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Central Coast Regional Water Quality Control Board

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**Certification of Regulatory Action of Another Local and Federal Agency**

for

**Total Maximum Daily Loads for Chlorpyrifos for the San Lorenzo River Watershed  
(including San Lorenzo River, Zayante Creek, and Branciforte Creek) and Arana  
Gulch Watershed Santa Cruz County**

POLLUTANT: Chlorpyrifos  
WATERBODY NAMES  
AND WBID NO: San Lorenzo River - WBID: CAR3041202219980827084709  
Branciforte Creek - WBID: CAR3041205119990223104548  
Zayante Creek – WBID: CAR3041202220020124155410  
Arana Gulch - WBID: CAR3041205119990222133711  
and their tributaries.  
HYDROLOGIC UNIT: Hydrologic Unit Code 18060001  
COUNTY: Santa Cruz County

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BY THE EXECUTIVE OFFICER:

1. The San Lorenzo River, Branciforte Creek, Zayante Creek, and Arana Gulch are listed on the 2008-2010 Clean Water Act section 303(d) list as impaired due to chlorpyrifos. This Certification establishes TMDLs for chlorpyrifos and associated allocations for the San Lorenzo River watershed (includes San Lorenzo River, Branciforte Creek, and Zayante Creek) and Arana Gulch watershed and their tributaries.
2. The San Lorenzo River watershed encompasses approximately 140 square miles within Santa Cruz County. The Arana Gulch watershed encompasses approximately 7 square miles within Santa Cruz County. Land cover within the two watersheds is primarily undeveloped or forested land (82%) while urban areas comprise the second largest land cover at 16.5% (source: California Department of Conservation Farmland Mapping and Monitoring Program, 2008).
3. The Central Coast Water Board's goal for establishing TMDLs in the San Lorenzo River watershed and Arana Gulch watershed is to rectify impairment due to chlorpyrifos, thereby providing support for designated beneficial uses associated with aquatic life. Recent sampling (2010/2011) shows that these waterbodies do not have detectable levels of chlorpyrifos. Waterbodies showed exceedances of numeric targets in 2006, prompting inclusion on the 2008-2010 Clean Water Act section 303(d) list.
4. The *Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options* (State Water Resources Control Board, adopted by Resolution 2005-0050),

JEFFREY S. YOUNG, CHAIR | KENNETH A. HARRIS JR., EXECUTIVE OFFICER

hereafter referred to as the “Impaired Waters Policy,” provides policy and procedures for adopting Total Maximum Daily Loads and addressing impaired waters in California.

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 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 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, existing water quality criteria are being enforced (the Department of Fish and Wildlife numeric criteria for chlorpyrifos), and existing policies (US Environmental Protection Agency restrictions and city, county, and university policies) are being relied upon to address the impairment in the watershed. No rulemaking is required to address the impairment because regulations have already been adopted through the proper rulemaking or legislative processes.
8. The Impaired Waters Policy establishes a certification<sup>1</sup> 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 impairment is being implemented by a regulatory action of another entity and the Water Board finds that the solution will actually correct the impairment, the Water Board may certify that regulatory action in lieu of adopting a redundant program.
10. Existing regulations and policies by other entities currently exist to address chlorpyrifos impairments addressed in this TMDL. USEPA has banned chlorpyrifos from public sale effective December 31, 2001, and the City of Santa Cruz and the County of Santa Cruz have integrated pest management policies that state that all uses of chlorpyrifos on their properties will be eliminated by January 2000 (City) and January 2003 (County). The University of California has a pesticide evaluation procedure and no chlorpyrifos has been applied on its campus since 1995. The City of Scotts Valley has an integrated pest management policy (May 2008) that states any EPA Toxicity Category II pesticide

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<sup>1</sup> 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.

(includes chlorpyrifos) will only be used with prior approval from the Public Works director. Since adoption of the Policy, no chlorpyrifos has been applied.

11. The Impaired Waters Policy states that when the Water Board independently determines that a regulatory action of another state, local, or federal agency will be adequate to correct the impairment, the Water Board may 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 actions will implement the assumptions and requirements of the TMDL.
12. No additional regulation or implementation requirements are being proposed because the existing regulations implemented by the various agencies described in Finding No. 10 are adequate. Additionally, current information suggests that these existing regulations have already resulted in correcting the impairments, as described in the TMDL.
13. 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 the regulatory action of another state, local, or federal agency is being implemented and the regulatory action will correct the impairment.
14. 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.
15. 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 July 1, 2013, California Regional Water Quality Control Board Central Coast Region).
16. In accordance with section 2.f) of the Impaired Waters Policy, the Water Board may delegate the authority to make certifications of regulatory actions of another state, local or federal agency to implement TMDLs under section 2.c) of the Impaired Waters Policy to its Executive Officer for non-controversial TMDLs.
17. 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 San Lorenzo River Watershed and Arana Gulch Watershed Chlorpyrifos TMDL regulatory actions of another state, local, or federal agency:
  - i. The regulations are consistent with the assumptions and requirements of the TMDL;
  - ii. Sufficient mechanisms exist to provide reasonable assurances that the regulatory actions will address the impairment in a reasonable period of time;

- iii. Sufficient mechanisms to enforce the regulatory actions exist such that further regulatory action in the form of a TMDL implementation plan by the Water Board is unnecessary and would be redundant.

18. 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 Chlorpyrifos for the San Lorenzo River Watershed and Arana Gulch Watershed and Regulatory Action of another state, local, or federal agency.

**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 as described in the Final Project Report;
2. The implementation program milestones identified in the TMDL implementation plan, as described in the Final Project Report, 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 chlorpyrifos for the San Lorenzo River Watershed and Arana Gulch Watershed and the regulatory action of another state, local, or federal agency 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).

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Kenneth J. Harris Jr.  
Executive Officer  
Regional Water Quality Control Board

May 29, 2014

Date