

**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2010-0031**

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE CENTRAL COAST REGION (BASIN PLAN) TO: (1) REMOVE THE SHELLFISH HARVESTING BENEFICIAL USE FOR SOQUEL LAGOON, (2) ADD THE SOQUEL LAGOON WATERSHED TO THE HUMAN FECAL MATERIAL DISCHARGE PROHIBITION AND THE DOMESTIC ANIMAL WASTE DISCHARGE PROHIBITION, AND (3) ESTABLISH TOTAL MAXIMUM DAILY LOADS FOR PATHOGENS IN SOQUEL LAGOON, SOQUEL CREEK, AND NOBLE GULCH

WHEREAS:

1. On May 8, 2009, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) adopted Resolution No. R3-2009-0024 ([Attachment I](#)) amending the Basin Plan to: (1) Remove the Shellfish Harvesting Beneficial Use for Soquel Lagoon, (2) Add the Soquel Lagoon Watershed to the Human Fecal Material Discharge Prohibition and the Domestic Animal Waste Discharge Prohibition, and (3) establish Total Maximum Daily Loads (TMDLs) for Pathogens in Soquel Lagoon, Soquel Creek, and Noble Gulch.
2. The federal regulations at 40 Code of Federal Regulations (CFR) section 131.10(g) allow the Central Coast Water Board to remove a designated use, which is not an “existing” use, if the state can demonstrate that achieving the use is not feasible based on the factors set forth in that section. Shellfish harvesting is not an “existing use” as that term is defined in 40 CFR 131.3 because the shellfish harvesting use has not been attained in the water body on or after November 28, 1975. The removal of the SHELL beneficial use is based on the results of a Use Attainability Analysis (UAA) in Soquel Lagoon. Central Coast Water Board staff developed the UAA in 2004 and 2005 to determine the historic, actual, and potential shellfish harvesting activities in Soquel Lagoon. The UAA is necessary to conform to 40 CFR section 131.10(j), because the action involves a designated use specified in Clean Water Act (CWA) section 101(a)(2). The amendment and the UAA only addresses the fishable goal (“protection and propagation of fish, shellfish, and wildlife”) as it pertains to shellfish harvesting and does not address other fishable goals or the swimmable goal included in the water contact recreation designation contained in section 101(a)(2) of the CWA. The fishable goal of the CWA is also protected under other beneficial uses (including cold fresh water habitat) designated in the Basin Plan for the Soquel Lagoon.
3. The Central Coast Water Board found that the removal of the shellfish harvesting beneficial use from the Soquel Lagoon and the establishment of these TMDLs and Basin Plan amendments for the Soquel Lagoon Watershed were consistent with the provisions of State Water Resources Control Board (State Water Board) Resolution No. 68-16, “Statement of Policy with Respect to Maintaining High Quality of Waters in California” and 40 CFR section 131.12.

4. The Central Coast Water Board may, pursuant to California Water Code section 13243, specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted (i.e., prohibitions). The Implementation Plan for the TMDLs for the Soquel Lagoon Watershed requires compliance with the Human Fecal Material Discharge Prohibition and the Domestic Animal Waste Discharge Prohibition for discharges in the Soquel Lagoon Watershed. Supporting documentation for adding the Soquel Lagoon Watershed to the above-named prohibitions is provided in the Final Project Report for Total Maximum Daily Loads for Fecal Coliform in Soquel Lagoon, Soquel Creek, and Noble Gulch. Consistent with California Water Code section 13244, the Central Coast Water Board complied with public notice and hearing requirements for adding the Soquel Lagoon Watershed to the Human Fecal Material Discharge and the Domestic Animal Waste Discharge Prohibitions.
5. The elements of a TMDL are described in 40 CFR sections 130.2 and 130.7 and section 303(d) of the CWA, and U.S. Environmental Protection Agency 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 Central Coast Water Board has determined that the TMDLs for pathogens in the Soquel Lagoon Watershed have been set at levels necessary to attain and maintain the applicable numeric water quality objectives 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 section 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 in this case an existing concentration-based water quality objective was used as the basis for the TMDLs numeric target.
6. The Central Coast Water Board concurred with the Use Attainability Analysis and the analysis contained in the Final Project Report, the California Environmental Quality Act “Substitute Environmental Document” for the Basin Plan amendments (including the CEQA Checklist), the staff report, responses to comments, and found that these analyses comply with the requirements of the State Water Board’s certified regulatory CEQA process, as set forth in California Code of Regulations, Title 23, section 3775 et seq. Furthermore, the Central Coast Water Board found that these analyses fulfill the Central Coast Water Board’s obligations attendant with the adoption of regulations “requiring the installation of pollution control equipment, or a performance standard or treatment requirement,” as set forth in section 21159 of the Public Resources Code. The Central Coast Water Board’s environmental analysis has taken into account a reasonable range of environmental, economic, and technical factors.
7. The State Water Board finds that the Basin Plan amendment is in conformance with Water Code section 13240, which specifies that Regional Water Quality Control Boards may revise Basin Plans; section 13242, which requires a program of implementation to achieve water quality objectives; and section 13243 which authorizes Regional Water Quality Control Boards to specify certain conditions or areas where the discharges of certain types of waste will not be permitted. The State Water Board also finds that the TMDLs, as reflected in the Basin Plan amendment, are consistent with the requirements of federal CWA section 303(d).

8. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subd. (b). The necessity of developing a TMDL is established in the TMDLs staff report, the CWA section 303(d) List of Water Quality Limited Segments, and the data contained in the administrative record documenting the pathogen impairments of the Soquel Lagoon Watershed.
9. A Basin Plan amendment does not become effective until approved by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law (OAL). The TMDLs and SHELL de-designation must also receive approval from the U.S. Environmental Protection Agency.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendment to the Basin Plan adopted under Central Coast Water Board Resolution No. R3-2009-0024.
2. Authorizes the Executive Director or designee to submit the amendment adopted under Central Coast Water Board Resolution No. R3-2009-0024, as approved, and the administrative record for this action to the OAL and the TMDLs and shellfish harvesting de-designation to the U.S. Environmental Protection Agency for approval.

#### CERTIFICATION


The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 6, 2010.

AYE: Vice Chair Frances Spivy-Weber  
Board Member Arthur G. Baggett, Jr.  
Board Member Walter G. Pettit

NAY: None

ABSENT: Chairman Charles R. Hoppin  
Board Member Tam M. Doduc

ABSTAIN: None

  
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 Jeanine Townsend  
 Clerk to the Board