

DRAFT

May 17, 2007

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER QUALITY
TBD**

ITEM

SUBJECT

CONSIDERATION OF A RESOLUTION APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY REGION (BASIN PLAN) TO ESTABLISH A TOTAL MAXIMUM DAILY LOAD (TMDL) AND IMPLEMENTATION PLAN FOR PATHOGENS IN THE NAPA RIVER WATERSHED

DISCUSSION

The San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) adopted a proposed amendment to the Basin Plan to establish a TMDL to address pathogens in the Napa River Watershed. The TMDL defines allowable density-based bacteria concentrations and prohibits discharge of raw or inadequately treated human waste in the Napa River Watershed. San Francisco Bay Water Board determined that the zero human waste discharge target is necessary because raw or inadequately treated human waste is a significant source of pathogenic organisms (including viruses); and attainment of fecal coliform targets alone may not be sufficient to protect human health. The staff report presents results of staff analysis of pathogen impairment and sources, recommended pathogen load allocations, and a plan to implement the allocations. If approved, the Basin Plan amendment will: (1) establish a pathogen TMDL in the Napa River Watershed pursuant to section 303(d) of the Clean Water Act, and (2) establish an implementation strategy to achieve and support the TMDL. Approval of this item will revise Basin Plan Chapter 4 (implementation plan).

The San Francisco Bay Water Board has established water quality standards for the Napa River and its tributaries. The water quality standards consist of: (a) beneficial uses for the water body, (b) water quality objectives to protect those beneficial uses, and (c) the Antidegradation Policy, which requires the continued maintenance of existing high-quality waters. Currently, the Napa River is listed on the Clean Water Act 303(d) list because it does not meet standards due to elevated concentrations of pathogens, as well as sediment and nutrients. The primary beneficial uses of the Napa River and its tributaries impaired by high levels of pathogens are water contact recreation (REC1) and non-contact water recreation (REC2). The purpose of this TMDL is to protect and restore these beneficial uses by reducing the levels of pathogens in this watershed. This plan builds upon previous, and ongoing, successful efforts to reduce pathogen loads in the Napa River and its tributaries, and requires actions consistent with the California Water Code (CWC) section 13000 et seq.; the state's Nonpoint Source Pollution Control Program Plan (CWC Section 13369) and its Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program; and the human waste discharge prohibition (Basin Plan Discharge Prohibition 15).

PROBLEM STATEMENT

Waterborne pathogens pose a risk to human health. In ambient waters, the presence of human and animal fecal waste and associated pathogens leads to high concentrations of fecal coliform and *E. coli* bacteria. Bacteria levels in the Napa River and its tributaries are higher than the

bacteria water quality objectives established to protect people who swim, wade, and fish in these waters. Consequently, humans who recreate in the Napa River and its tributaries are at risk of contracting waterborne diseases.

The overall intent of this implementation plan is to restore and protect beneficial uses of the Napa River and its tributaries by reducing pathogen loadings. Potential pathogen sources in the watershed include: septic systems, sanitary sewer line failure, municipal runoff, municipal wastewater treatment facilities, livestock, and wildlife. The San Francisco Bay Water Board recognizes the technical, institutional, and monetary challenges that each source category may face in designing and implementing measures to reduce its respective loading. It is anticipated that enforcement mechanisms will only be needed where individuals have chosen not to assess and reduce their potential to affect water quality.

The Napa River Watershed Pathogen TMDL uses fecal coliforms, *E. coli*, and fecal enterococci as pathogen indicators. Use of these indicators is consistent with San Francisco Bay Water Board water quality objectives and with federal guidance (U.S. Environmental Protection Agency [USEPA], 2002). If, in the future, better indicator organisms are identified and new objectives are put into place for these organisms, this TMDL will be re-evaluated and modified if appropriate.

In order to develop a TMDL, a desired or target condition must be established to provide measurable environmental management goals and a clear linkage to attaining the applicable water quality objectives. The numeric targets (desired future conditions for the Napa River Watershed) proposed for this TMDL are as follows:

- Geometric mean *E. coli* density less than 126 CFU/100 mL
- 90th percentile *E. coli* density less than 409 CFU/100 mL
- Geometric mean fecal coliform density less than 200 CFU/100 mL
- 90th percentile fecal coliform density less than 400 CFU/100 mL
- Median total coliform density less than 240 CFU/100 mL
- No single total coliform sample to exceed 10,000 CFU/100 mL
- Zero discharge of untreated or inadequately treated human waste to the Napa River and its tributaries

The bacterial density targets are based on USEPA's *E. coli* recommended criteria and on the Basin Plan's contact recreation water quality objectives for fecal coliform and total coliform bacteria. It should be noted, however, that the State Water Resources Control Board (State Water Board) is in the process of developing statewide bacterial water quality objectives based on USEPA guidance. Should the State Water Board adopt new objectives, the existing fecal and total coliform water quality objectives currently in the Basin Plan will likely be replaced. The fecal coliform and total coliform targets and allocations will need to be revisited, and perhaps vacated, and will no longer be effective upon the replacement of the total and fecal coliform water quality objectives in the Basin Plan.

The last target, zero discharge of untreated human waste, is based on the knowledge that fecal bacteria are imperfect indicators of human pathogens. Since direct monitoring of human pathogens is not feasible, and since human waste is the most serious source of these pathogens, a target to implement the prohibition of raw or inadequately treated human waste discharge is proposed. This target is consistent with the Basin Plan's region-wide prohibition against the discharge of raw or inadequately treated sewage.

IMPLEMENTATION PLAN

This plan builds upon previous and ongoing successful efforts to reduce pathogen loads in the Napa River and its tributaries.

The TMDL gives Napa County until January 2008 to submit a plan and implementation schedule for evaluating On-Site Sewage Disposal Systems (OSDS) performance, and for correcting deficiencies in OSDSs identified as potentially discharging to surface waters. Priority will be given to Browns Valley Creek, Murphy Creek, and Salvador Channel subwatersheds. The septic system owners will be responsible for compliance with applicable Napa County, San Francisco Bay Water Board, and State Water Board requirements. Beginning January 2011 and bi-annually thereafter, Napa County will be required to provide documentation of progress that has been made toward implementing control measures.

It will be the responsibility of the Napa Sanitation District, the City of Calistoga, the City of St. Helena, the City of American Canyon, the Yountville Joint Treatment Plant, and the Napa River Reclamation District #2109 to apply for coverage under the State Water Board's general waste discharge requirements for sanitary sewer systems (Order No. 2006-0003-DWQ) and to comply with the provisions of the waste discharge requirements. In addition to applying for coverage under the general waste discharge requirements, each municipal wastewater discharger will be required to comply with its applicable National Pollutant Discharge Elimination System (NPDES) permit. Each of the responsible parties will be required to report progress of its inspections and evaluations of the sanitary sewer systems annually.

The state's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program requires that current and proposed nonpoint source discharges be regulated under waste discharge requirements, waivers of waste discharge requirements, Basin Plan prohibitions, or some combination of these tools. For grazing lands and confined animal facilities, ranchers, both landowners and lessees, and the confined animal facilities owners and operators must submit a Report of Waste Discharge to the San Francisco Bay Water Board by January 2010 that provides the following: a description of the facility, identification of necessary site-specific management measures to reduce animal waste runoff, and an implementation schedule for identified management measures. In addition, ranchers and the confined animal facilities operators will be required to comply with the applicable waste discharge requirements, waiver conditions, or prohibitions, and to report progress on implementation of management measures that reduce animal waste runoff. Completion and/or compliance dates will be determined and specified in the applicable waste discharge requirements or waiver conditions. However, the San Francisco Bay Water Board staff intends to work with stakeholders to develop conditions for a general waiver of waste discharge requirements for grazing lands by 2009.

The City of Napa, Napa County, Town of Yountville, City of St. Helena, City of Calistoga, and the City of American Canyon will be required to comply with approved storm water management plans. In addition to being compliant with the storm water management plans, these entities will need to update/amend the plans, as needed, to include specific measures designed to reduce

the discharge of human and animal wastes. The approved storm water management plans and applicable NPDES permits will specify the dates for completion and/or compliance.

The numeric targets and load allocations in the TMDL are not directly enforceable. To demonstrate attainment of applicable allocations, responsible parties must demonstrate that they are in compliance with specified implementation measures and any applicable waste discharge requirements or waiver conditions.

The TMDL encourages, but does not require, watershed groups and stakeholder partnerships to coordinate, with the ultimate goal of achieving water quality targets. In many cases, watershed groups may assist and participate in actions to facilitate successful implementation of this TMDL, including developing appropriate management practices, conducting group or watershed-based monitoring, sharing technical knowledge, and obtaining funding. Watershed groups can assist individual dischargers in achieving compliance. However, as required by the state's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program, individual dischargers continue to bear the ultimate responsibility for complying with water quality requirements and orders.

Approximately every five years, the San Francisco Bay Water Board will review the Napa River Watershed Pathogen TMDL and evaluate new and relevant information from monitoring, special studies, and the scientific literature. If source control actions are fully implemented throughout the watershed and the TMDL targets are not met, the San Francisco Bay Water Board may consider whether the TMDL targets are attainable and re-evaluate or revise the TMDL and allocations as appropriate. Alternatively, if the required actions are not implemented or are only partially implemented, the San Francisco Bay Water Board may consider further regulatory or enforcement action against dischargers not in compliance.

COST ESTIMATE: AGRICULTURAL WATER QUALITY CONTROL PROGRAM

Cost estimates were projected for a ten-year planning horizon. The average annual program implementation cost to agricultural dischargers is estimated to range between \$60,000 and \$250,000 for the next ten years. These costs will be shared by Napa River Watershed grazing lands operators (approximately 20 operators). This estimate includes the cost of implementing animal waste controls and grazing management measures and is based on costs associated with technical assistance and evaluation, installation of water troughs, and livestock control fencing along up to 25 percent of streams in grazing lands. Besides fencing, other acceptable methods of managing livestock access to streams are not included in this cost estimate due to variability in costs and site-specific applicability. In addition to private funding, potential sources of financing include federal and state water quality grants and federal agricultural grants.

POLICY ISSUE

Should the State Water Board approve the amendment to the Basin Plan to establish a TMDL and implementation plan for pathogens in the Napa River Watershed, as adopted under San Francisco Bay Water Board Resolution No. R2-2006-0079?

FISCAL IMPACT

San Francisco Bay Water Board and State Water Board staff work associated with or resulting from this action will be addressed with existing and future budgeted resources.

REGIONAL WATER BOARD IMPACT

Yes, approval of this resolution will affect the San Francisco Bay Water Board by amending the Basin Plan.

STAFF RECOMMENDATION

That the State Water Board:

1. Approves the amendment to the Basin Plan as adopted under San Francisco Bay Water Board Resolution No. R2-2006-0079.
2. Authorizes the Executive Director or designee to submit the amendment adopted under San Francisco Bay Water Board Resolution No. R2-2006-0079 to the Office of Administrative Law for approval of the regulatory provisions and to the United States Environmental Protection Agency for approval of the TMDL.

DRAFT

May 17, 2007

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2007-

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY REGION (BASIN PLAN) TO ESTABLISH A TOTAL MAXIMUM DAILY LOAD (TMDL) AND IMPLEMENTATION PLAN FOR PATHOGENS IN THE NAPA RIVER WATERSHED

WHEREAS:

1. The San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) adopted a revised Basin Plan on June 21, 1995, approved by the State Water Resources Control Board (State Water Board) on July 20, 1995, and approved by the Office of Administrative Law (OAL) on November 13, 1995, and has since been revised.
2. On November 13, 2006, the San Francisco Bay Water Board adopted Resolution No. R2-2006-0079 (Attachment), amending the Basin Plan to establish a pathogen TMDL for the Napa River Watershed.
3. The San Francisco Bay Water Board held public hearings on April 12, 2006 and June 14, 2006 to consider the Basin Plan amendment. At the June 14, 2006 public hearing, the San Francisco Bay Water Board took action to adopt the Basin Plan amendment through Resolution No. R2-2006-0043. Such action did not fully comply with Water Code section 13244 as the notice of public hearing was not published in any newspaper. On August 31, 2006, the Basin Plan amendment, Staff Report, and Environmental Checklist were therefore re-noticed, including the required newspaper publication, for public review and comment. It was presented for San Francisco Bay Water Board action at its November 2006 meeting, after compliance with all procedural requirements, including Water Code section 13244. The Basin Plan amendment was adopted on November 13, 2006.
4. The State Water Board finds that the Basin Plan amendment is in conformance with Water Code section 13240, which specifies that Regional Water Quality Control Boards may revise Basin Plans, and section 13242, which requires a program of implementation of water quality objectives. The State Water Board also finds that the TMDL as reflected in the Basin Plan amendment is consistent with the requirements of federal Clean Water Act section 303(d).
5. The San Francisco Bay Water Board found that the analysis contained in the TMDL staff report, supporting documentation, the California Environmental Quality Act (CEQA) Checklist, and the response to comments comply with the requirements of the State Water Board's certified regulatory CEQA process as set forth in California Code of Regulations, Title 23, section 3775, et seq.
6. The San Francisco Bay Water Board has duly considered the Environmental Checklist, Staff Report, and supporting documentation with respect to environmental impacts and finds that the Basin Plan amendment will not have a significant impact on the environment. Therefore, no alternatives or mitigation measures are required or proposed. The

San Francisco Bay Water Board found that the Basin Plan amendment will result in no potential for adverse effects on wildlife. The San Francisco Bay Water Board has also considered the environmental analysis contained in the Staff Report of the reasonably foreseeable methods of compliance with the Basin Plan amendment, including economics.

7. The San Francisco Bay Water Board found that the Basin Plan amendment will ensure the reasonable protection of the beneficial uses of surface waters within the Region, and is consistent with the state Antidegradation Policy (State Water Board Resolution No. 68-16) and federal antidegradation requirements.
8. This Basin Plan amendment does not become effective until approved by the State Water Board and OAL. The TMDL must also be approved by the U.S. Environmental Protection Agency (USEPA).

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendment to the Basin Plan as adopted under San Francisco Bay Water Board Resolution No. R2-2006-0079.
2. Authorizes the Executive Director or designee to submit the amendment adopted under San Francisco Bay Water Board Resolution No. R2-2006-0079 to OAL for approval of the regulatory provisions and to USEPA for approval of the TMDL.

CERTIFICATION

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

Song Her
Clerk to the Board