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CEQA

Regional Board is responsible to provide sufficient environmental review to comply with CEQA. This would necessarily include consistency analysis with other legal mandates (e.g. Cal Water Code, Alternatives Analysis, DFG Code, federal CWA).

Cal Water Code Section 13242 specifies the necessary attributes of a Water Quality Control Plan with: 1) Descriptions of Actions that will attain Water Quality Objectives, 2) A timeline for implementation of the described actions, 3) Monitoring to assure compliance.

This proposed project must comply with the above by the use of reasonable and science based mitigations that will, eventually, assure attainment of WQS.

Voluntary Programs

Voluntary programs that meet standards set by the Regional Board, comply with Basin Plan standards and objectives, and will assure progress towards WQS attainment should be considered. Such programs (e.g. Ranch Plans, Fish Friendly Farming) should be reviewed for the necessary attributes for compliance, and if they do comply, be accepted as a duly authorized implementation action.

Presented to the Regional Water Quality Control Board - Region 1, by:

Alan Levine
For Coast Action Group

Attachment: Brinson, Mark M. Changes in the Functioning of Wetlands Along Environmental Gradients, WETLANDS, Vol. 13, No. 2, Special Issue, June 1993, pp 65-74

REFERENCES

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The discussion in all of the above referenced documents indicate: 1) Areas of failure of the Forest Practice Rules to address protection of beneficial uses, 2) Areas of necessary correction of Forest Practice land use that will show positive trends, via rules (currently in place or suggested) for use in guiding implementation planning - with some assurance of trends towards attaining WQS (for both Temperature and Sediment). Within all of these documents there is a significant (striking) degree of similarity in the description of riparian protection actions necessary to be taken as enforceable guidelines for timber harvest activity on impaired waters of north coast watersheds.

Implementation

It is clear that policy development should develop new Basin Plan Objectives as Riparian and Wetland Protection Policy. Some recommendations for implementation have been made - above. Use of WDRs, and/or Conditional Waivers for riparian and wetland protections can work if the wording is sufficient to protect the resource.

The Regional Board can also apply protective policy to City and County Stormwater NPDES permits. Development of such policy will give direction to the County and municipal governing bodies for the development of zoning code and ordinance that can address riparian and wetland protection issues.

TMDLs (both State and EPA promulgated), as stated above, currently do not have adequate riparian and wetland protection policy included, as enforceable language, in the TMDLs. Only the Garcia River TMDL has some policy for riparian protection and it seems to be working well. TMDL successes, for those approved and waiting approval, is dependent on progress in the development of riparian and wetland protection policy.

Economics

Economic analysis for the implementation of projects for water quality resource protection is difficult. It is almost impossible to determine the costs over the range of possible actions that may need to be taken. Variability of range of actions is unknown and almost impossible to estimate. Assessing monetary value to accrued benefits of such policy is similarly vague. Their are accrued benefits to near stream landowners, fisher people, water users, recreationists, fish and wildlife values that would have to be accounted for. What is the value of clean water?

The bottom lines is it is the responsibility of the Regional Board, under State Water Code and the regional Basin Plan, to take action that assures the protection of Beneficial Uses and attainment of Water Quality Objectives.

These documents, noted above, not only indicate impairment from current and historic forest practices, they provide analysis and prescriptive measures to be taken to address attainment of WQS. These studies indicate that level of disturbance is a major factor and needs to be addressed if we are ever going to meet WQS. These documents also indicate that loss of riparian function can be attributed to inadequate protections currently in the Forest Practice Rules.

Other references to review for appropriate regulatory guidelines are:

Coho Recovery Guidelines (DFG)- Regulations (not approved) specifically referenced for Timber Harvest activity in the form of an Incidental Take Permit (Draft 2112 - rules). The Coho listing under CESA is referenced in the Implementation/Action Plan document. All notation and/or reference to Coho Recovery proposed actions (timber harvest and well as other policy) is absent in terms of any nexus with enforceable language.

Threatened and Impaired Rules (FPRs): These regulations are currently in place in the Forest Practice Rules and are intended to address beneficial use issues related to Forest Practices on listed/impaired watercourses. These interim rules are, for the most part, based on riparian protection practices for listed impaired water bodies and salmon bearing streams. CDF has stated that these regulations are, in themselves, sufficient to protect beneficial uses. There is no documentation to support this claim by CDF. However, these regulations are superior to the baseline of regulations that preceded the Threatened and Impaired Rules. The Board of Forestry is considering removing these regulations at this time.

Stream and Wetlands protection policy should, at a minimum, assure the maintenance of the Threatened and Impaired rules in areas of timber harvest operations.

Forest Practice Rules proposed language changes proposed by the NCRWQCB to the Board of Forestry (in several iterations): These proposed rules changes, written to address failure of the FPRs to protect beneficial uses, contain enforceable language that would produce positive changes towards attaining WQS.

Implementation Proposal submitted to the NCRWQCB for the Garcia River TMDL by Coast Action Group: This proposal was submitted to the Regional Board as suggestions for rules imposition for beneficial uses. Recommendation for riparian protection in areas of timber harvest can be referred to in this document to be found in the Garcia TMDL for Sediment Implementation file.

Information for the BMP assessment or formulation can be obtained from:

"Riparian Setbacks: Technical Information for Decision Makers"
http://www.crowp.org/pdf_files/riparian_setback_paper_jan_2006.pdf

"Riparian Buffer Width, Vegetative Cover, and Nitrogen Removal Effectiveness: A Review of Current Science and Regulations", <http://www.epa.gov/ada/download/reports/600R05118/600R05118.pdf>

See also - Forest Practices specific discussion - below

Forestry Practices

It is unclear in the project description if the Stream and Wetlands Protection Policy is to cover areas of timber harvest operations. As noted, above and in many scientific studies, inappropriate timber harvest activity is responsible for water quality degradation through loss of riparian function. Recovery of water quality values, objectives, and beneficial use protection is dependent on sufficient riparian protection from further degradation.

Please note, in reference to policy development discussion: Report of the Scientific Review Panel On California Forest Practice Rules and Salmonid Habitat, Prepared for The Resources Agency of California and the National Marine Fisheries Service, comprised of a selected panel of scientists, 1999, indicates that "the Forest Practice Rules" and their administration by the California Department of Forestry "do not protect the beneficial uses of water." "Silviculture is the leading source of impairment to water quality in the North Coast of California. Related to these water quality problems, California has a number of species, in particular salmon, that are endangered threatened or otherwise seriously at risk, due in very significant part to forestry activities that impair their spawning, breeding and rearing habitat." (Findings for the California Coastal Non-point Program and CZARA Action Plan, USEPA/NOAA, 1999) A Scientific Basis for the Prediction of Cumulative Watershed Effects, UC, Berkeley, June 2001, and finally the Final Report on Sediment Impairment and Effects on the Beneficial Uses of Elk River and Stitz, Bear, and Jordan Creeks, Concur, 2002, also support the findings noted above. All of these noted scientific reviews indicate the Forest Practice Rules, including projects related to small landowners and Non-Industrial Timber Plans, are deficient in cumulative impacts analysis and riparian protection and can not be counted on to protect the beneficial uses of water and meet Basin Plan water quality objectives.

by the findings of the above mentioned TMDLs indicating that specific land use practices are responsible for diminished riparian and water quality values. Also, the fact that recently approved Shasta and Scott River TMDLs and Action Plans are dependent on the development of such policy to be truly functional.

Limiting Factors and Desired Riparian Conditions

In consideration of why such policy development is needed (aside from the fact that WQ values are not improving and are documented to be not sufficiently protected) it would be helpful to develop a matrix of Limiting Factors effecting near stream health and also a similar matrix for Desired Conditions. Such matrix would be helpful in near stream condition analysis and policy development. Such matrix can support modeling the relationship, interaction, of factors involving the stream channel, flood plain, and riparian function. Comparison of desired condition to actual function can be made with findings relevant to the causal relationships. Attributes of such matrix can be useful in developing new standards for Water Quality Objectives (numeric and narrative). Hydrologic issues can be linked to such matrix and related policy and language needs for policy development and addressing needs for new Water Quality Objectives (and/or prohibitions) to be amended into the Basin Plan.

This discussion is applicable to all attributes: **Riparian Vegetation and Buffer Width** - effects: stabilization, filtration, habitat, temperature and micro-climate, filtration; **Flood plain** - effects: storage capacity, changes in hydrology and related effects up and down the system, habitat, ground water storage, interface with instream flows, **Active Channel** - effects: alteration and changes in dynamics, **Hydrology** - effects: land use and water flow changes, peak flows (changes in hydrologic incidence and time [lag time] to peak flow).

Assessment of stream habitat conditions would benefit from both a Limiting Factors and a Desired Conditions matrix.

BMPs

The above mentioned regional planning authorities and mechanisms often mention use of BMPs to protect water quality values. However, a description of what actually constitutes a BMP is usually missing in the planning authority's lexicon.

Recommendation: The Regional Board provide a description of what BMPs for various land use operations that potential effect streams and wetlands might look like.

Impaired Waterbodies and the Basin Plan

As mentioned above, most of the north coast rivers are listed impaired for the pollutants sediment, temperature, nutrients, and the lack of Dissolved Oxygen. There are many other north coast streams that are impaired but are not listed. These impaired listings, where Beneficial Uses are not being supported, are a result of inappropriate land use. In many cases (at least 50%) on these impaired rivers forest practices is the primary land use and degradation (riparian loss) from inappropriate practices is the major contributor to failure of riverine function. On the remainder of the impaired rivers it is a combination of poor timber harvest practices, poor agricultural practices (grazing and growing), and urbanized land use with poor pollution controls that has contributed to diminished riparian capacity.

The EPA promulgated TMDLs on the Albion, Gualala, Noyo, Ten Mile, and other rivers on the north coast has documented impacts, including loss of riparian function, on these waterbodies. State promulgated TMDLs for the Garcia, Scott, and Shasta Rivers have also provided such documentation. However, none of these TMDLs or approved Action Plans have set appropriate criteria and objectives and land use guidelines to support attainment of riparian function - or - improvement of riparian function.

Stream and Wetlands protection policy should take the findings of these TMDLs to make determinations regarding the policy that will be issued for such resource protection. This policy is consistent with Basin Plan Objectives and Anti-degradation policy which states:

Basin Plan Anti-degradation Policy: "Controllable water quality factors shall conform to the water quality objectives contained [in the Basin Plan]. When other factors result in the degradation of water quality beyond the levels or limits established [in the Basin Plan] as water quality objectives, then controllable factors shall not cause further degradation of water quality. Controllable water quality factors are those actions, conditions, or circumstances resulting from man's activities that may influence the quality of waters of the State and that may reasonably be controlled."

Riparian attributes are both measurable and controllable factors that can be addressed via the proposed Stream and Wetlands System Protection Policy.

The fact that degradation that has occurred under existing Basin Plan prohibitions indicates that additional prohibitions (control language) are necessary. This is supported

December 8, 2006

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Subject: Stream and Wetlands System Protection Policy, Proposed Basin Amendment - Initial Comments

General

Coast Action Group appreciates that the Regional Board recognizes the necessity for taking such action as described in the proposed project, Stream and Wetlands Protection Policy, and making an effort to move forward with such policy. The proposed protection policy is appropriate and indicated by the acknowledged loss and degradation of wetlands and near stream riparian areas leading to a loss in water quality - non-attainment of Water Quality Standards resulting in the listing of most north coast rivers as impaired on the State of California Impaired Water Quality Limited Segments/CWA 303(d) list.

The Regional, and State, Water Quality Control Board(s) have the responsibility to manage the State's water resources to meet Water Quality Objectives and protect the Beneficial Uses described in the Basin Plan. Impaired listing status and degraded resources necessitate action plans, including Basin Plan amendments, to address the issue of attainment of desired goals.

The regional planning bodies, Counties and Cities in Region 1, have not successfully addressed issue through their own regional planning mechanisms (i.e. General Plans and GP updates, and Zoning Code, Ordinance, Stormwater Plans, and NPDES permits). The these planning bodies have sought (they say) guidance from the Regional Board in the development of stream and wetland protection policy. In some cases the planning bodies have claimed that the Regional Board was derelict in providing guidance. The proposed Basin Plan amendment to protect wetlands and riparian areas would serve to clarify what actions these planning bodies should employ regarding the management these resources in their specific areas of responsibility. The proposed Basin Plan amendment can also serve to provide standards and criteria for all land use types that can have effect and water quality and wetland values as a result of their specific use.