



## Quartz Valley Indian Reservation

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Date: 08/20/10

To: Barry Hill, USFS Regional Hydrologist  
From: Crystal Bowman, QVIR Environmental Director

### **Re: Review comments regarding the USFS Region 5 Draft “Chapter X - Legacy Problem Remediation”**

The Quartz Valley Indian Reservation Environmental Protection Department with the help of our consultants, Pacific Watershed Associates, has reviewed the US Forest Service’s Water Quality Management Plan draft version of Chapter X – Legacy Problem Remediation. We have attached the draft Chapter X on which we have made comments (in Word Tracking) and a few edits. We have also highlighted some text in yellow to identify the phrase or sentence on which we commented.

#### **Related documents**

We also reviewed the other “background” documents we received along with the draft Chapter X (Legacy Problem Remediation). We have made a few comments on two of these documents as they also relate to Legacy Problem Remediation. One was the “Introduction” to the Water Quality Management Plan and the other was the draft “Statewide Administrative Processes.”

Three sections in the draft WQMP “Introduction” document are worthy of brief comment:

- 1) The “Introduction” contains the purpose statement for the WQMP process and lists five distinct WQMP elements. Element #4 is “Restoration of Legacy Water Quality Problems.” First, legacy water quality problems should be remediated not restored. Secondly, because legacy issues have been identified and elevated as one of the five key elements of the WQMP planning process for the protection and restoration of water quality it obviously holds a high level of importance in the overall WQMP process. In addition, the objectives of the WQMP and the associated “Handbook” include the remediation of legacy sources of pollution as one of 8 overall objectives (Objective #4). Unfortunately, as stated in our review comments on the attached document (see Word Tracking comments), the measures and processes included in this chapter (Chapter X) dealing with the identification and treatment of legacy water quality problems is very minimally described or addressed. As quoted from our first review comment of that text:

“The reference to Legacy problems is only made in the last paragraph of this document. First, “Legacy” is not defined in this document. Secondly, the content of this chapter is much more than about Legacy problems...it is about all problems,

including existing and legacy issues. Legacy problems are only tangentially mentioned. We would suggest the document's title be revised to reflect the content of the chapter – Watershed Prioritization for Protection and Restoration.”

If legacy water quality problems are to be adequately identified and addressed the WQMP document it will need to be defined and described in much greater detail. There is little of substance in the chapter we reviewed dealing with legacy problems, and no guidance or methodologies are included in this part of the proposed WQMP.

- 2) As stated at the bottom of page 3 of the Introduction document, “Section 313 of the CWA states that the federal government is subject to and will comply with all Federal, State, interstate and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity.” From our perspective, the most important element of this statement is that the USFS is directed and responsible for protecting water quality “in the same manner and to the same extent as any nongovernmental entity.” This becomes relevant when observing the degree of protection and level of concern that has been focused on some private landowners, including large industrial timber companies in northern California. It will be important to compare the final USFS-SWRCB WQMP agreement, including its implementation measures and associated monitoring and adaptive management programs, in comparison to those required for private land management practices elsewhere in the northern California region. This will not be possible until the entire text of the WQMP is available for review.
- 3) As outlined in the “Introduction” document, the original WQMP was certified by the SWRCB in 1981 (see pages 4 and 5). It stated that the USFS would be the lead management agency with primary responsibility for WQMP implementation and that the State Water Board expected the RWQCBs would waive imposition of waste discharge requirements as long as the USFS successfully implemented the WQMP. We found it particularly revealing that one deleted section of text in the current WQMP Introduction stated: “For about the next 20 years, things operated largely as anticipated on NFS lands, except that over time both the Water Boards and the Forest Service increasingly neglected application of the WQMP.” This deletion is not important in and of itself, but it points to the normal tendency to become lax about the formal implementation processes and the long term on-the-ground application of the agreed upon measures.

Today, both the USFS and the Regional Water Boards are understaffed and overcommitted in their programs. Staffs in both agencies come and go, and new people take their place. Budgets get tight and priorities and areas of emphasis change over time. As a consequence, we worry there will be a natural tendency to lose sight of the importance of the joint USFS-SWRCB WQMP program, just as was done following the original 1981 WQMP

certification. It is exactly this type of historical inattention to ongoing implementation, monitoring and adaptive management that will be crucial to avoid if the current process is to be successfully implemented. The program will only be successful if it is institutionalized within the USFS organizational structure, and if the Water Board commits sufficient funds and dedicated personnel to oversee and evaluate the effectiveness of the on-going program. USFS lands in northern California are extensive and warrant a dedicated program of monitoring and oversight by the Water Board, much as NCRWQCB technical staffs are dedicated to manage and oversee several of the Aquatic Habitat Conservation Plans that have been approved and are being implemented on private industrial forest lands in the same region.

Several statements in the draft Statewide Administrative Processes are also worthy of comment:

- 1) As stated in the draft Statewide Administrative Processes document: “Responsibility, transparency, and accountability **depend** *[emphasis added]* on Water Board and public access to Forest Service information and decisions and opportunities to exchange information and viewpoints with diverse stakeholders.” We agree and this is a welcomed step forward in the process of transparency. Properly implemented, it should increase public confidence in USFS efforts to protect and restore water quality. A publicly accessible internet site is an excellent way to transmit data and information to the public and to the Water Board. Supposedly, it will include “information related to water-quality protection and improvement and current activities on NFS lands that may affect water quality will be posted or made available through links.” It will be important to include not just the plans, reports and protocols that are being used (as it suggests), but to also include the actual data and assessment results that are developed and collected through ongoing field inventories and monitoring efforts. “Responsibility, transparency, and accountability” can only be assured if the data is posted in a timely manner, not just the reports and methods documents. For maximum transparency, posted information should include the results of field inspections, meetings with Water Board staff and other relevant data and information that may be of concern to stakeholders in the affected areas and would be required to independently evaluate the effectiveness of WQMP program activities.
- 2) As stated: “Interagency (Forest Service-Water Board) training sessions will be held annually on BMP development, implementation, and monitoring.” And later, “Forest Service watershed, timber, fire and fuels, engineering, range, and recreation staff will be encouraged to attend, and Water Board staff will be invited.” Best Management Practices are critical to the success of the WQMP program. Because of this, we believe subject-

area experts and representatives from all these groups, including the Water Board, should be required to attend relevant BMP trainings as a part of the ongoing WQMP process. It should not be optional. Everyone is busy, especially within governmental organizations that have shortages of both funding and personnel. There are always more important things that need to be done. As soon as the training becomes optional, its importance within the organization is diminished and elements of the program take on the connotation of also being optional.

## **Chapter X – Legacy Problem Remediation**

We have provided comments in Word Tracking on the USFS 7/23/2010 draft “Chapter X – Legacy Problem Remediation.” The comments are summarized as follows:

- 1) Chapter X is much more about describing a generalized methodology for prioritizing watersheds for restoration and protection - not for remediating legacy problems on USFS lands. The word “legacy” is not defined in the document, nor is it even used in the chapter until the final two paragraphs of the final page. Either the chapter should be renamed, or the chapter should be rewritten to actually address the identification and treatment of legacy water quality problems on USFS lands. In our opinion, watershed prioritization is an important topic and should be addressed. In addition, the identification and treatment of legacy water quality problems is also important and should be addressed in its own, separate section.
- 2) The USFS Watershed Improvement Program (WIP) is purported to be a core element of the proposed USFS WQMP program. However, the USFS WIP is not easily researched and does not appear in traditional internet searches. For what is claimed to be “a nationwide USFS program of assessment and restoration on a watershed scale” it has received very little national or regional exposure or attention. In contrast, and for comparison, the NRCS WHIP and EQIP programs are well known national programs and they are described in detail on the web and on the official NRCS web site. This suggests that the USFS WIP program is either a new program or it is an internal program that has received little publication or description. This relatively unknown and unpublished assessment and restoration methodology is unlikely to receive significant acceptance by the general public and by important stakeholders who will need to see that it has gone through extensive testing, technical acceptance or even scientific peer review. This program needs much better description and its record of testing and implementation should be described in detail. If it is not completely described and shown to have been successfully employed for its stated purposes (to protect and restore water quality) it is unlikely to be accepted.
- 3) The WIP program lists 6 main elements, but it does not include three other program elements that will be essential to a successful water quality protection and restoration program. These include: 1) actual restoration

project work, 2) implementation monitoring, and 3) effectiveness monitoring. Because the WIP program is poorly and incompletely described here and elsewhere, it will be important for the USFS to provide much greater detail on the various program elements as well as the methodologies and techniques used to implement it at the landscape and watershed scale.

- 4) The USFS watershed prioritization methodology indicates that high priority watersheds are to be treated first (see page 1, paragraph #1). It further states that “priority watersheds receive heightened water quality protection under the USFS Guidance and are integral for maintaining sanctuary habitats for threatened and endangered species and unique plant and animal communities.” This is a biologically important concept, but it is then immediately contradicted or diluted by the statement that “watershed restoration projects are not limited to priority watersheds, and are used to address watershed issues and water quality problems in lower priority watersheds also.” This dilution of available funding to treat low priority watersheds and project sites will hamper efforts to work on and complete the highest priority watersheds and instead will encourage Forests and Districts to spread the available restoration monies across less important watersheds. This is a serious flaw in the plan to prioritize and treat high value waters and biologically significant watersheds. Rather, it encourages the continuation of the politically expedient practice of spreading limited financial resources across the landscape (and across local communities), treating watersheds that are not high priority.
- 5) Priority Watershed Selection
  - a. On Page 1, the Chapter identifies a “draft 2009 Implementation Guide” Forests will employ to select priority watersheds, but it does not provide an explanation of what this is and where it can be found. Including important program elements that are not sufficiently described, explained or tested is unlikely to win support from stakeholders. We have not been provided a copy of this important document for review.
  - b. We believe the Water Board and major stakeholders should be integrally involved in priority watershed selection (see page 2). It should not be optional or at the discretion of the USFS.
  - c. A list of three factors are presented that must be considered or included when identifying priority watersheds (page 2). One includes “a rapid assessment of the estimated costs.” Does this imply that if an extremely high priority, high value watershed would cost more to protect than a lower priority watershed, then it would be given a lower priority for treatment? A better prioritization criterion might be cost-effectiveness (as opposed to

cost). Costs generally have little to do with a watershed's priority in relation to water quality or biological significance. Giving estimated costs a high level of importance in the prioritization process may tend to focus restoration work on watersheds that require less funding, even if they are not of high biological significance. Employing cost-effectiveness allows a determination of the greatest benefit for a given expenditure of funds. The concept of using cost-effectiveness as a tool for restoration prioritization has been published in the literature and is a generally accepted methodology for ranking water quality protection and restoration projects.

6) Watershed Condition Assessment

- a. As stated on page 2, "A draft Implementation Guide for Assessing and Tracking Changes to Watershed Condition" was completed in 2009 and is currently under [USFS] review." This important watershed assessment protocol was not made available for our review. Without the details of this program element it is not possible to evaluate the proposed USFS assessment methodology. When it is completed and has been thoroughly tested it should be made available for outside technical review and evaluation prior to being implemented in the USFS-SWRCB WQMP program.
- b. Twelve indicators are listed for assessing watershed condition. The 12 listed condition indicators would be evaluated by assessments. However, current condition (while important) does not indicate or provide information on the level of threat to water quality that might exist in a watershed. Somewhere in the assessment inventory there will need to be a threat assessment, and not simply a condition assessment. For example, there are certain to be a number of high value watersheds on the various Forests, each of which contain streams and waters that are in excellent condition. However, some of these might be under a high level of threat while others are not threatened by either legacy impacts or current/future management practices. The level of the potential threat(s) to water quality and beneficial uses will be important to determine for each priority watershed.

7) Watershed Improvement Needs Inventories – There is insufficient information in these two paragraphs to procedurally or technically evaluate the methodologies or effectiveness of the WIN inventory strategy. This section is inadequate in the absence of more information or a complete programmatic description of the assessment and restoration process.

8) Essential Project Identification - The "draft Implementation Guide" listed here and elsewhere in this Chapter was not available for our review. It is an important (critical) element of the WQMP program and should be available. This document supposedly defines the criteria used to identify

what are termed “Essential Projects” for implementation on each Forest.

- 9) Watershed Restoration Plans – Here and elsewhere in Chapter X it should be continually emphasized that **protection is required in addition to restoration**. One without the other will be self-defeating – they are complimentary activities. The best watersheds - those with the highest value streams, waters and biological resources - need to be protected before monies are allocated to restoring other, degraded watershed systems. This is the essence of the Aquatic Conservation Strategy and it is entirely consistent with the SWRCB mandate for the protection and restoration of water quality on USFS lands in Region 5: *Protect the best, Restore the rest*. There are numerous locations in the Chapter where restoration is listed solely and independently, and protection is not mentioned as a co-occurring activity. It is our opinion they should always be discussed in connection with each other. For example, watershed prioritization should take protection into account and not solely rely on a restoration-based strategy. Many of the highest quality watersheds in each Forest may have few existing or potential impacts, but those are the first watersheds that will need to be treated or protected to preserve them from future degradation. They will be the seed of recovery for nearby degraded systems.

### **Project Level Restoration**

- 1) The section on Project Level Restoration states that “restoration will be limited to available funds generated by the sale of forest products.” This is a misleading statement and diminishes the priority of the WQMP program. There are a variety of funding sources that are available to conduct the planning and implementation phases of watershed protection and restoration. These include the USFS Legacy Roads and Trails program and a number of other federal and state-funded matching grant programs that can be employed to generate funds for project work. We assume that Washington and the Region will place a high priority on implementing this important program and also provide additional base funding to meet the letter and intent of the WQMP program.
- 2) Finally, this final section of Chapter X contains the first mention of Legacy Problems related to water quality on USFS lands. As mentioned at the beginning of our review, this is a serious flaw and omission in the presentation. The identification and treatment of legacy water quality issues on USFS lands is an important topic but it has not been addressed in this Chapter. Similarly, there are many on-going (non-legacy) problems contributing to water quality degradation on USFS lands that also need to be addressed. The identification and treatment of these active and potential sources of NPS pollution are likely to need even greater attention than

legacy sources.

## **Conclusion**

We have provided some editing and associated general comments on the draft Chapter X: “Legacy Problem Remediation.” The title of the USFS draft document we reviewed is a misnomer. The draft text (see attached) included legacy problems only as a minor side note to the topics that were actually covered. The document addressed the general components of the USFS WIP program, described as “a nationwide USFS program of assessment and restoration on a watershed scale.” It additionally described a broad methodology of watershed prioritization that will be used for selecting watersheds for future assessment and treatment in Region 5. Unfortunately, we were able to find very little documentation of this USFS program and the general information provided in this “Chapter” would be considered only a broad brush overview that lacked sufficient technical detail to allow for an adequate technical or administrative review.

As we have mentioned, our review also suffers from limitations that are beyond our control. As with other document reviews we have recently conducted regarding the draft WQMP, a number of reference texts (e.g., the draft Implementation Guide) have been identified in the chapter without the corresponding texts to support them. This makes a thorough technical review of the material impossible. We are able to review only the draft language of various sections of the WQMP chapters without the context that could be provided by the other referenced materials and protocols. Hopefully, the entire WQMP and its supporting documentation will be available in one complete package in the future.

Sincerely,

Crystal Bowman, Environmental Director  
Quartz Valley Indian Reservation

Enclosure(s): (QVIR edits and comments: *USFS Draft Chapter X - Legacy Problem Remediation*)