

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

DRAFT RESOLUTION NO. R1- 2006- 0052

Amending the Water Quality Control Plan for the North Coast Region to Include the
Action Plan for
The Shasta River Watershed, a Major Tributary to the Klamath River,
Temperature and Dissolved Oxygen
Total Maximum Daily Loads

WHEREAS, the California Water Quality Control Board, North Coast Region, (Regional Water Board) finds that:

1. *The Water Quality Control Plan for the North Coast Region* (Basin Plan) designates the beneficial uses of waterbodies within the North Coast Region. The Basin Plan also establishes water quality objectives in the North Coast Region including objectives for dissolved oxygen and water temperature. The beneficial uses of waterbodies, water quality objectives, and the state and federal antidegradation policies, together, constitute water quality standards.
2. Section 303(d) of the Clean Water Act requires states to identify waters that do not meet applicable water quality standards and further requires the United States Environmental Protection Agency (USEPA) to list such waters on the impaired waters list.
3. The Clean Water Act also requires that states or the USEPA establish Total Maximum Daily Loads (TMDLs) for waters on the impaired waters list. Such TMDLs shall be established at levels necessary to implement applicable water quality standards with seasonal variations and a margin of safety.
4. The USEPA added the Shasta River, major tributary to the Klamath River, to California's 303(d) impaired waters list in 1992 due to organic enrichment/low dissolved oxygen and in 1994 due to elevated temperature. The Shasta River has continued to be identified as impaired in subsequent listing cycles, the latest in 2002.
5. Elevated water temperatures and low dissolved oxygen levels in the Shasta River and its tributaries have resulted in the impairment of designated beneficial uses of water and the non-attainment of water quality objectives. The beneficial uses impaired in the Shasta River watershed by high temperature and low dissolved oxygen are primarily those associated with the cold water salmonid fishery (commercial and sport fishing (COMM); cold freshwater habitat (COLD); rare, threatened, and endangered species (RARE); migration of aquatic organisms

(MIGR); spawning, reproduction, and/or early development of fish (SPAWN)), and recreation uses (contact and non-contact recreation (REC-1, REC-2)). Downstream uses in the Klamath River, including the Native American Cultural Use (CUL) and the Subsistence Fishing (FISH) use, are also impaired.

6. The coho salmon population in the Klamath River watershed, including the Shasta River, are listed as threatened under the federal Endangered Species Act and the California Endangered Species Act. Low dissolved oxygen levels and high water temperatures have been identified by the California Department of Fish and Game, the US Fish and Wildlife Service and the National Academy of Sciences as important factors contributing to the decline of coho and other salmonid populations in the Shasta River.
7. Throughout the Shasta River watershed, many individuals, groups, and agencies have been working to enhance and restore fish habitat and water quality. These groups include, but are not limited to, the Shasta Valley Resource Conservation District, the Shasta River Coordinated Resource Management and Planning Group, Natural Resources Conservation Service, UC Cooperative Extension, Siskiyou County and the Five Counties Salmon Conservation Program, the California Department of Fish and Game, the California Department of Water Resources, the United States Forest Service, and the Klamath River Basin Fisheries Task Force. The past and present proactive efforts of these stakeholders have improved, and will continue to improve, water quality conditions in the Shasta River watershed.
8. The Action Plan for the Shasta River Temperature and Dissolved Oxygen Total Maximum Daily Loads (Basin Plan Amendment), is attached to this resolution, and meets the requirements of section 303(d) of the Clean Water Act. The implementation actions are designed to encourage and build upon on-going, proactive restoration and enhancement efforts in the watershed. The Basin Plan Amendment includes load allocations and an implementation plan to control the impacts to natural water temperature regimes and dissolved oxygen levels, and provides reasonable assurances that water quality standards will be met. The Basin Plan Amendment requires monitoring and reporting that is intended to verify the adequacy and effectiveness of recommended actions, and each source category includes a time schedule that contains a deadline at which point the Regional Water Board will review the success of the measures.
9. In 1967 the state legislature combined the Water Rights Board and Water Quality Board to create the State Water Board to address the relationship between water quality and quantity. Increasing cold water supply is one of the three measures necessary to meet the temperature water quality standards. This recommended flow measure does not alter or reallocate water rights in the Shasta or Klamath River watersheds, nor bind the Regional Water Board in future TMDLs, the State Water Board, Division of Water Rights in any water right decision, or state and federal courts.

10. Pursuant to Water Code section 13269, and consistent with California's Nonpoint Source Pollution Control Program, the Basin Plan Amendment waives the requirement for dischargers to file a Report of Waste Discharge (RWD) so long as they are participating in the recommended actions and programs as detailed in Table 4 of the Basin Plan Amendment. The conditional waiver is consistent with the Basin Plan because it requires compliance with actions necessary to achieve the TMDL and applicable water quality standards and requires the prevention of nuisance. It requires implementation of monitoring and reporting for each source category to determine effects on water quality and implementation of management practices to comply with the TMDL and applicable water quality standards. The conditional waiver does not apply to any discharges for which a WDR, waiver, or prohibition is issued under a separate action by the Board. The conditional waiver is in the public interest because it provides an incentive for dischargers to participate in on-going programs designed to improve and protect water quality and avoids the adoption of a redundant program. The waiver expires upon Regional Water Board adoption of a superseding regulatory action after the evaluation period specified for each source category, or after five years, whichever occurs first. The State Water Resources Control Board (State Water Board) or Regional Water Board may terminate the waiver at any time.
11. The Regional Water Board prepared written reports regarding adoption of the Basin Plan Amendment in compliance with applicable state and federal environmental regulations (Cal. Code of Regs., tit. 23, § 3775 et seq.; and 40 C.F.R. Parts 25 & 131).
12. The proposed Basin Plan Amendment is consistent with the provisions of the State Water Board Resolution No. 68-16, which is the "Statement of Policy with Respect to Maintaining High Quality Waters in California." Resolution No. 68-16 incorporates the federal Antidegradation Policy.
13. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the regional water boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) requirements for preparing environmental documents. (Cal. Code Regs., tit. 14, § 15251, subd. (g); Cal. Code Regs., tit. 23, § 3782.) As such, the basin planning documents together with the Environmental Checklist, are the "substitute documents" that contain the required environmental documentation under CEQA. (Cal. Code Regs., tit. 23, § 3777.)
14. The implementation plan allows many compliance approaches to be pursued. In preparing the accompanying CEQA substitute documents, the Regional Water Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and intends the substitute documents to serve as a tier 1 environmental review. Many of the compliance obligations will be undertaken by public agencies that will have separate obligations under CEQA. Project level impacts will need to be considered in any subsequent

environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2.

15. TMDLs are environmentally, and legally, mandated projects that set out performance standards or treatment requirements. The adoption of the proposed Basin Plan Amendment is therefore a regulatory action subject to the requirements of Public Resources Code section 21159. Consistent with the requirements of that section, the CEQA Environmental Checklist includes an analysis of environmental impacts, mitigation measures to reduce or avoid those impacts, and alternative means of compliance that would avoid or eliminate environmental impacts. (Pub. Resources Code, § 21159, subd. (a)(1)-(3); Cal. Code Regs., tit. 14, §§ 15187, subds. (b), (c)(1)-(3), 15189.) The analysis in the CEQA Environmental Checklist takes into account a reasonable range of environmental, economic, and technical factors. The analysis determined that the proposed Basin Plan Amendment would not have a significant adverse effect on the environment. The Regional Water Board has reviewed and considered the substitute documents and finds that the analyses comply with the requirements of the State Water Board's certified regulatory CEQA process. The environmental documents prepared by Regional Water Board staff pursuant to Public Resources Code section 21080.5 are hereby certified, and the Executive Officer is directed to file a Notice of Decision after State Water Board and Office of Administrative Law (OAL) approval of the Basin Plan Amendment, in accordance with section 21080.5(d)(2)(E) of the Public Resources Code and the California Code of Regulations, title 23, section 3781.
16. The Basin Plan Amendment has been developed in coordination with the United States Environmental Protection Agency, and will address a listing identified in the Consent Decree, *Pacific Coast Federation of Fishermen's Associations v. Marcus*, U.S. District Court for the Northern District of California, No. 95-4474 MHP, requiring timely development of TMDLs for certain named watersheds in the North Coast Region.
17. Since February 2003, Regional Water Board staff have engaged interested parties in stakeholder involvement through meetings of the Shasta River TMDL Technical Advisory Group. On June 28, 2005, a Public CEQA Scoping Meeting was held in Yreka, California.
18. Consistent with title 23 of the California Code of Regulations, sections 3778 through 3780, Regional Water Board staff consulted with stakeholders in the Region and with other potentially affected parties about the proposed action, and considered and addressed all comments.
19. Regional Water Board staff submitted the Basin Plan Amendment and corresponding Staff Report to an external scientific peer reviewer, Dr. Charles Coutant. On November 14, 2005, Dr. Coutant submitted his comments on several specific areas of concern. Regional Water Board staff revised the TMDL Staff

- Report and proposed Basin Plan Amendment in response, or provided a written response that explained the basis for not making the suggested revisions.
20. A Public Notice of the proposed Basin Plan Amendment, public workshops and Regional Water Board hearing was published on February 22, 2006.
 21. Regional Water Board staff conducted public workshops in Santa Rosa, Eureka, and Yreka on March 8, 14, and 15, 2006, to receive public comments. Regional Water Board staff revised the proposed Basin Plan Amendment as a result of public comments, and responded in writing.
 22. On May 17, 2006, the Regional Water Board held a public hearing and received written comments and testimony on the proposed Basin Plan Amendment. All comments were considered. Following the public testimony, the Regional Water Board directed staff to prepare a revised set of documents, including the Basin Plan Amendment, Resolution and Staff Report, that clearly delineated the changes made to the draft document as a result of the public hearing process. The Regional Water Board also directed staff to re-schedule the hearing for the June Regional Water Board meeting.
 23. On June 28, 2006, the Regional Water Board held a public hearing and received written comments and testimony on the proposed Basin Plan Amendment. All comments were considered.
 24. The Regional Water Board has determined that compliance with the proposed Basin Plan Amendment should attain and maintain the applicable water quality objectives for water temperature and dissolved oxygen, as well as restore and protect beneficial uses.
 25. The proposed Basin Plan Amendment was developed in accordance with Water Code section 13240 et seq., governing Basin Plan revisions.
 26. The proposed Basin Plan Amendment is crafted to build upon ongoing and proposed pro-active water quality improvement work in the affected communities, and beyond that relies only upon the use of existing regulatory and enforcement authorities and water quality objectives to achieve the recovery of beneficial uses in the Shasta River watershed. Therefore, no new costs are associated with the Action Plan, as it involves only the exercise of existing authorities to direct the performance of existing obligations, using watershed-specific information to guide this effort.
 27. The Basin Plan Amendment must be reviewed and approved by the State Water Board, the OAL, and the USEPA. The State Water Board will forward the approved amendment to the USEPA for review. The Basin Plan Amendment will become effective upon approval by USEPA.

NOW, THEREFORE, BE IT RESOLVED THAT, after considering the entire record, including oral testimony at the hearing,

1. Pursuant to section 13240 and 13242 of the Water Code, the Regional Water Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the Basin Plan Amendment to the *Water Quality Control Plan for the North Coast Region* as set forth in the attached document.
2. The Executive Officer is directed to forward copies of the Basin Plan Amendment and administrative record to the State Water Board in accordance with the requirements of Water Code section 13245.
3. The Regional Water Board requests that the State Water Board approve the Basin Plan Amendment in accordance with Water Code sections 13245 and 13246 and forward the Basin Plan Amendment to OAL and the USEPA.
4. The substitute environmental documents prepared pursuant to Public Resources Code section 21080.5 are hereby certified, and the Executive Officer is directed to file a Notice of Decision with the Resources Agency after State Water Board and OAL approval of the Basin Plan Amendment, in accordance with section 21080.5(d)(2)(E) of the Public Resources Code and the California Code of Regulations, title 23, section 3781.
5. If, during the approval process, the State Water Board or OAL determines that minor, non- substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Regional Water Board of any such changes.
6. The Executive Officer is authorized to sign a certificate of fee exemption.

CERTIFICATION

I, Catherine Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, North Coast Region, on June 28, 2006.

Catherine E. Kuhlman
Executive Officer