



California Regional Water Quality Control Board

Central Coast Region



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Edmund G. Brown, Jr.
Governor

Certification of Non-regulatory Action

for

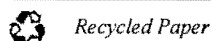
Total Maximum Daily Load for Fecal Indicator Bacteria and Alternative Implementation Program for the Cholame Creek Watershed, San Luis Obispo and Monterey Counties

POLLUTANT:	Fecal Indicator Bacteria
WATER BODY NAME:	Cholame Creek
WBID:	CAR3170008120011127080727
HYDROLOGIC UNIT:	Hydrologic Unit Code 1806000402 (HUC-10, Cholame Creek)
COUNTY:	San Luis Obispo and Monterey Counties

BY THE EXECUTIVE OFFICER:

1. Cholame Creek is listed on the Clean Water Act section 303(d) list as impaired due to pathogens. Cholame Creek does not attain the water quality objectives for fecal coliform set forth in the Water Quality Control Plan (Basin Plan) for the Central Coast Region adopted by the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board). This Certification establishes TMDLs for fecal coliform and *E. coli* and associated allocations for the Cholame Creek Watershed.
2. Cholame Creek is located in a 237-square-mile, sparsely populated, rural watershed in the coast ranges of southern Monterey County and northern San Luis Obispo County. Grazing lands and ranching are the predominant land use activity in this watershed (source: California Department of Conservation Farmland Mapping and Monitoring Program, 2008).
3. The Central Coast Water Board's goal for establishing TMDLs in the Cholame Creek Watershed is to rectify the impairment due to fecal indicator bacteria, thereby providing support for the designated beneficial uses of contact and non-contact water recreation.
4. The *Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options* (State Water Resources Control Board, adopted by Resolution 2005-0050); hereafter referred to as the "Impaired Waters Policy" provides policy and procedures for adopting Total Maximum Daily Loads and addressing impaired waters in California.

California Environmental Protection Agency



5. The Impaired Waters Policy states that the Regional Water Quality Control Boards (Water Boards) have independent discretion, broad flexibility, numerous options, and some legal constraints that apply when determining how to address impaired waters.
6. The Impaired Waters Policy states that the Water Boards generally have inadequate resources to timely address each and every water quality problem, and they must, therefore, prioritize use of their resources to where they will do the most good. Accordingly, the Impaired Waters Policy provides for a process in which the Water Boards may rely on methodologies used by another entity that is involved in effective efforts to address an impairment, and that the Water Board should seek to take those efforts into account and, where appropriate, take advantage of these third-party efforts.
7. The Impaired Waters Policy provides that if the solution to an impairment can be implemented with a single order of the Water Board, it may be implemented by that order. When an implementation plan can be adopted in a single action, such as a permit, waiver, or order, there is no legal requirement to first adopt the plan through a Basin Plan amendment. In the case of this TMDL, an existing water quality standard is being enforced (the Basin Plan fecal coliform objective), and an existing State Water Resources Control Board-approved Water Quality Management Plan (California Rangeland Water Quality Management Plan – refer to Finding 10) is being relied upon to address the sole controllable source contributing to the impairment in the watershed. No rulemaking is required to address the impairment because the regulatory standard has already been adopted through the proper rulemaking or legislative process.
8. The Impaired Waters Policy establishes a certification¹ process whereby the Water Boards can formally recognize regulatory or nonregulatory actions of other entities as appropriate TMDL implementation programs when the Water Boards determine those actions will result in attainment of standards.
9. The Impaired Waters Policy states that if a solution to an impairment is being implemented by a non-regulatory action of another entity, and the Water Board finds that the solution will actually correct the impairment, the Water Board may certify that the non-regulatory action will correct the impairment and if applicable, implement the assumptions of the TMDL, in lieu of adopting a redundant program.
10. An approved water quality management plan currently exists to address controllable pathogen source loads associated with rangeland. The California Rangeland Water Quality Management Plan was developed by the Rangeland Management Advisory Committee, a statutory committee that advises the

¹ The term “certification”, as used in this policy, is expressly limited to describing a process by which the Water Boards can formally recognize an acceptable alternative implementation program for a TMDL.

California Board of Forestry on rangeland resources. The California Rangeland Water Quality Management Plan was accepted by the State Water Resources Control Board in 1995 (SWRCB Resolution No. 95-43). The Rangeland Water Quality Management Plan sets forth the framework for the cooperative development of ranch management strategies for water quality protection. The State Water Resources Control Board Nonpoint Source Program Plan identifies the California Rangeland Water Quality Management Plan as a recognized and viable nonpoint source pollution control tool.

11. The Impaired Waters Policy states that only when the Water Board independently determines that a program being implemented by another entity will be adequate to correct the impairment may the Water Board rely upon that program. If a Water Board makes such findings, and the findings are supported by substantial evidence in the administrative record, the Water Board may certify that such program will implement the assumptions and requirements of the TMDL.
12. In accordance with Section 2.c) of the Impaired Waters Policy, a TMDL may be adopted with and reflected in a resolution or order that certifies that a non-regulatory program is being implemented by another entity and the program will correct the impairment.
13. In accordance with Section 3.c) of the Impaired Waters Policy, interested persons may file a petition for State Water Resources Control Board reconsideration of any resolution or order issuing or denying a certification under Section 2.c) of the Impaired Waters Policy in the manner described in Division 3, Chapter 28, Article 6, of Title 23 of the California Code of Regulations, however, any such petition shall be filed not later than 30 days after the date of the certification by the Water Board.
14. The Water Board delegated the authorities and duties vested in it to the Executive Officer that it was authorized to delegate under Water Code Section 13223 ("Delegation of Authority, Signature Requirements", dated January 5, 2011, California Regional Water Quality Control Board Central Coast Region).
15. In accordance with section 2.f) of the Impaired Waters Policy, the Water Board may delegate the authority to make certifications of non-regulatory actions to implement TMDLs under section 2.c) of the Impaired Waters Policy to its Executive Officer for non-controversial TMDLs.
16. In accordance with the Impaired Waters Policy and based on independent review of the record, the Executive Officer makes the following specific findings about the Cholame Creek fecal indicator bacteria TMDL alternative implementation program:
 - i. The program is consistent with the assumptions and requirements of the TMDL;

- ii. Sufficient mechanisms exist to provide reasonable assurances that the program will address the impairment in a reasonable period of time;
- iii. Sufficient mechanisms to enforce the program exist or the Water Board otherwise has sufficient confidence that the program will be implemented, such that further regulatory action in the form of a TMDL implementation plan by the Water Board is unnecessary and would be redundant.

17. This certification action does **not limit the Water Board's authority under Division 7 (commencing with section 13000) of the Water Code or other applicable laws.**

ACTION:

- Order for Certification of Total Maximum Daily Load for Fecal Indicator Bacteria for the Cholame Creek Watershed and Alternative Non-regulatory Implementation Program

CONDITIONS OF CERTIFICATION:

In accordance with Section 2.e) and Section 2.h) of the *Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options* ("Impaired Waters Policy" - State Water Resources Control Board, adopted by Resolution 2005-0050), certification under section 2.c) only remains valid if:

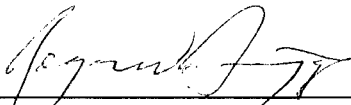
1. A monitoring and reporting plan that addresses the impaired water, as approved in conjunction with this certification by the Executive Officer, is adhered to;
2. The implementation program milestones identified in the TMDL implementation plan must be adhered to or regulatory intervention and reversion to Water Board direct oversight will be triggered if the pace of work lags or fails;
3. The certification may be revoked by the Water Board after finding that the program has not been adequately implemented, is not achieving its goals, or is no longer adequate to restore water quality;
4. The implementation program must comport with the requirements of the Key Elements of a Nonpoint Source Pollution Control Implementation Program, consistent with the Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program;
5. A certification under section 2.c) of the Impaired Waters Policy shall be valid only for the purpose of implementing TMDLs required by section 303(d) of the Clean Water Act. Such a certification shall not be deemed to constitute a "certification" as used in any other section of the Clean Water Act or as used in any other statute.

6. This certification under section 2.c) of the Impaired Waters Policy will expire eight years after the date TMDL becomes effective (which is upon certification by the Water Board Executive Officer), if not reissued. On or before the expiration date, the Water Board shall review the actions taken to address the impaired waters, and may renew the certification if significant progress has been made to correct the impairment, or the Water Board may direct staff to develop another regulatory solution to the impairment.

CERTIFICATION:

I hereby issue an order certifying the Total Maximum Daily Load (TMDL) for fecal indicator bacteria for the Cholame Creek Watershed and the non-regulatory alternative implementation program to implement the TMDL, in lieu of adopting a redundant program.

All certification actions are contingent on (a) the Conditions of Certification as presented above and (b) compliance with all applicable requirements of the Central Coast Regional Water Quality Control Board's Water Quality Control Plan (Basin Plan).



Roger W. Briggs
Executive Officer
Regional Water Quality Control Board

5-17-11

Date



