STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2010-0043

APPROVING AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR THE NORTH COAST REGION (BASIN PLAN) TO ESTABLISH: (1) SITE SPECIFIC WATER QUALITY OBJECTIVES FOR DISSOLVED OXYGEN IN THE KLAMATH RIVER; (2) AN ACTION PLAN FOR THE KLAMATH RIVER TOTAL MAXIMUM DAILY LOADS ADDRESSING TEMPERATURE, DISSOLVED OXYGEN, NUTRIENT, AND MICROCYSTIN IMPAIRMENTS IN THE KLAMATH RIVER; AND (3) AN IMPLEMENTATION PLAN FOR THE KLAMATH AND LOST RIVER BASINS.

WHEREAS:

1. On March 24, 2010, the North Coast Regional Water Quality Control Board (North Coast Water Board) adopted Resolution Nos. R1-2010-0025 (Attachment I) and R1-2010-0026 (Attachment II) amending the Basin Plan to establish: (1) site specific water quality objectives (SSOs) for dissolved oxygen (DO) in the Klamath River; (2) an action plan for the Klamath River Total Maximum Daily Loads (TMDLs) addressing temperature, DO, nutrient, and microcystin impairments in the Klamath River; and (3) an implementation plan for the Klamath and Lost River Basins.

2. The North Coast Water Board found that the Basin Plan amendments were consistent with the provisions of State Water Resources Control Board (State Water Board) Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California" and 40 CFR section 131.12.

3. The North Coast Water Board has the authority, pursuant to California Water Code section 13243, to specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted (i.e., prohibitions). The Implementation Plan for the TMDLs for the Klamath River requires compliance with the prohibition of discharges in violation of water quality objectives in the Klamath River Basin. Supporting documentation for the above-named prohibition is provided in the Final Staff Report for the Klamath River TMDLs addressing temperature, DO, nutrient, and microcystin impairments in California. Consistent with California Water Code section 13244, the North Coast Water Board complied with public notice and hearing requirements for the prohibition.

4. The elements of a TMDL are described in 40 CFR sections 130.2 and 130.7 and section 303(d) of the CWA, and U.S. Environmental Protection Agency guidance documents. A TMDL is defined as "the sum of individual waste load allocations for point sources and load allocations for nonpoint sources and natural background." (40 CFR §130.2). The North Coast Water Board has determined that the TMDLs addressing the impairments of: temperature, DO, nutrient, and microcystins are set at levels necessary to attain and maintain the applicable water quality standards taking into account seasonal variations and a margin of safety.

5. The upper reaches of the Klamath River are in Oregon, and that state has adopted and U.S. EPA approved a TMDL, “Upper Klamath Lake Drainage TMDL and WQMP” (Oregon TMDL), and Oregon is considering adopting a TMDL for the Upper Klamath River and Lost River sub-basins in Oregon.

   The Oregon TMDL anticipates a number of management actions which are intended to reduce phosphorus loading in the Upper Klamath Lake basin by 40%. It also describes the uncertainties inherent in setting the target of 40% phosphorus reduction (e.g. Executive Summary, Chapter II, Chapter VI). Conditions at the Oregon – California state line can affect the ability of California to achieve its planned water quality improvements, and the success of the Oregon TMDL is important to California.

6. The North Coast Water Board’s TMDL assigns load allocations associated with the Klamath Hydroelectric Project based on modeling and models peer reviewed during development of the board’s TMDL. Load allocations are neither water quality standards nor effluent limitations. Models are constantly improving. The State Water Board anticipates that interested parties will continue to update models and model inputs. The State Water Board will consider any modeling and available data prior to issuing a water quality certification, if any, for the Klamath Hydroelectric Project to ensure that conditions of certification include provisions to comply with water quality standards. The North Coast Water Board’s TMDL implementation actions (Table 4-18) recognize the flexibility the State Water Board retains with respect to timing, interim measures, and methods for final compliance when issuing a water quality certification, if any, for the Klamath Hydroelectric Project.

7. The North Coast Water Board found that the analysis contained in the Final Staff Report, the California Environmental Quality Act (CEQA) substitute documentation for the proposed Basin Plan amendment, including the CEQA Checklist, the staff report, and the responses to comments complies with the requirements of the State Water Board’s certified regulatory CEQA process, as set forth in the California Code of Regulations, Title 23, section 3775 et seq.

8. The State Water Board finds that the Basin Plan amendments are in conformance with Water Code section 13240, which specifies that Regional Water Quality Control Boards may revise Basin Plans; section 13241, which authorizes Regional Water Quality Control Boards to establish water quality objectives, section 13242, which requires a program of implementation to achieve water quality objectives; and section 13243 which authorizes Regional Water Quality Control Boards to specify certain conditions or areas where the discharges of certain types of waste will not be permitted. The State Water Board also finds that the TMDLs, as reflected in the Basin Plan amendment, are consistent with the requirements of federal CWA section 303(d).

9. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subd. (b). The necessity of developing a TMDL is established in the TMDLs staff report, the CWA section 303(d) List of Water Quality Limited Segments, and the data contained in the administrative record documenting the impairments of the Klamath River.

10. A Basin Plan amendment does not become effective until approved by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law. The TMDLs and water quality objectives must also receive approval from the U.S. Environmental Protection Agency.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendments to the Basin Plan adopted under North Coast Water Board Resolution Nos. R1-2010-0025 and R1-2010-0026.

2. Authorizes the Executive Director or designee to submit the amendments adopted under North Coast Water Board Resolution Nos. R1-2010-0025 and R1-2010-0026, as approved, and the administrative record for these action to the Office of Administrative Law and the TMDLs and water quality objectives to the U.S. Environmental Protection Agency for approval.

3. Periodically State Water Board will review progress under the California TMDL and the Oregon TMDL. If it appears that Water Quality improvement in California is being impeded by delays in implementing the Oregon TMDL, the State Water Board may petition the U.S. EPA Administrator to convene a management conference in accordance with Section 319 (g)(1) of the Clean Water Act.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 7, 2010.

AYE:	Chairman Charles R. Hoppin Vice Chair Frances Spivy-Weber Board Member Arthur G. Baggett, Jr. Board Member Tam M. Doduc Board Member Walter G. Pettit
NAY:	None
ABSENT:	None
ABSTAIN:	None

Jeanine Townsend
Clerk to the Board