s)

- Joseph Bower

Response

Comment noted. At this point in time, Regional Water Board staff have determined that the most effective way to reduce sediment waste discharges, and attain the TMDLs and sediment-related water quality standards, is the proposed TMDL Implementation Policy Statement.

COMMENTS RELATING TO THE THREE-TIERED APPROACH

(71) Comment(s)

- The TMDL Implementation Policy Statement departs from the “three-tiered” approach to water quality control of California’s Non-Point Source Management Plan.

Commentator(s)

- David A. Bischel, California Forestry Association
- Christopher J. Carr, Stoel Rives LLP

Response

Regional Water Board staff are aware that the proposed TMDL Implementation Policy Statement does not specifically describe the “three-tiered” approach. The three-tiered approach is no longer the policy of the State Water Board. Earlier this year, the State Water Board adopted the *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (NPS Implementation and Enforcement Policy) on May 20, 2004, which explains how the NPS Program Plan will be implemented and enforced. The NPS Implementation and Enforcement Policy moves beyond the three-tiered approach and states that all current and proposed non-point source discharges must be regulated under waste discharge requirements, waivers of waste discharge requirements, or a basin plan prohibitions, or some combination of these administrative tools.

COMMENTS RELATING TO THE TIMBER HARVEST PLAN PROCESS

(72) Comment(s)

- Opportunities for improving evaluations and responses to Cumulative Watershed Effects, as well as for basic monitoring and adaptive management are either tardy, lack adequate participation, or are not grounded in basic needs and realities of resources, landowners, and the public. There needs to be ONE CWE evaluation and response for each Planning Watershed facilitated by qualified personnel – not an essentially meaningless paper exercise for each THP or NTMP. Reasonable project proponent project monitoring with simple yet effective protocols needs to take place ASAP prior to CDF or lead agency sign-off.

Commentators

- Richard Gienger

Response

This comment is applicable to the timber harvest plan review process and is beyond the scope of the proposed TMDL Implementation Policy Statement.

COMMENTS RELATING TO EQUALITY ISSUES

(73) Comment(s)

- Would prefer to have all landowners on the same “playing field.”

Commentator(s)

- Cathleen Morgan

Response

The proposed TMDL Implementation Policy Statement does create a “level playing field,” as it is applicable to all landowners and land uses within watersheds that drain to sediment-impaired water bodies.