Attachment 1

California Regional Water Quality Control Board
North Coast Region

RESOLUTION NO. R1-2009-0004

Resolution Amending *the Water Quality Control Plan for the North Coast Region* to Establish Exception Criteria to the Point Source Waste Discharge Prohibitions by Revising the Action Plan for Storm Water Discharges and Adding a New Action Plan for Low Threat Discharges

WHEREAS, In accordance with Section 13240 et seq. of the California Water Code, the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), caused to be developed a *Water Quality Control Plan for the North Coast Water Quality Control Region* (Basin Plan); and;

WHEREAS, The Regional Water Board, acting in accord with Section 13244 of the Water Code, adopted Basin Plans for the Klamath River Basin (1A) and the North Coastal Basin (1B) on March 20, 1975. The Klamath River Basin Plan (1A) was combined with the North Coastal Basin Plan (1B) to form the Basin Plan on April 28, 1988; and;

WHEREAS, Section 13243 of the Water Code authorizes the Regional Water Board in a Basin Plan, or waste discharge requirements, to specify certain conditions or areas where the discharge of waste, or certain types of waste will not be permitted, and;

WHEREAS, The Basin Plan prohibits point source waste discharges during the period of October 1 through May 14 in the Mad, Eel, and Russian Rivers and their tributaries and prohibits all point source waste discharges year-round in the rest of the North Coast region, except as stipulated in the action plans and policies in the Point Source measures section of the Basin Plan. Where discharges are limited to the period from October 1 through May 14, the discharge during that period is limited to less than one-percent of the receiving stream's flow (one-percent prohibition); and;

WHEREAS, A conflict currently exists between conditions in existing regional and statewide point source discharge permits that allow year-round low threat discharges, and the existing prohibitions in the Basin Plan which do not; and;

WHEREAS, The Regional Water Board has consistently directed staff to investigate alternatives to address the conflict between the regional and statewide permits and the Basin Plan prohibitions. Resolving this conflict has been ranked as a high priority by the Regional Water Board during adoption of the last two Triennial Review Priority Lists; and;

WHEREAS, In February 2009, the State Water Board adopted the Recycled Water Policy[1]. The purpose of the Recycled Water Policy is to increase the use of recycled water from municipal wastewater sources that meets the definition in Water Code Section 13050(n), in a manner that implements state and federal water quality laws. The State Water Board also plans to adopt statewide general waste discharge requirements for landscape irrigation uses of municipal recycled water, satisfying the requirements of Water Code section 13552.5, which required the adoption of such a permit to streamline the permitting of most landscape irrigation uses of recycled water; and

WHEREAS, To address the conflict that exists between conditions in existing regional and statewide point source discharge permits that allow year-round low threat discharges, and the existing prohibitions in the Basin Plan which do not, and to be consistent with the State Water Board's Recycled Water Policy, staff drafted a proposed Amendment to the Basin Plan, which would provide criteria under which exceptions to the point source prohibitions could be granted. The proposed Amendment also allows for exceptions to the one-percent prohibition during the discharge prohibition period if a discharge meets the Basin Plan criteria for exceptions to the one-percent prohibition; and;

WHEREAS, The process of basin planning has been certified by the Secretary for Resources as exempt from the requirement of the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq.) to prepare an Environmental Impact Report or Negative Declaration, and the substitute environmental documents (SED) prepared under the State Water Board's own regulations, as set forth in Article 6 of title 23 of the California Code of Regulations, are used instead of the documents that would be required by CEQA and;

WHEREAS, On August 4, 2005 and on April 26, 2007, Regional Water Board staff held CEQA Scoping Meetings to provide information to the public on the proposed Amendment and to request comments from the public and other agencies regarding the scope of the environmental analysis and potential impacts associated with implementation of the proposed Amendment that should be included in the SED; and;

WHEREAS, On November 20, 2008, Regional Water Board staff prepared, posted to the Regional Water Board website and distributed a Notice of Filing, written report (Staff Report) which included the SED, and the proposed Amendment to interested individuals and public agencies for review and

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1 Recycled Water Policy, Staff Report and Certified Regulatory Program Environmental Analysis, State Water Resources Control Board, February 2009.
http://www.waterboards.ca.gov/water_issues/programs/water_recycling_policy/

comment in accordance with state and federal environmental regulations [Cal. Code Regs., title, 23, § 3775; 40 CFR 25 and 40 CFR 131]. The public comment period was open from November 20, 2008 until January 29, 2009; and;

WHEREAS, On January 8, 2009, Regional Water Board staff held a public workshop to inform the public about the proposed Amendment and to receive comments from the public and other agencies; and;

WHEREAS, The SED includes the Staff Report, the proposed Amendment language, and the environmental analysis and checklist. The SED for the proposed project includes alternatives and mitigation measures to reduce or avoid potential adverse impacts. In assessing the potential significant impacts of the proposed Amendment, the SED does not engage in speculation or conjecture. Mitigation measures to reduce to levels of insignificance any significant adverse environmental impacts of the project were identified; and;

WHEREAS, In evaluating the SED, the Regional Water Board has considered not only reasonable alternatives to the proposed Amendment and mitigation measures to minimize any significant adverse environmental impacts of the proposed Amendment, but also the requirements of Public Resources Code Section 21159 and Section 15187 of title 14 of the California Code of Regulations (CEQA Guidelines). Those sections apply when the Regional Water Board adopts a rule or regulations that require the installation of pollution control equipment, establish a performance standard, or establish a treatment requirement. To comply with the requirements set forth in Public Resources Code 21159 and Section 15187 of the CEQA Guidelines, the Regional Water Board analyzed the reasonably foreseeable environmental impacts of the methods of compliance with the proposed Amendment, the reasonably foreseeable feasible mitigation measures related to those potential impacts, and reasonably foreseeable alternative means of compliance with the proposed Amendment that would avoid or eliminate any identified impacts; and

WHEREAS, Regional Water Board staff received and responded to seventy-eight (78) comment letters in addition to 320 form letters received from Russian River Watershed Protection Council members. The majority of concerns voiced during the written public comment period were in regard to incidental runoff of recycled water and the potential effects on water quality from pathogens, constituents of emerging concern, and other pollutants. Staff has responded to all of these concerns in the Response to Comments document dated July 1, 2009.

WHEREAS, On July 23, 2009, the Regional Water Board held a public hearing to consider adoption of the proposed Amendment (including the SED and the comments received during the Basin Planning process). Notice of the Public Hearing was given to all interested persons and published on May 3, 2009 in the Eureka Times Standard, on May 11, 2009 in the Siskiyou Daily News, and in the Santa Rosa Press Democrat on June 13, 2009, in accordance with Water Code Section 13244; and;

WHEREAS, The Board's deliberative process reflects the Regional Water Board's independent judgment and analysis. After considering the documents and comments received during the public review process, the Regional Water Board hereby determines that the proposed project, with the identified mitigation measures, will not have a significant effect on the environment. The documents and other materials that constitute the record supporting the Regional Water Board's decision are located at the Regional Water Board office, maintained in a public file; and

WHEREAS, The proposed Amendment will be included in Chapter 4, Implementation Plans, of the Basin Plan. The Amendment consists of:

1) A new Low Threat Discharges "Action Plan" (Low Threat Action Plan) (Attachment 1) and
2) Modifications to the existing Action Plan for Storm Water Discharges (Storm Water Action Plan) (Attachment 2); and;

WHEREAS, The Regional Water Board has considered the costs of implementing the Amendment, and finds these costs to be reasonable and minimal relative to the benefits derived from implementing the Amendment; and;

WHEREAS, The Basin Plan Amendment must be submitted for review and approval by the State Water Resources Control Board (State Water Board), State's Office of Administrative Law (OAL) and the U.S. EPA. Once approved by the State Water Board, the Amendment is submitted to OAL and U.S. EPA. The Basin Plan amendment will become effective upon submittal of the CEQA filing fee to the California Department of Fish and Game. The Regional Water Board will file a Notice of Decision with the Secretary of Resources in compliance with section 21080.5 of the Public Resources Code.

THEREFORE, BE IT RESOLVED THAT:

1. The Regional Water Board, after considering the entire record, including written comments submitted to the Regional Water Board office and oral comments provided at the workshop on January 8, 2009, and at the adoption hearing held on July 23 2009, hereby adopts the proposed Basin Plan Amendment as set forth in Attachments 1 and 2 of this Resolution and as supported by the SED.

2. Mitigation measures identified as necessary to reduce or eliminate potential significant impacts on the environment must be implemented as conditions of approval of all permits that are given an exemption from the Basin Plan point source discharge and one-percent prohibitions. Best management practices must be identified to treat, control, minimize or avoid discharges, and be incorporated into, and made a condition of, any approval of an exemption from the Basin Plan point source and one-percent prohibitions. The Notice of Intent filed for enrollment under the general low threat permit and the monitoring and reporting requirements required of each permittee enrolled under that permit suffice as a monitoring and reporting requirement under section 15097 of the CEQA Guidelines and will provide assurance of compliance with mitigation requirements identified within the SED. Similarly, the application filed for coverage under a Phase I or Phase II MS4 Permit, the Regional Water Board or Executive Officer's approval of each permittee's storm water management plan, and the monitoring and reporting requirements required of each permittee suffice as a monitoring and reporting requirement under 15097 of the CEQA Guidelines, and will provide assurance of compliance with mitigation requirements identified within the SED.

3. The Executive Officer is directed to forward copies of the Basin Plan Amendment to the State Water Board, in accordance with the requirements of Water Code Section 13245.

4. The Regional Water Board requests that the State Water Board approve the Basin Plan Amendment in accordance with the requirements of Water Code sections 13245 and 13246, and forward it to the OAL and the U.S. EPA for approval.

5. If during its 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 July 23, 2009.

for Catherine Kuhlman

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PROPOSED BASIN PLAN LANGUAGE
FOR THE
LOW THREAT DISCHARGE ACTION PLAN

(strikeout / underline version)

The proposed draft amendment language shown in italics, entitled "Low Threat Discharge ~~Amendment~~Action Plan" will be inserted into the Basin Plan, Section 4, Implementation Plans, immediately preceding the Action Plan for Storm Water Discharges, on page 4-9.00, as follows:

The Regional Water Board finds that there are categories of discharges that pose a low threat to water quality when conducted and managed properly. A low threat discharge is ~~generally~~ a planned discharge that is generally short-term and/or of minimized volume from a definable project that results in a point source discharge to surface waters and that is managed in a manner that does not threaten the quality or beneficial uses of water without additional dilution. These discharges meet the definition of a waste[1], and as such, are required to be permitted pursuant to the California Water Code. These low threat discharges can cause, or threaten to cause, minor impairment of ~~existing or potential~~ beneficial uses of the receiving water if they are not properly managed through the application of a best management practices (BMP) program that includes the implementation of measures and actions ~~that~~ remove pollutants and minimize the volume, rate, and duration of discharge.

The purpose of this Action Plan is to identify procedures for regulating low threat point source discharges that can be demonstrated to not have an adverse impact on beneficial uses or water quality and for which there are no other reasonable discharge alternatives, and thus provide exceptions to the Basin Plan Point Source Waste Discharge Prohibitions, set out on pages 4-1.00 to 4-2.00.

Discharges resulting from the following sources could be determined to be low threat provided that the discharge does not contain pollutants in quantities that could adversely affect beneficial uses and the discharge meets specific criteria identified in this Action Plan:

- *Construction dewatering;*
- *Installation, development, test pumping, maintenance and purging of water supply or geothermal wells;*
- *Hydrostatic testing, maintenance, repair, and disinfection of potable water supply vessels, pipelines, tanks, reservoirs, etc.;*
- *Hydrostatic testing of newly constructed pipelines, tanks, reservoirs, etc, used for purposes other than potable water supply (e.g., gas, oil, reclaimed water, etc.);*
- *Dredge spoils dewatering;*
- *Other similar types of discharges that pose a low threat to water quality, yet technically must be regulated under a surface water discharge permit.*

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[1] California Water Code, section 13050(d) defines a waste as including "sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of disposal".

Low-threat point source discharges may be permitted to surface waters and may be exempted from the Basin Plan seasonal and year-round point source discharge prohibitions and discharge flow limitation, provided that all of the following conditions are met:

1. *The discharge shall not adversely affect the beneficial uses of ~~the receiving~~surface water or cause a condition of nuisance.*

2. *The discharge shall comply with all applicable water quality objectives.*

3. *Best practicable treatment or control of the discharge shall be implemented to assure that pollution and nuisance will not occur, and the highest water quality consistent with maximum benefit to the people of the State will be maintained.*

4. *The discharge is necessary because no feasible alternative to the discharge (reclamation, evaporation, infiltration, discharge to a sanitary sewer system, etc.) is available.*

5. *The discharge is limited to that increment of wastewater that remains after implementation of all reasonable alternatives for reclamation or disposal.*

6. *The discharge is regulated by NPDES ~~Permit~~permit/~~Waste~~ waste ~~Discharge~~ discharge ~~Requirements~~requirements.*

Implementation Plan

Low threat discharges that result in the discharge of pollutants to surface waters shall be covered under an NPDES permit/~~Waste~~ waste ~~Discharge~~ discharge ~~Requirements~~requirements. Several permit options are available, including, but not limited to Statewide general municipal, industrial, or construction storm water permits, Statewide General NPDES Permit for Discharges from Utility Vaults and Underground Structures, Regional Water Board general permits designed to address low threat discharges, and individual permits.

Discharges may be eligible for consideration for permit coverage as a low-threat discharge after the discharger submits specific information to the Regional Water Board for review and approval as required by and outlined in the appropriate permit or as otherwise required by the Regional Water Board.

Strikeout / underline version – (indicating changes to existing Storm Water Action Plan found on pages 4-9.00 of the *Water Quality Control Plan for the North Coast Region*)

~~Although, s~~Storm water runoff is part of the natural hydrologic cycle; however, human activities, particularly industrialization and urbanization, can result in significant and problematic changes to the natural hydrology of an area. As a result, when rain falls, pollutants may become dissolved in or eroded into, and carried by runoff, without treatment, into surface waters. These pollutants, unless controlled, may degrade the beneficial uses of surface waters. In addition to having direct effects on water quality, industrialization and urbanization of watersheds often alter natural runoff patterns. Storm water that would infiltrate into soils or get captured by vegetation and natural topography can get intercepted by impervious surfaces or compacted soils. Storm drain systems collect this runoff and discharge it directly into waterways. Increased runoff amounts and alteration of peak discharge rates can result in stream bank erosion, modification of natural habitat conditions and increased downstream flooding.

To address the recognized storm water problems, the U.S. Congress added Section 402(p) to the federal Clean Water Act in 1987. This section, and the federal regulations which implement it (40 CFR 122, 123, 124, November 1990), require NPDES permits for storm water discharges from municipalities and industries, including construction. The 1987 Clean Water Act amendments require municipalities to reduce pollutant discharges to the maximum extent practicable, and industries, including construction, to implement Best Available Technology and Best Conventional Pollutant Control Technology to reduce pollutants.

As a result of Section 402(p), the State of California developed a program for the implementation of four types of storm water permits:

- Phase I ~~areawide~~ municipal storm water permits for municipalities serving greater than 100, 000 people,
- Phase II municipal storm water permits for urbanized areas serving less than 100,000 people,
- ~~site-specific~~ ~~i~~Industrial ~~or construction~~ storm water permits for facilities that discharge storm water associated with industrial activities requiring a general permit pursuant to 40 Code of Federal Regulations, Section 122.26(b)(14), and ~~or~~
- Construction storm water permits for sites that create land disturbance of one (1) acre or more. ~~and general construction.~~

Within ~~that framework~~ the storm water permitting program, ~~the regional water boards issue the municipal areawide permits and site-specific industrial – construction site permits, and~~ the State Water Resources Control Board (State

Water Board) ~~issues~~ has issued statewide general permits for the regulation of storm water ~~resulting~~ from Phase II municipalities, and industrial and construction activities. In addition, the State Water Board has issued a statewide storm water permit to the California Department of Transportation (CalTrans) in order to regulate municipal and construction storm water discharges from the state highway system and associated facilities. Enforcement of all categories of storm water permits is the responsibility of the Regional Water Board. The Regional Water Board is also responsible for adopting Phase I municipal permits and may elect to adopt site-specific or region-wide municipal, industrial and construction site permits. In addition, provisions of the Clean Water Act allow the Regional Water Board to issue NPDES storm water permits to other construction, industrial or municipal sources based on a finding that these discharges are significant sources of pollutants to surface waters.

The statewide general Phase II municipal permit and the Phase I municipal permit for the Santa Rosa area require storm water dischargers to implement a Storm Water Management Program (SWMP) to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, and to eliminate or minimize non-storm water discharges. The SWMP must include the following elements: public education and outreach; public involvement in development and implementation of the SWMP, inspections of commercial and industrial sites, inspections of storm water infrastructure and facilities, including construction sites, that may discharge storm water or non-storm water flows to the storm water infrastructure; monitoring of the storm water infrastructure (visual, water quality samples, other environmental indicators), including a program to detect and eliminate illicit discharges; pollution prevention and good housekeeping program for municipal operations; complaint response, and enforcement of violators. The Phase I and II municipal permits also require special programs aimed at construction sites, including the development and implementation of construction site storm water runoff control programs and post-construction storm water management programs. The post-construction storm water management program should include measures to implement low-impact design features on an individual site and area-wide basis. The goal of the program is to minimize the impact of new development on storm water quality and quantity. The statewide general industrial and construction storm water permits ("statewide general storm water permits") also require the implementation of best management practices (BMPs), including structural and non-structural controls to prevent and minimize pollutants in storm water and authorized non-storm water discharges.

The statewide general storm water permits, CalTrans permit and the Regional Water Board's Phase I permit all acknowledge that municipal and industrial storm water conveyance systems may receive certain de minimis categories of non-storm water discharges, including, but not limited to, flows from water line flushing, irrigation, air conditioning condensate, dechlorinated swimming pool discharges, and fire hydrant flow testing, that are not expected to be sources of

pollutants as determined by studies conducted or approved by the State and regional water boards. The storm water permits do not prohibit certain types of low-threat non-storm water discharges from entering the storm drain system, provided that they are not significant contributors of pollutants to the municipal storm water conveyance system and do not result in violation of water quality standards. Although these discharges may individually pose little threat to water quality, the storm water permittee is required to implement certain control measures to ensure that these discharges, individually and cumulatively do not adversely impact water quality.

The allowable low-threat non-storm water discharges fall into two categories: (1) intentional discharges that are planned, routine and occur on an on-going basis and (2) incidental discharges that are unanticipated, accidental, and infrequent. Examples of intentional low-threat non-storm water discharge categories, include, but are not limited to discharges from foundation, footing and crawl space drains, residential swimming pool draining, air-conditioning condensate, and residential car washing. Examples of incidental low-threat non-storm water discharge categories include, but are not limited to, accidental discharges from potable water sources due to unexpected line breaks, incidental runoff of potable or recycled water from landscape irrigation due to an unexpected break in irrigation line or sprinkler head, and flows from emergency fire-fighting activities. The intentional discharges, by nature, are expected to have a lower risk of containing pollutants or causing other water quality problems such as erosion, because they are subject to planning to minimize pollutants and to control the rate, volume and timing of the discharge. Although the intentional discharge categories may cause nuisance, they require a lesser BMP program than the incidental discharges. Due to the unplanned nature of incidental discharges, this category of non-storm water discharges poses a slightly greater risk to water quality due to the potential for higher levels of pollutants and less opportunity to control the rate, volume, and timing of the discharge.

Discharges of storm water and certain categories of low-threat non-storm water flows (identified in paragraph 6 above and in individual and general storm water permits) from permitted storm water conveyance systems shall not be subject to the Basin Plan's point source waste discharge prohibitions provided that the following conditions are met:

1. The discharge and the activities which affect the discharge are managed in conformance with the provisions of the applicable NPDES permit.

2. The discharge does not cause adverse effects on the beneficial uses of the receiving water.

3. The permittee shall implement a general management program to eliminate or minimize non-storm water discharges into surface waters. The program shall be submitted to the Regional Water Board for approval

and include implementation of BMPs, outreach and education, inspections, monitoring, reporting and enforcement provisions.

In addition, incidental discharges of low threat non-storm water flows from permitted storm water conveyance systems shall not be subject to the Basin Plan's point source waste discharge prohibitions provided that the following additional conditions are met:

1. The incidental discharge event is not due to negligent maintenance or poor design of infrastructure, or failure to oversee the activity that resulted in incidental runoff.

2. There were no feasible alternatives to the incidental discharge event, such as retention of the incidental runoff. This condition is not satisfied if measures for capturing the incidental discharge should have been installed to prevent incidental runoff, in the exercise of reasonable engineering judgment.

3. The permit holder and/or potable/recycled water user has a management plan, approved by the Regional Water Board Executive Officer, that identifies best management practices designed to avoid, minimize, and where appropriate mitigate incidental runoff incidents. The management plan must include education/outreach, inspection, monitoring, and enforcement components.

The Regional Water Board will continue to implement Section 402(p) of the Clean Water Act by permitting discharges of storm water from municipalities which own and operate storm water sewer systems, and discharges associated with industrial and construction activity (as defined in 40 CFR Part 122), to surface waters of the North Coast Region. ~~provided the following conditions are met.~~

~~1. The discharge and the activities which affect the discharge are described in a Notice of Intent or Application for NPDES Permit filed with the State or Regional Water Board; and/or~~

~~2. The discharge and the activities which affect the discharge are managed in conformance with the provisions of the applicable NPDES permit.~~