

**California Regional Water Quality Control Board
North Coast Region**

California Environmental Quality Act

**Addendum to the
Temperature Policy Substitute Environmental Document**

**Prepared for the Policy in Support of Restoration
Basin Plan Amendment**

December 2014

This addendum has been prepared to analyze factors to determine whether the Policy in Support of Restoration in the North Coast Region (Restoration Policy) will result in any new significant effects, or substantially more severe significant effects than previously examined for the Policy for the Implementation of the Water Quality Objectives for Temperature (Temperature Policy). (Cal. Code of Regs., tit. 14, §15162.)

Temperature Policy CEQA Documentation

On March 13, 2014, the North Coast Regional Water Quality Control Board (Regional Water Board) adopted the Temperature Policy, which was subject to the requirements of the California Environmental Quality Act (CEQA) as a “certified regulatory program.” (Cal. Code Regs., tit. 14, § 15251, subd. (g); Cal. Code Regs., tit. 23, § 3782.) The Regional Water Board developed and certified a Substitute Environmental Document (SED) consistent with the requirements of section 21159, including the CEQA Environmental Checklist containing 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 intent of the Temperature Policy was in part to document in one place the tools and actions available and necessary to achieve temperature water quality standards so as to protect and restore the beneficial uses of water in the North Coast Region. The SED served as a programmatic review of the environmental impacts from the reasonably foreseeable methods of compliance (compliance measures), which are the potential actions that parties may employ to comply with the Temperature Policy. Implementation actions to meet temperature objectives were described as a range of compliance measures in the following categories: Measures to Preserve and Maintain Shade; Measures to Control Sedimentation; Measures to Address Tailwater and Surface Impoundments; Measures to Preserve Existing Cold Water Resources; Restoration; and Measures to Restore and Maintain Stream Flows. Specific compliance measures were described in detail, along with associated impacts and

mitigation measures. Compliance measures spanned a large range of potential projects, many restorative in nature, including stream stabilization, soil conservation, culvert replacement, riparian buffers, low impact development (LID), in-stream gravel augmentation, large woody debris/habitat enhancement projects, and the modification and/or removal of on-stream storage facilities and dams.

The Regional Water Board identified potentially significant impacts, including potentially significant cumulative impacts, that are less than significant with mitigation incorporated, and some that may be unavoidable. The Regional Water Board found that the long term benefits from implementation of compliance measures (such as aquatic ecosystem restoration) could likely outweigh any short term adverse effects. Particularly for large-scale restoration projects, project-level impacts and factors would need to be considered in any subsequent environmental analysis pursuant to Public Resources Code section 21159.2.

Restoration Policy

The Restoration Policy is primarily a narrative expressing support for restoration and similar type projects. The resolution describes in detail (1) the importance of restoration projects for the protection, enhancement and recovery of beneficial uses, (2) the obstacles that slow or preclude restoration actions, (3) the legal and procedural requirements for permitting restoration projects, (4) the ongoing Regional Water Board effort to provide support towards the implementation of restoration projects, and (5) directs staff to continue to support restoration in the future. The corresponding basin plan amendment provides a similar expression in support of restoration, but without specific details on current restoration efforts that will become dated over time. Staff proposes to include this Basin Plan narrative amendment in Chapter 4 (Implementation) of the Basin Plan, under nonpoint source measures.

While the Restoration Policy is primarily a narrative and a description of existing law, the Regional Water Board is treating it as a regulatory amendment because it includes clarifying language regarding the non-applicability of the Action Plan for Logging, Construction, and Associated Activities (Action Plan) to restoration projects. The Restoration Policy specifies that waste discharge prohibitions within the Action Plan were not incorporated into the Basin Plan for the purpose of regulating or enforcing upon otherwise authorized restoration projects, and shall not be construed to apply to any restoration project subject to a permit or other order of the State or Regional Water Board. If the Action Plan is construed to inhibit implementation of restoration projects, then non-application of the Action Plan as a result of the clarification in the Restoration Policy would arguably increase the number of restoration projects that may be implemented. Therefore, the potential impacts that could result from an increased number of restoration projects must be analyzed and mitigation measures identified to reduce those impacts.

Staff intends to rely on the SED generated for the Temperature Policy, which analyzed and addressed potential impacts and mitigation measures of a full range of potential restoration projects that could be implemented to meet temperature objectives. Various

projects intended to comply with the Temperature Policy are similar if not identical to the various projects contemplated under the Restoration Policy, including bioengineering of eroding hill slopes and streambanks, wetland restoration, migration barrier removal, instream flow enhancement, habitat improvements, accelerated recruitment of large woody material, spawning gravel augmentation, and the reestablishment of native wetland and riparian vegetation. The range of compliance measures identified in the Temperature SED, while not necessarily exhaustive, constitutes a comprehensive and as detailed a project description as can be expected in a programmatic review. The SED incorporates detailed analyses of potential impacts and feasible mitigation measures for compliance measures from a small to large scale. The SED includes a programmatic statement of overriding considerations if the State or Regional Water Board finds that a project's potentially significant, unavoidable environmental impacts could be acceptable in light of the benefits of attainment and protection of beneficial uses. Of course, any site-specific activity would be evaluated on a project level to balance the impacts and the benefits individually and within the watershed context.

Alternatives Analysis

While the range of compliance measures, impacts and mitigation described in the SED are consistent for the purposes of the CEQA documentation for the Restoration Policy, the alternatives analysis does not line up as the Policies differ in purpose. The Temperature Policy contemplates a range of actions that responsible parties may need to take in order to comply with Basin Plan objectives and many of those actions are restorative in nature. The alternatives to the Temperature Policy included a blanket specification for riparian protection buffers and the option of implementing temperature objectives for individual watersheds rather than describing a region-wide approach. In contrast, the Restoration Policy contemplates a range of actions that are restorative in nature, but is neutral as to whether these actions are voluntary or otherwise required under the law. The only meaningful alternative for the Restoration Policy is to not adopt the Policy, which presents a possibility that fewer restoration projects would be implemented. This alternative would not meet the purpose of the Policy, which is to encourage and promote restoration consistent with the Clean Water Act and the Porter-Cologne Water Quality Control Act. Decision-makers will have the benefit of specific alternatives analyses during project-level review of any large-scale restoration projects.

CEQA Addendum

Under Public Resources Code section 21166 and section 15162 of the CEQA Guidelines, when an EIR has been certified for a project, a subsequent or supplemental EIR for that project is not required unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows the project will have impacts not discussed in the previous EIR or that will be substantially more severe than shown in the previous EIR, or that feasible mitigation measures are available to reduce one or more significant effects of the project.

CEQA Guidelines section 15164 provides that an addendum to a previously certified document shall be prepared “if some changes or additions are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred.” (Cal. Code Regs., tit. 14, § 15164(a).) Based on the facts described in detail above, the Regional Water Board finds that none of the conditions triggering the preparation of subsequent CEQA documentation have occurred.

Conclusion

There is no substantial evidence showing that any of the conditions set forth in section 21166 of the Public Resources Code or section 15162 of the CEQA Guidelines are present: instead, substantial evidence demonstrates that none of those conditions are present. Specifically, the Regional Board finds i) no substantial changes are proposed which will require major revisions to the previous CEQA analysis done for the Temperature Policy due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; ii) no substantial changes have occurred with respect to the circumstances under which the Project is to be undertaken which will require major revisions to the previous CEQA analysis due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and iii) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the CEQA analysis was adopted, that shows new significant effects, substantially more severe significant effects, or additional feasible mitigation measures. The Regional Water Board therefore finds that it is not required to prepare subsequent or supplemental CEQA documentation. The Regional Water Board will consider this Addendum with the Temperature Policy SED prior to making a decision on the proposed Restoration Policy.