



Date: February 18, 2010

From: Central Coast Agricultural Water Quality Coalition
750 Shannon Hill Dr
Paso Robles CA 93446
(805) 208-8039

To: Jeanine Townsend, Clerk

RE: Comments Letter – Pajaro River Watershed – Fecal Coliform TMDLs

Dear Ms. Townsend:

Cattlemen are environmental stewards. They grow grass which cattle harvest; and consequently, they are attuned to a complex and dynamic interchange between their productions goals and the environment. Because of environmental awareness, in the mid-1900's, Cattlemen initiated a state wide water quality planning and educational process. They continue these efforts today and The Central Coast Agricultural Water Quality Coalition coordinates on the Central Coast.

The Central Coast Agricultural Water Quality Coalition (The Coalition) has assisted Central Coast Cattlemen in addressing water quality issues. The Coalition's mission is to represent farmers and ranchers in the development and implementation of voluntary, cost-effective, producer-directed programs to protect water quality on the Central Coast through education, outreach, coordination, facilitation and innovation.

Since 2005, The Coalition has participated in Fecal coliform and bacterial TMDL public processes throughout the Central Coast region. We have attended multiple public process meetings and hearings and provided comments on the Southern Santa Barbara Beach, Santa Maria, Salinas, Pajaro, and Watsonville Slough TMDLs. And we have communicated TMDL information to ranchers. Because of our region-wide involvement, we have grave concerns about the inconsistency of the TMDL process across the region. There is quite a bit of variation in how TMDLs are implemented from watershed to watershed and between types of regulated communities. Furthermore, the Central Coast Regional Water Quality Control Board (Regional Board) TMDL process and policy appears to be a moving target that shifts from year to year depending on regulatory, budgetary and staffing pressures.

In 2006, we hosted a "Cut the Crap" class for Cattlemen in Santa Barbara County. Regional Board staff was invited and presented information about the TMDL process at that meeting. Also, since that time, The Coalition has been actively involved in the Co-management of Water Quality and Food Safety issue.

In 2007, Regional Board Staff insisted that Coastal Cattlemen write a regional water quality protection plan, The Coalition and the Central Coast Cattlemen's Leadership Group wrote the Central Coast Non-Point Source Grazing Approach and Benefits of Grazing document. This document was written by a dedicated group at considerable personal expense and time. The Cattlemen utilized the EPA Non-Point Source Grazing Management Measures Guide as a template for the document. Furthermore, they made an effort to comply with all elements of the 2004 SWRCB Non-Point Source Policy. Their approach was to create a flexible, living document that could be used by the most traditional or the most progressive rancher. The Central Coast Benefits of Grazing is attached as an Appendix to the document and is the first compendium of all the environmental, fire protection, weed control, economic, social, and cultural benefits associated with grazing on the Central Coast. The Central Coast NPS Grazing Approach document was completed in August, 2008 and submitted to Regional Board Staff for comment in early September, 2008. Regional Board staff never provided feedback to the Cattlemen. The Cattlemen took that to mean Regional Board condoned, if not endorsed, their work. Subsequently, The Cattlemen moved forward with their proactive efforts.

This document is currently under peer review. The Central Coast Cattlemen's Leadership Group would welcome the opportunity to discuss this document and its utility with State Water Resources Control Board staff and Board members prior to formal adoption of the Pajaro River Fecal Coliform TMDL.

In 2009, The Coalition hired a Coordinator, Dina Iden, to support the Cattlemen. We teamed with The University of California Cooperative Extension (UCCE) to improve rangeland water quality planning and education. The goal was to streamline the Rangeland Water Quality Plan and update the Rangeland Water Quality Planning Short Courses to include new tools that have been developed in the past five years.

New tools recently developed by proactive individual Cattlemen include, but are not limited to, a rangeland positive point self assessment system developed by ranchers in San Luis Obispo and Monterey Counties in conjunction with Cal Poly and UCCE staff. Additionally, The Central Coast Rangeland Coalition has developed performance measures that indicate rangeland health and the ability of grazing land to protect water quality and build water assimilative capacity.

Updated plans and classes will address newly emerging issues such as climate change, carbon sequestration and methane gas production. The California Cattlemen's Association and the California Rangeland Conservation Coalition are taking the lead on these global and national issues which are, nevertheless, pertinent to and should be understood by Central Coast Cattlemen.

Finally, The Coalition is working with NRCS, Resource Conservation Districts and UCCE to explore grant funding to defray educational and staffing costs.

It is with these extensive and proactive efforts in mind that The Coalition reviewed The Pajaro River Fecal Coliform Final TMDL Project Report and provides the following comments.

The Coalition recognizes that this TMDL has been in development for some time and when it was first initiated, the use of fecal coliform as indicator bacteria was common. However, advances in pathogenic speciation have rapidly developed in the past few years. In light of the heightened concerns surrounding human pathogens, the use of fecal coliform as indicator bacteria is woefully inadequate. It is critical to

speciate to better determine which human pathogens of concern are associated with specific sources in the watershed. Pathogens and sources should then be matched to appropriate management practices. To proceed without utilizing the best available sourcing technologies is an empty exercise. The Coalition recommends that adoption of this TMDL be delayed until more detailed speciation can be done to better guide the TMDL implementation plan.

The Coalition finds section 5.1.6 **Natural Source-waste Discharges Not subject to Regulation** to be very interesting, in particular, Staff's reasoning that they can only "regulate natural waste entering surface waters caused by human activities". As stated, The Coalition believes that this policy obligates the Central Coast Regional Water Quality Control Board to regulate pathogen loading from feral pigs. These hogs were introduced by man and exist in the natural environment as escaped domestic livestock. Current populations are managed through Department of Fish and Wildlife depredation permits. Man's activities have a direct bearing on the presence and density of feral pig populations in this watershed. This reasoning, combined with the purported connection between the presence of feral pigs and the 2007 E. coli 0157:h7 outbreaks make it imperative that Regional Board Staff coordinate with Department of Fish and Wildlife to proactively manage feral pig populations that could potentially contaminate waters with E. coli 0157:h7. The Coalition suggests that this TMDL be delayed until feral pig sources of impairment are properly addressed.

The Coalition recognizes that load calculations and allocations are very complicated. It requires experts scientifically trained in the discipline of concern. Quite frankly, we were surprised that Staff chose not to provide more detail in how it arrived at this TMDL load calculation. Staff alluded to the dangers of recreating in contaminated waters as the rationale for choosing these load calculations. However, this seems like flimsy logic considering the majority of this watershed to be in private ownership so that water recreation is either by permission or by trespass. The Coalition requests that Staff be instructed to provide more detail on load allocations prior to state adoption of this TMDL.

Below are comments regarding the Implementation and Monitoring Plans.

Lumping rural residential owners/operators and commercial livestock as one source (i.e. domestic animals) regardless of size and type of operation, is problematic. Rural residential and commercial livestock operations should be separated. They are a completely different communities with different outreach requirements and entirely different management practices requirements. It will be logistically impossible to ascertain implementation effectiveness and compliance using Regional Board Staff's consolidated approach. Here are a few questions which pertain to enforcement of rural residential owners/operators:

- What plan does Regional Board Staff have for identifying who should be regulated?
- How does Regional Board Staff propose communicating the TMDL requirements to this group?
- How realistic is it to expect this community to monitor? As a group? As individuals?
- How realistic is it to expect this community to create an implementation plan that tracks implementation effectiveness? As a group? As individuals?
- Can this Regional Board Staff, with current staffing and budgetary constraints, actually regulate and enforce the proposed implementation plan in the rural residential community?
- What compliance plan will be promulgated for this community?
- How does Regional Board Staff propose obtaining "clear evidence" of compliance?
- What is the likelihood that Regional Board Staff will enforce upon this regulated community? Will there be some sort of class distinction where larger landowners will be targeted; while smaller landowners are ignored, albeit they are subject to the same requirements?

- In regards to liability, what third party would be willing to accept the liability for ensuring implementation, monitoring, reporting and compliance for rural residential properties?

The Coalition recommends that Staff separate commercial cattle producers from rural residential properties and revisit the TMDL load calculations and allocations, implementation plan and monitoring requirements and economic analysis. Failure to separate these sources now will create future confusion about TMDL progress and will jeopardize the long-term success of the TMDL program.

Section 12.1.2 **Domestic Animal Waster Discharges Outside Scope of MS4s** requires that owner/operators of lands containing domestic animals...be required to submit [a] report for compliance which describes how implementing the identified management practices are likely to progressively achieve load allocation. The plan will include monitoring and reporting to the Central Coast Water Board. In regards to required reports, Porter Cologne specifies that when reports may disclose trade secrets or secret processes [they] may not be made available for inspection by the public This brings up legal questions as to what are "trade secrets or secret processes" when one considers agricultural production. Grass and cattle production are highly variable depending on the physical characteristics of the property under production, and consequently, many ranchers consider production practices to be what differentiates their final product from their competition (aka their neighbors). For example, there are established precedents that production practices specified in standard animal production contracts or protected by confidentiality agreements will be treated as proprietary information. This might apply to ranchers growing grass fed beef under contract. In another example, cropping information that might be used in marketing reports would be exempt. The Coalition recommends that the adoption of this TMDL be delayed until the legal question (regarding what report information will be publicly available) is addressed and stakeholders are informed.

Staff has grossly underestimated the costs of implementation, monitoring, reporting and compliance plan requirements. The Coalition appreciates the difficulty of calculating true economic costs. Budgeting requires many assumptions. The Coalition also appreciates staff providing estimated costs; however, the 2005 numbers from Las Tablas Resource Conservation District or the 2008 data from South Dakota do not accurately reflect current management practice costs on the Central Coast.

Most ranchers do not have the resources or expertise to comply with TMDL requirement as individuals. Therefore, some group approach likely will be required. The Coalition is well acquainted with the costs to create and administer a watershed group as suggested in the Implementation Plan. Unfortunately, Regional Board Staff did not fully capture the startup and maintenance expenses associated with the group approach in their cost estimates, such as:

- Organizational startup expenses which include:
 - Forming a Board
 - Creating organizational documents
 - Filing with the State
 - Establishing an office
 - Numerous meetings and conference calls
- The cost of negotiating a monitoring plan with Regional Board Staff.
- The cost of procuring and retaining consultants and other contractors to conduct the monitoring and reporting program.
- The cost of creating and obtaining funding to pay for monitoring and reporting costs.
- The cost of writing a SWAMP compatible QAPP to meet Regional Board specifications.
- The cost of setting up monitoring and reporting systems to meet Regional Board specifications.
- Actual monitoring and analytical costs.
- Troubleshooting glitches in monitoring processes and laboratory analysis.

- Cost of informing constituents of compliance requirements (outreach).
- Costs of demonstrating management practices (outreach).
- Costs associated with measuring implementation effectiveness (outreach).
- Costs associated with negotiating an e-reporting form with Regional Board Staff in order to meet SWAMP compatible reporting requirements.
- Costs associated with reporting monitoring results.
- Costs of renegotiating any and all of the above because of changes in Regional Board TMDL policy, process or adaptive management.
- The cost of staff and overhead (office space, IT equipment and maintenance, taxes, insurance, and professional services such as bookkeepers, accountants and attorneys).

Regional Board TMDL Staff have been informed of the lack of technical resources resulting from the economic downturn and bond fund suspensions. Simply put, there are not sufficient technical service providers to assist stakeholders with these TMDL requirements. Has Regional Board Staff conducted any sort of technical capacity survey to determine if the implementation plan is even feasible? A phased approach might better meet Regional Board's long-term goals. The Coalition recommends that Staff revisit the Implementation Plan to determine if there are ways to phase in pathogen load reductions in order to rebuild existing technical capacity.

Again, The Coalition appreciates the opportunity to provide comment. We support efforts to move the agricultural community along the change continuum towards improved water quality. These comments are submitted in good faith with the intent to provide frank and helpful feedback.

Please feel free to contact The Coalition with questions and or comments.

Regards,



Kay Mercer
Executive Director

CC:
Chairman Jeffrey Young
Mr. John Hiyashi
Mr. Russell Jeffries
Ms. Monica Hunter
Mr. Tom O'Malley
Mr. Gary Shallicross
Mr. David Hodgkin