

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, California**

RESOLUTION NO. R3-2012-0018

**ADOPTING A TOTAL MAXIMUM DAILY LOAD AND IMPLEMENTATION PLAN FOR
NITRATE FOR THE LOS BERROS CREEK SUBWATERSHED
SAN LUIS OBISPO COUNTY**

The Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) finds:

1. The Central Coast Water Board adopted the second edition of the Water Quality Control Plan for the Central Coastal Basin (Basin Plan) on September 8, 1994. The Basin Plan designates beneficial uses, establishes water quality objectives, sets forth implementation plans to achieve water quality objectives addressing point source and nonpoint source discharges, includes prohibitions, and incorporates statewide plans and policies.
2. Section 303(d) of the Clean Water Act requires states to identify and prepare a list of waterbodies that do not meet water quality standards and to establish a Total Maximum Daily Load (TMDL) for the listed water bodies. TMDLs can be expressed in terms of either mass per time, concentration, or other appropriate measure [40 CFR §130.2(i)].
3. Los Berros Creek is located in a largely rural, 28-square-mile subwatershed in southern San Luis Obispo County and forms the southeastern tributary reaches of the geographically larger Arroyo Grande Creek Watershed. The Los Berros Creek Subwatershed is an east-west trending drainage with headwater reaches at Temettate Ridge to the east, and with a confluence with Arroyo Grande Creek to the west.
4. Los Berros Creek is listed on the 2008-2010 Clean Water Act 303(d) list of impaired waters as impaired due to elevated nitrate levels. Due to the Clean Water Act 303(d) listing, the Central Coast Water Board is required to adopt a TMDL and an associated implementation plan (40 CFR 130.6(c)(1), 130.7, Water Code section 13242). This Resolution establishes a TMDL and associated allocations for this impairment.
5. The Central Coast Water Board's goal for establishing a TMDL in the Los Berros Creek Subwatershed is to rectify impairment due to nitrate, thereby providing support for designated beneficial uses associated with municipal and domestic water supply (MUN) and groundwater recharge (GWR).
6. The Final Project Report contains a problem statement, numeric targets, source analysis, total maximum load, linkage analysis, load allocations, margin of safety, an implementation plan, and a monitoring plan. The Final Project Report addresses impairments due to nitrate.

7. The elements of a TMDL are described in 40 CFR 130.2 and 130.7, section 303(d) of the Clean Water Act, and USEPA guidance documents. A TMDL is defined as “the sum of individual waste load allocations for point sources and load allocations for nonpoint sources and natural background” (40 CFR 130.2). The Los Berros Creek subwatershed TMDL is set at a level necessary to attain and maintain the applicable numeric water quality standards, taking into account seasonal variations and any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7 (c) (1)). The regulations in 40 CFR 130.7 also state that TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters. TMDLs are often expressed as a mass load of the pollutant but can be expressed as a unit of concentration if appropriate (40 CFR 130.2(i)). Expressing these TMDLs as units of concentration is appropriate because existing concentration-based water quality criteria are used as the basis for the TMDL numeric targets and attaining that concentration-based water quality target will result in protection of the beneficial uses.
8. According to the *Water Quality Control Policy for Addressing Impaired Waters* (State Water Board Resolution 2005-0050), “[i]f the solution to an impairment can be implemented with a single vote of the regional board, it may be implemented by that vote...there is no legal requirement to first adopt the plan [TMDL] through a basin plan amendment” (p. 5). The Central Coast Water Board finds that the TMDL for nitrate for the Los Berros Creek subwatershed will be achieved by implementing an existing action of the Central Coast Water Board, the *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* in the Central Coast Region (Agricultural Order) and accompanying Monitoring and Reporting Program. Therefore, the Central Coast Water Board finds that the Agricultural Order, and future renewals and revisions thereof, will implement the TMDL in lieu of adopting a redundant program.
9. The Monitoring and Reporting Program set forth in the Agricultural Order will provide the information sufficient to confirm that the TMDL is being implemented and numeric targets and allocations will be achieved.
10. Central Coast Water Board staff will conduct a review of implementation activities when monitoring and reporting data are submitted as required by the Agricultural Order, or when other monitoring data and/or reporting data are submitted outside the requirements of the Agricultural Order. Central Coast Water Board staff will pursue modification of Agricultural Order conditions or other regulatory means, as necessary, to address remaining impairments from nitrate during the TMDL implementation phase.
11. Central Coast Water Board staff implemented a process to inform interested persons and the public about the TMDL. Central Coast Water Board staff’s efforts to inform the public and solicit comment included a public meeting with interested persons and a public notice and comment period. Public notice of the public hearing was given by mailing a copy of the public notice to all persons requesting such notice and applicable government agencies on March 1, 2012. Relevant documents and notices were also made available on the Central Coast Water Board website. The public notice provided the public a 30-day public comment period preceding the Central Coast Water Board hearing. Central Coast Water Board staff responded to oral and written comments received from the public. All public comments were considered.
12. Adoption of these TMDLs will not result in any degradation of water quality; in fact, they are designed to improve water quality. Consistent with applicable law, the Agricultural

Order requires compliance with water quality standards and protection of beneficial uses. As such, these TMDLs comply with all requirements of both State and federal anti-degradation requirements (State Board Resolution 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*, and 40CFR 131.12).

13. Existing actions by the Central Coast Water Board make any further regulatory action (i.e., any "project") unnecessary. Therefore, this action is not a "project" that requires compliance with the California Environmental Quality Act (CEQA) (California Public Resources Code §21000 et seq.). The Central Coast Water Board is not directly undertaking an activity, funding an activity, or issuing a permit or other entitlement for use (Public Resources Code section 21065; 14 Cal. Code of Regs. §15378). The Agricultural Order is subject to, and in compliance with, the requirements of CEQA.
14. The U.S. Environmental Protection Agency's published TMDL guidance (*Guidance for Water Quality-Based Decisions: The TMDL Process – Chapter 1, Policies and Principles*, EPA 404/4-91-001, April 1991) explicitly states that implementation of TMDLs and water quality-based controls should not be delayed because of lack of information and uncertainties about pollution problems, particularly with respect to nonpoint sources. More information about the spatial extent and nature of water quality impairments can be collected during TMDL implementation.
15. This TMDL will become effective upon approval of this Resolution by the Central Coast Water Board.
16. On May 3, 2012, in San Luis Obispo California, the Central Coast Water Board held a public hearing and heard and considered all public comments and evidence in the record.

THEREFORE, be it resolved that:

1. The Central Coast Water Board, after considering the entire record, including the oral testimony at the hearing, hereby adopts the Total Maximum Daily Load for Nitrate for the Los Berros Creek Subwatershed, as shown in the Final Project Report.
2. The Central Coast Water Board finds that an existing action of the Central Coast Water Board, *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* and associated monitoring program, is an appropriate plan for implementation of the TMDL, will be adequate to correct the impairments, and is expected to result in attainment of water quality standards with respect to nitrate in the Los Berros Creek Subwatershed. At this time, any further regulatory action to create another program of implementation by the Water Board would be redundant and unnecessary.
3. The Central Coast Water Board may revoke these findings if it finds that the Agricultural Order and associated monitoring and reporting program are not adequately implemented or are no longer adequate to resolve the impairment.
4. The Central Coast Water Board's Executive Officer is directed to submit the TMDL to the U.S. Environmental Protection Agency (USEPA) for review. If during its approval process the USEPA determines that minor, non-substantive corrections to the language of the TMDL are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Central Coast Water Board of any such changes.

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Central Coastal Region on May 3, 2012.

Roger W. Briggs
Executive Officer