

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

RESOLUTION NO. R3-2013-0012

**ADOPTING A TOTAL MAXIMUM DAILY LOAD AND IMPLEMENTATION PLAN FOR
NITRATE IN THE BELL 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 water bodies. 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 (CWA). The objective of the *California 303(d) Listing Policy* is to establish a standardized approach for developing California's CWA section 303(d) list and to provide guidance for interpreting data and information to make decisions regarding water quality standards attainment.
4. Bell Creek is listed on the 2008-2010 Clean Water Act section 303(d) list of impaired waters as impaired due to the nitrate. Due to the Clean Water Act section 303(d) listing, the Central Coast Water Board is required to adopt a TMDL and an associated implementation plan (40 CFR 130.6(c)(1), 130.7, Water Code section 13242). This Resolution establishes a TMDL and associated allocations for these impairments.
5. Bell Creek watershed is a south-trending drainage that extends from the southern face of the Santa Ynez Mountains to the Pacific Ocean just west of Goleta. Bell Creek watershed is the receiving water for approximately 6 square miles of land.
6. 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 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.

7. In accordance with the *Impaired Waters Policy*, a TMDL must be calculated for impairments caused by certain USEPA-designated pollutants. The two other common causes or categories of impairment are related to anthropogenic factors. They include waters impaired by pollution and waters impaired 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, the USEPA has designated all pollutants as suitable for TMDL calculation under proper technical conditions.
8. Based on available data, the source of nitrate in Bell Creek causing impairment is the controllable discharge from agricultural lands attributable to human activities; reducing this discharge alone will redress the impairment.
9. The Central Coast Water Board's goal for establishing a TMDL in the Bell Creek Watershed is to redress impairment due to nitrate, thereby providing support for designated beneficial uses associated with municipal and domestic water supply.
10. The Final Project Report contains a problem statement, numeric targets, source analysis, total maximum load, linkage analysis, load allocations, margin of safety, an implementation plan, and a monitoring plan. The Final Project Report addresses impairments due to nitrate.
11. 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 Bell Creek Watershed TMDL is 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.
12. According to the *Water Quality Control Policy for Addressing Impaired Waters* (State Water Board Resolution 2005-0050), "[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 TMDL for nitrate for the Bell 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 Program. Therefore, the Central Coast Water Board finds that the existing Agricultural Order will implement the TMDL in lieu of adopting a redundant program.
13. The Monitoring and Reporting Program set forth in the Agricultural Order will provide the information sufficient to confirm that the TMDL is being implemented and numeric targets and allocations will be achieved.

14. 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.
15. Central Coast Water Board staff implemented a process to inform interested persons and the public 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. Public notice of the public hearing was given by mailing a copy of the public notice to all persons requesting such notice and applicable government agencies on February 13, 2013. Relevant documents and notices were also made available on the Central Coast Water Board website. The public notice provided the public a 30-day public comment period preceding the Central Coast Water Board hearing. Central Coast Water Board staff responded to oral and written comments received from the public. All public comments were considered.
16. Adoption of these TMDLs will not result in any degradation of water quality; in fact, they are 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 Board Resolution 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*, and 40CFR 131.12).
17. 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.
18. This TMDL will become effective upon approval of this resolution by the Central Coast Water Board.
19. On May 30, 2013, 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 the Total Maximum Daily Load for Nitrate in the Bell Creek Watershed, as shown in the Final Project 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* and associated monitoring program, is an appropriate plan for implementation of the TMDL, will be adequate to correct the impairments, and is expected to result in attainment of water quality standards with respect to nitrate in the Bell Creek watershed. At this time, any further regulatory action to create another program of implementation by the Water Board would be redundant and unnecessary.

3. The Central Coast Water Board may revoke these findings if it finds that the Agricultural Order and associated monitoring and reporting program 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 (USEPA) for review. If during its approval process the USEPA 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., Interim 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 Coastal Region on May 30, 2013.

Kenneth A. Harris Jr.
Interim Executive Officer