

**California Regional Water Quality Control Board
San Diego Region**

Resolution No. R9-2024-0012

**A RESOLUTION CERTIFYING THAT ANOTHER ENTITY'S
NON-REGULATORY ACTION WILL RESTORE THE
RARE BENEFICIAL USE OF SAN MATEO CREEK**

WHEREAS, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), finds that:

1. The objective of the Clean Water Act (CWA) is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The objective of the CWA is achieved, in part, through water quality standards. In California, water quality standards include designated beneficial uses of waters and the water quality criteria (known as water quality objectives) specific to those beneficial uses. In California, water quality standards are included in statewide or regional water quality control plans.
2. The San Diego Water Board first developed and adopted the Water Quality Control Plan for the San Diego Basin (9) (Basin Plan) in 1975. The Basin Plan and subsequent revisions were reviewed and approved by the State Water Board and Office of Administrative Law (OAL), and as applicable, the U.S. Environmental Protection Agency (USEPA). The Basin Plan designates beneficial uses, establishes water quality objectives, and contains implementation programs, policies, and prohibitions to achieve those objectives for waters in the San Diego region.

3. Section 303(d)(1) of the CWA requires each State to regularly identify surface waters that do not meet applicable water quality standards after technology-based controls have been implemented (referred to as the section 303(d) List) and to prioritize the development of total maximum daily loads (TMDLs) for such surface waters. States are required to submit their section 303(d) List biennially to the USEPA.
4. For the purpose of TMDL development, the section 303(d) List must include a description of the pollutants causing impairment and a priority ranking for all listed water quality limited segments.
5. In 2016 the San Diego Water Board adopted Resolution No. R9-2016-0196, which consisted of a CWA section 305(b) and 303(d) year 2014 “Integrated Report.” The Integrated Report included an impaired waters list (“2014 303(d) List”) pursuant to section 303(d) of the CWA.
6. The State Water Board approved the 2014 303(d) List on October 3, 2017, when it adopted Resolution No. 2017-0059. The USEPA approved the 2014 303(d) List on April 6, 2018.
7. The 2014 303(d) List identified San Mateo Creek as impaired under section 303(d) of the CWA for invasive species impacts on the federally endangered Southern California Steelhead (*O. mykiss*), with RARE identified as the most sensitive beneficial use impaired. Subsequent surveys since the 2014 impairment listing have confirmed the continued impairment.
8. The State and Regional Water Boards are committed to protecting and restoring the waters of California to ensure that all applicable beneficial uses are fully attained. Regional Water Boards have wide latitude, numerous options, and some legal constraints that apply when determining how to address impaired waters. Pathways for addressing impairments are outlined in the statewide “Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options.” (“Impaired Waters Policy”, State Water Board Resolution 2005-0050).
9. As described in the Impaired Waters Policy, if a solution to an impairment is being implemented by a non-regulatory action of another entity, and the regional board finds that the solution will correct the impairment, the regional board may certify that the non-regulatory action will correct the impairment in lieu of adopting a redundant program.

10. The San Diego Regional Water Quality Control Board Invasive Species Total Maximum Daily Load for San Mateo Creek Staff Report (TMDL) includes all USEPA TMDL elements, analyzes and describes the impairment of San Mateo Creek, and identifies the source of pollutants to be nonpoint source pollution (NPS).
11. The TMDL includes a monitoring plan, a timeline for trackable progress, and identifies points at which regulatory intervention and reversion may be triggered.
12. The TMDL comports with the requirements of the Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program, including but not limited to, the Key Elements of an NPS Pollution Control Program Implementation Program. The State of California has awarded \$198,894 in CWA section 319 funds to California Trout, Inc, (Caltrout), a 501(c)3 nonprofit organization, to develop a coordinated watershed management plan to address the impairment. NPS funding is available to federal and state agencies, resource conservation districts, and other groups to implement full scale, on-the-ground management measures to address water quality problems resulting from NPS pollution.
13. This Certification does not amend the Basin Plan. This Certification is a formal attestation that the implementation of non-regulatory programs by other entities will correct the impairment. Other entities include, but are not limited to, the United States Department of the Navy, the United States Forest Service, the California Department of Fish and Wildlife, and Caltrout.
14. San Diego Water Board staff developed a draft TMDL in direct consultation with the California Department of Fish and Wildlife and National Marine Fisheries Service. Board staff distributed a Public Notice to interested persons and public agencies on June 15, 2022, regarding the Draft TMDL. The Public Notice included the draft TMDL and a project fact sheet identifying that a Certification of a non-regulatory action was being considered in lieu of adoption of a Basin Plan Amendment to correct the impairment. Written comments were accepted through November 01, 2022. Five comment letters were received on the draft TMDL. Board staff made minor clarifying changes to the Draft TMDL in response to comments received. Four of the five comment letters supported the use of nonpoint source funding and planning to address the impairment. No commenters were opposed to the use of a non-regulatory certification to resolve the impairment. As such, this Certification is considered non-controversial and can be approved by the Executive Officer.

15. This Certification is consistent with the 2013 USEPA Long-Term Vision for Assessment, Restoration, and Protection under the Clean Water Act Section 303(d) Program, which calls for states to “use alternative approaches, in addition to TMDLs, that incorporate adaptive management and are tailored to specific circumstances where such approaches are better suited to implement priority watershed or water actions that achieve the water quality goals of each state, including identifying and reducing nonpoint sources of pollution.”
16. This Certification is consistent with and supports Executive Order W-59-93, referred to as the “no net loss and net gain policy,” which directed State government programs and policies that affect wetlands to ensure no overall net loss and long term net gain in the quantity, quality, and permanence of wetlands acreage and values.
17. This Certification is consistent with and supports San Diego Water Board Resolution No. R9-2015-0041, Resolution to Support Restoration of Aquatic Ecosystems in the San Diego Region. The certification will guide restoration activities and documentation of restoration success through beneficial use attainment.
18. This Certification is consistent with and supports Executive Order N-10-19 and the State of California Water Resilience Portfolio released on July 28, 2020. This Certification advances resilience through the stated goal of protection and enhancement of natural ecosystems through “effective standard setting, continued investments, and more adaptive, holistic environmental management” and is necessary to support action 8.6 “...assess biological communities to determine stream health and condition future projects to protect high-quality high-functioning systems.”
19. This Certification is consistent with and supports Executive Order N-82-20. On October 7, 2020, the Governor of California issued Executive Order N-82-20 which directs the California Environmental Protection Agency to “Conserve Biodiversity, Combat Climate Change, and Build Climate Resilience Through Nature-Based Solutions.” This Certification promotes the efficient use of State and community water quality management resources towards protecting and restoring areas important for native aquatic biodiversity.

20. This Certification is consistent with and supports Assembly Bill 809 (2023).
Assembly Bill 809 requires the California Department of Fish and Wildlife to establish the California Monitoring Program to collect comprehensive data on anadromous salmonid populations, in coordination with relevant agencies, as defined, to inform salmon and steelhead recovery, conservation, and management activities. Assembly Bill 809 authorizes the California Department of Fish and Wildlife to consult with local agencies, tribes, conservation organizations, and academic institutions to carry out monitoring efforts under the program.
21. This Certification is consistent with and supports Assembly Bill 315 (2021).
Assembly Bill 315 supports the funding of projects to restore fish and wildlife habitats on private property.
22. This Certification is consistent with and supports Senate Bill 155 (2021). Senate Bill 155 exempts from CEQA projects that conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and habitat upon which they depend or that restore or provide habitat for California native fish and wildlife.
23. Interested persons may file a petition for State Board reconsideration of this resolution issuing this certification 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 this certification.

THEREFORE, BE IT RESOLVED THAT:

The San Diego Water Board:

1. Certifies that the non-regulatory actions of other entities as described in the TMDL and developed with funds from the CWA section 319 nonpoint source pollution grant program, will resolve the RARE beneficial use impairment in San Mateo Creek within a reasonable time frame.
2. Does not delegate its authority over water quality control to another regulatory or non-regulatory entity.
3. Approves the TMDL monitoring plan as a means to track progress and has sufficient confidence that the program will be implemented such that further regulatory action by the San Diego Water Board would be unnecessary and redundant.
4. Will provide annual updates on progress toward addressing the impairment under the timelines of the TMDL.

5. Will assist other entities in supporting actions taken to resolve the impairment consistent with the TMDL.
6. Will reference the TMDL in the Basin Plan during the next triennial review, which is scheduled to begin in 2024.
7. Will submit the TMDL to the USEPA and the State Water Board in accordance with the Impaired Waters Policy.
8. This Certification shall expire, unless re-certified, on December 31, 2033, consistent with the San Diego Water Board Progress Assessment timeline in the TMDL.

DAVID W. GIBSON
Executive Officer