

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Mike Napolitano)
MEETING DATE: September 9, 2009

ITEM: 7

SUBJECT: **Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region to Establish a Total Maximum Daily Load (TMDL) for Sediment in the Napa River and an Implementation Plan to Achieve the TMDL and Related Habitat Enhancement Goals—Hearing to Consider Adoption of Proposed Basin Plan Amendment**

CHRONOLOGY: January 2007 – Board adopted Basin Plan amendment
June 2008- Basin Plan amendment withdrawn from State Board consideration

DISCUSSION: At this hearing, the Board will be asked to consider adopting the Tentative Resolution (Appendix A) amending the Basin Plan to incorporate a TMDL and implementation plan to control sediment and achieve related habitat enhancement goals in the Napa River watershed (Napa River watershed TMDL).

In January 2007, the Board adopted an earlier version of this Basin Plan amendment. In May 2008, when the State Board was considering approval of the Basin Plan amendment, it received written comments on the Basin Plan amendment that challenged the adequacy of the CEQA environmental analysis. To further evaluate and address these concerns, in June 2008, we withdrew the Basin Plan amendment from further State Board consideration. Since withdrawing the amendment, two revisions to the Basin Plan amendment (Appendix B) and supporting documentation were made in response to two, 45-day public comment periods (i.e., September 5, 2008, and May 19, 2009, respectively).

Additional documentation in this package includes our revised Staff Report (Appendix C), Responses to Comments (Appendix D), and copies of all written comments received during both public comment periods (Appendix E).

In order to protect and restore the habitat of the Napa River's native fish community, and to enhance the recreational values of the river, the Basin Plan amendment will establish the following:

- Numeric targets for sediment that protect water quality
- A TMDL equal to 125 percent of natural background sediment load
- Allocations for all significant sediment source categories
- An implementation plan to achieve the TMDL and related habitat enhancement goals (e.g., habitat complexity, baseflow, stream temperature, and fish passage)
- A plan and schedule for evaluating and monitoring progress toward meeting the targets

Significant changes since the Board's January 2007 action include:

- Addition of a new vineyard performance standard to control significant increases in storm runoff (Table 4.1, proposed Basin Plan amendment, Appendix A, Exhibit A)

- Revision of footnotes and clarification of performance standards for gullies and/or shallow landslides (Tables 4.1 through 4.4, proposed Basin Plan amendment, Appendix A, Exhibit A)
- Extension of completion dates for both required TMDL implementation measures and recommended TMDL actions (Tables 4.1 through 4.4, and Tables 5.1 through 5.4, respectively of the proposed Basin Plan amendment, Appendix A, Exhibit A)
- Expansion of the cumulatively considerable impacts discussion contained in the CEQA analysis (Appendix C, Supporting Staff Report, Chapter 7, Regulatory Analyses)
- Modification of the CEQA analysis to recognize a slight potential for impact on sensitive natural communities from vineyard development in the watershed (Appendix C, Supporting Staff Report, Chapter 7, Regulatory Analyses)

Since withdrawing the amendment in June 2008, we have engaged in a series of time-intensive efforts to meet with stakeholders to help them better understand the extent and purpose of the proposed revisions. The Responses to Comments document (Appendix D) addresses all comments received during the September 2008 and May 2009 comment periods and calls out revisions to the Basin Plan amendment and Staff Report that are now proposed.

Comments received, and concerns expressed, can be broadly grouped as follows:

- Challenges to the adequacy, robustness, and final form of the CEQA analysis, including that deferring development of the WDR waiver violates CEQA because it segments the environmental assessment of the proposed Basin Plan amendment, and that an environmental impact report (EIR) equivalent level of CEQA analysis is required.
- Concerns that the performance standard to “effectively attenuate significant increases in storm runoff” added to Table 4.1 of the Basin Plan amendment may translate into unacceptable numeric expressions for increases in peak stormwater discharges.
- Conflicting concerns over future uncertainties regarding the geographic scope, parcel size threshold, adequacy, stringency, and specificity of implementation actions for sediment control, particularly with respect to implementation measures and monitoring for control of sediment discharges from vineyards.
- Requests to consider extending deadlines for required TMDL implementation measures and schedules for recommended TMDL actions to reflect the delays incurred following the Board’s 2007 action.
- Requests to consider development of a single, consolidated WDR waiver program to lessen effort and alleviate duplication between the Board and Napa County.
- Concerns over the Board’s institutional capacity to undertake and support the required implementation measures (i.e., WDR waiver programs) specified in the Basin Plan amendment (Attachments A and B); including our ability to assist implementing parties in identifying, prioritizing, tracking, monitoring, and funding required and recommended sediment reduction actions.

Although no changes were made to the technical and scientific basis of the TMDL (e.g., sediment source analysis, targets, etc.), Board staff’s revisions to the Basin Plan amendment and supporting documents respond to stakeholder concerns, protect water quality, and meet all federal and State requirements. With regard to the issues raised on the adequacy and robustness of the CEQA analysis, we maintain that the Board is within its regulatory prerogative to first do a rulemaking

in the form of a Basin Plan amendment to set forth the rules that will apply to a class of dischargers, and then later use its regulatory tools (e.g., permits, waiver of permits, and enforcement orders) to achieve those rules. Nothing in CEQA compels the Board to simultaneously adopt permits to achieve the new vineyard performance standard.

Board staff plan to develop a technical advisory committee (TAC) to advise us regarding development of the vineyard WDR waiver as related to means for achieving all vineyard performance standards specified in the Basin Plan amendment. This includes discussion and evaluation of viable technical options to achieve the performance standard of effectively attenuating increases in storm runoff. The TAC approach was successfully employed in the development of the Tomales Bay grazing WDR waiver, adopted by the Board in July 2008. The work of the TAC, in combination with continued stakeholder outreach, education, and input, should resolve the uncertainties surrounding the scope and timing of a vineyard WDR waiver program. Furthermore, during the past five years, Board staff have reviewed farm plans and conducted site reviews for eighty-six vineyards covering more than 7,000 acres in the Napa River watershed. Through these reviews, coupled with field work and previous reviews of other erosion control plans, we have become familiar with site development, management practices, and types of erosion control practices employed in vineyards in the Napa River watershed. This collective Board staff experience will be brought to the development of the vineyard WDR waiver.

Acknowledging the significant delay in approval of the Napa River watershed TMDL, and our need to build upon both local and the Board's institutional capacity, we have extended the completion deadlines for both required TMDL implementation measures and recommended TMDL actions.

In conclusion, the proposed Basin Plan amendment is a balanced approach for addressing the complex issues of sediment reduction and related habitat enhancement in the Napa River watershed. The overall approach to solving this water quality problem requires that all potential sources take responsibility for controlling sediment discharges, and that collaborative efforts continue to improve fish habitat. The implementation plan provides opportunities for future adaptive improvements to the plan. The proposed amendment outlines a comprehensive and holistic approach to restoring threatened fish populations, as well as protecting recreational and aesthetic values.

RECOMMEN- Adopt the Tentative Resolution
DATION

APPENDICES: A. Tentative Resolution with Proposed Basin Plan Amendment (Exhibit A)
 B. Proposed Basin Plan Amendment showing all changes since May 19, 2009
 C. Staff Report
 D. Responses to Comments
 E. Written Comments