

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

RESOLUTION NO. R3-2015-0032

**ADOPTING TOTAL MAXIMUM DAILY LOADS FOR NITRATE IN STREAMS
OF THE SAN ANTONIO CREEK WATERSHED, SANTA BARBARA COUNTY**

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

1. The Central Coast Water Board adopted the Water Quality Control Plan for the Central Coastal Basin (Basin Plan) on March 14, 1975. The Basin Plan designates beneficial uses, establishes water quality objectives, implementation programs for achieving water quality objectives addressing point source and nonpoint source discharges, adopts 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 Total Maximum Daily Loads (TMDLs) for the listed waterbodies. TMDLs can be expressed in terms of either mass per time, concentration, or other appropriate measure [40 CFR §130.2(i)].
3. On May 20, 2004, the State Water Resources Control Board (State Water Board) adopted the Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (State Water Board Resolution No. 2004-0063), hereafter referred to as the California 303(d) Listing Policy. The California 303(d) Listing Policy describes the process by which the State Water Board and the Regional Water Quality Control Boards will comply with the listing requirements of the federal Clean Water Act. The objective of the California 303(d) Listing Policy is to establish a standardized approach for developing California's Clean Water Act Section 303(d) List of impaired waters and to provide guidance for interpreting data and information to make decisions regarding water quality standards attainment.
4. San Antonio Creek, from Railroad Bridge near the coast to Rancho del las Flores Bridge at Hwy 135, is listed on the 2008-2010 Clean Water Act Section 303(d) List of impaired waters due to the unionized ammonia, nitrite, and low dissolved oxygen. However, recent data indicates that San Antonio Creek is no longer impaired due to un-ionized ammonia or nitrite. Central Coast Water Board staff will propose de-listing San Antonio Creek for un-ionized ammonia and nitrite during the next listing cycle in accordance with the California 303(d) Listing Policy.
5. San Antonio Creek is not listed on California's 2008-2010 Clean Water Act Section 303(d) List for nitrate impairment, however, recent data indicates that an upstream portion of San Antonio Creek is impaired on the basis of non-attainment of the municipal and domestic drinking water supply (MUN) beneficial use designated by the Basin Plan. This resolution establishes TMDLs and associated allocations for nitrate impairment in accordance with the California 303(d) Listing Policy, including anti-degradation provisions to protect unimpaired waters from degradation.
6. San Antonio Creek watershed is a narrow, east-west trending drainage in Santa Barbara County that lies between the Santa Maria River watershed to the north and the Santa Ynez

River watershed to the south. San Antonio Creek watershed is the receiving water for approximately 152 square miles of land. Nearly one quarter of the westernmost portion of the watershed lies within Vandenberg Air Force Base where San Antonio Creek enters the Pacific Ocean just north of Purisima Point.

7. On May 20, 2004, the State Water Board adopted the Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (Nonpoint Source Policy). These TMDLs are consistent with the Nonpoint Source Policy. The Nonpoint Source Policy requires the Regional Water Quality Control Boards to regulate all nonpoint sources of pollution using the administrative permitting authorities provided by the Porter-Cologne Water Quality Control Act (Porter-Cologne Act, Water Code Division 7). Consistent with the Nonpoint Source Policy and the Porter-Cologne Act, Regional Water Quality Control Boards regulate nonpoint source discharges with waste discharge requirements, waivers of waste discharge requirements, and/or Basin Plan prohibitions.
8. Pursuant to California Water Code section 106.3(a), it is the policy of the State of California that every human being has a right to safe, clean, affordable, and accessible water adequate for human consumption. California Water Code section 106.3(b) requires the Central Coast Water Board to consider how state actions impact the human right to water and creates a state policy that directs the Central Coast Water Board and other state agencies to explicitly consider the human right to water when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and grant criteria affect the human right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This resolution promotes that policy by establishing TMDLs for nitrate in streams of the San Antonio Creek watershed which are designated for the protection of human health including municipal and domestic water supply.
9. On June 16, 2005, the State Water Board adopted the Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options (State Water Board Resolution No. 2005-0050), hereafter referred to as the Impaired Waters Policy. The Impaired Waters Policy provides policy and procedures for adopting TMDLs and addressing impaired waters in California. The Impaired Waters Policy states that the Regional Water Quality Control Boards have independent discretion, broad flexibility, numerous options, and some legal constraints that apply when determining how to address impaired waters.
10. In accordance with the Impaired Waters Policy, the State Water Board and Regional Water Quality Control Boards are responsible for the quality of all waters of the state, irrespective of the cause of the impairment. In addition, a TMDL must be calculated for impairments caused by certain USEPA designated pollutants. The Porter-Cologne Water Quality Control Act charges the State Water Board and the Regional Water Quality Control Boards with the responsibility of protecting the beneficial uses and quality of all waters of the state, irrespective of the cause of the impairment. Thus, if possible, the impairment should be corrected in either event. Presently, USEPA has designated all pollutants as suitable for TMDL calculation under proper technical conditions.
11. Based on available data, the source of nitrate causing impairment is the controllable discharge from agricultural lands attributable to human activities; reducing this discharge alone will redress the impairment.
12. The Central Coast Water Board's goal for establishing TMDLs for streams in the San Antonio Creek watershed is to redress impairment due to nitrate, thereby providing support for designated beneficial uses associated with municipal and domestic water supply.

13. The Final TMDL Report contains a problem statement, numeric targets, source analysis, total maximum loads, linkage analysis, load allocations, margin of safety, an implementation plan, and a monitoring plan. The Final TMDL Report addresses impairments due to nitrate.
14. 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 TMDLs for nitrate in streams of the San Antonio Creek watershed are 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 objectives 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.
15. According to the Impaired Waters Policy, “[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 TMDLs for nitrate in streams of the San Antonio Creek watershed 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 programs. Therefore, the Central Coast Water Board finds that the existing Agricultural Order will implement the TMDLs in lieu of adopting a redundant program.
16. The monitoring and reporting programs set forth in the Agricultural Order will provide the information sufficient to confirm that the TMDLs are being implemented and numeric targets and allocations will be achieved.
17. 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.
18. Central Coast Water Board staff implemented a process to inform interested persons 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. A public notice was emailed to all persons requesting such notice and relevant documents were made available on the Central Coast Water Board website on September 18, 2015. The public notice provided the public a 30-day public comment period preceding the Central Coast Water Board hearing. No public comments were submitted to Central Coast Water Board staff during the 30-day public comment period. Public notice of the public hearing was given by emailing a copy of the public notice to all persons requesting such notice and applicable government agencies.

19. Adoption of these TMDLs will not result in any degradation of water quality; in fact, it is 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 Water Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*, and 40 CFR 131.12).
20. 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.
21. The USEPA’s TMDL guidance (USEPA, 1991 Guidance for Water Quality-Based Decisions) explicitly states that TMDLs and implementation of 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.
22. These TMDLs will become effective upon approval of this resolution by the Central Coast Water Board.
23. On November 19, 2015, 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 Total Maximum Daily Loads for nitrate in streams of the San Antonio Creek watershed, Santa Barbara County, California, as described in the Final TMDL 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 in the Central Coast Region and associated monitoring and reporting programs, is an appropriate plan for implementation of the TMDLs, will be adequate to correct the impairments, and is expected to result in attainment of water quality standards with respect to nitrate in the San Antonio Creek watershed. At this time, any further regulatory action to create another program of implementation by the Central Coast Water Board would be redundant and unnecessary.
3. The Central Coast Water Board may revoke these findings if it finds that the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands in the Central Coast Region and associated monitoring and reporting programs 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 for review. If during its approval process, the U.S. Environmental Protection Agency 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, Kenneth A. Harris Jr., 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 Coast Region on November 19, 2015.

Kenneth A. Harris Jr.
Executive Officer