



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

**895 Aerovista Place, Suite 101
San Luis Obispo, California 93401**

**PROPOSED RESOLUTION NO. R3-2022-0020
AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE CENTRAL
COASTAL BASIN TO ESTABLISH TOTAL MAXIMUM DAILY LOADS FOR
ORGANOPHOSPHATE PESTICIDES AND TOXICITY IN THE LOWER SALINAS
RIVER WATERSHED, MONTEREY COUNTY, CALIFORNIA**



WHEREAS, the California Regional Water Quality Control Board, Central Coast Region (hereafter Central Coast Water Board), finds that:

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 and water quality objectives for waters of the state, including surface waters and groundwaters. The Basin Plan also includes implementation programs for achieving water quality objectives addressing point source and nonpoint source discharges, prohibitions, and incorporates statewide plans and policies. The current Basin Plan is the June 2019 Edition. The Central Coast Water Board has determined that the Basin Plan requires further revision and amendment.
2. The Basin Plan may be amended in accordance with California Water Code section 13240 and following.
3. The Central Coast Water Board has determined the Basin Plan requires further revision and amendment to establish Total Maximum Daily Loads (TMDLs) and an implementation plan for organophosphate pesticides (chlorpyrifos, diazinon, malathion) and toxicity for the lower Salinas River watershed, as identified in the attached Basin Plan amendment. The lower Salinas River watershed includes the following waterbodies: Moro Cojo Slough, Old Salinas River, Salinas River Lagoon, Tembladero Slough, Merritt Ditch, Alisal Slough, Alisal Creek, Blanco Drain, Salinas Reclamation Canal (Lower), Salinas Reclamation Canal (Upper), lower Salinas River, Espinosa Slough, Gabilan Creek, Natividad Creek, Santa Rita Creek, Quail Creek, and Chualar Creek.
4. Pursuant to California Water Code section 106.3(a), it is the policy of the State of California that every human being has a right to safe, clean, affordable, and accessible water adequate for human consumption. California Water Code section 106.3(b) requires the Central Coast Water Board to consider how their actions impact the human right to water and to explicitly consider the human right to water when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and grant criteria affect the human right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.
5. On January 26, 2017, the Central Coast Water Board adopted [Resolution No. R3-2017-0004](#),¹ resolving to continue to consider the human right to water when revising water quality control plans.
6. This Basin Plan amendment promotes the state policy and Resolution No. R3-2017-0004 by establishing TMDLs for organophosphate pesticides and toxicity in the lower Salinas River watershed. Waterbodies in this watershed are designated for

¹ https://www.waterboards.ca.gov/centralcoast/board_decisions/adopted_orders/2017/2017-0004_hrtw_fnl.pdf

protection of human health including beneficial uses for recreation and municipal and domestic water supply.

7. Consistent with the human right to water law and Resolution No. R3-2017-0004, the public process to consider these TMDLs provided meaningful opportunities for individuals and communities that lack adequate, affordable, or safe drinking water to engage in Water Board activities and provide input to Water Board decisions that affect their communities.
8. Consistent with the human right to water law and Resolution No. R3-2017-0004, this TMDL Project is intended, in part, to address discharges of pollutants to the lower Salinas River watershed and to provide for the regulation of such discharges in order to attain the highest water quality reasonable, considering all demands being made on those waters and the total values involved.
9. The geographic scope of this TMDL Project encompasses the approximately 405 square mile lower Salinas River Creek watershed. There are two major subwatersheds in the TMDL Project area, which terminate at Moss Landing Harbor; one is the lower Salinas River and its tributaries, and the other is the Salinas Reclamation Canal and its tributaries. Major tributaries to the lower Salinas River include Chualar Creek, Esperanza Creek, Quail Creek, Toro Creek, and Blanco Drain. The lower portion of the Salinas River forms the Salinas River Lagoon (North) where flows are regulated into the Old Salinas River and Moss Landing Harbor. Tributaries to the Salinas Reclamation Canal include Alisal Creek, Natividad Creek, Gabilan Creek, Santa Rita Creek, Alisal Slough, Espinosa Slough, and Merritt Ditch. The lower portion of Salinas Reclamation Canal forms the Tembladero Slough where flows join the Old Salinas River and eventually terminate at Moss Landing Harbor. Moro Cojo Slough is tributary to Moss Landing Harbor. Land use varies throughout the watershed, with the Gabilan Mountains being mostly undeveloped. The valley floor is mainly comprised of lands intensively farmed with irrigated agricultural crops and developed urban lands. Irrigated agricultural crops, comprised of primarily lettuce, broccoli, and strawberries, dominate the rich alluvial valley floor. The major urban area is the City of Salinas, located in the center of the watershed, with a population of approximately 156,000.
10. Multiple waterbodies within the lower Salinas River watershed are listed on the federal Clean Water Act section 303(d) List for water quality impairments due to chlorpyrifos, diazinon, malathion, and toxicity. Consequently, the Central Coast Water Board is required to adopt TMDLs (Code of Federal Regulations, title 40, sections 130.6(c)(1) and 130.7) and an associated implementation plan (California Water Code, section 13242).
11. The Central Coast Water Board previously established TMDLs for the lower Salinas River watershed for chlorpyrifos and diazinon through a single regulatory action, Resolution R3-2011-0005, on May 5, 2011, and reestablished the TMDLs through

another single regulatory action, General Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2021-0040, on April 21, 2021.

12. The Central Coast Water Board proposes to amend the Basin Plan by inserting amendments into Chapter 4, Section 9 (Total Maximum Daily Loads). The Basin Plan amendment in Attachment A to this Resolution establishing TMDLs for organophosphate pesticides and toxicity in the lower Salinas River watershed will supersede the aforementioned TMDLs for the lower Salinas River watershed for chlorpyrifos and diazinon established through Resolution R3-2011-0005 and reestablished through Order No. R3-2021-0040.
13. On May 20, 2004, the State Water Resources Control Board (State Water Board) adopted the [Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program](#) (NPS Policy)² ([State Water Board Resolution No. 2004-0030](#)).³ This TMDL Project is consistent with the NPS Policy. The NPS Policy requires the Regional Water Boards to regulate nonpoint sources of pollution using the administrative permitting authorities provided by Water Code division 7. Consistent with the NPS Policy and the California Water Code, Regional Water Boards regulate nonpoint source discharges with waste discharge requirements, waivers of waste discharge requirements, and/or waste discharge prohibitions.
14. On September 30, 2004, the State Water Board adopted the [Water Quality Control Policy for Developing California's Clean Water Act section 303\(d\) List](#) (California 303(d) Listing Policy)⁴ ([State Water Board Resolution No. 2004-0063](#)),⁵ as amended on February 3, 2015 ([State Water Board Resolution No. 2015-0005](#)).⁶ The California 303(d) Listing Policy describes the process by which the State Water Board and the Regional Water Boards will comply with requirements of the federal Clean Water Act (33 United States Code, section 1251 and following). The objective of the California 303(d) Listing Policy is to establish a standardized approach for developing California's Clean Water Act section 303(d) List and to provide guidance for interpreting data and information to make decisions regarding water quality standards attainment. This TMDL Project is consistent with the California 303(d) Listing Policy.
15. On June 16, 2005, the State Water Board adopted the [Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options](#) (Impaired Waters Policy)⁷ ([State Water Board Resolution No. 2005-0050](#)).⁸ The Impaired Waters Policy provides policy and procedures for adopting TMDLs and addressing impaired

² https://www.waterboards.ca.gov/water_issues/programs/nps/docs/plans_policies/nps_iepolicy.pdf

³ https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2004/rs2004-0030.pdf

⁴ https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2015/020315_8_amendment_clean_version.pdf

⁵ https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2004/rs2004-0063.pdf

⁶ https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2015/rs2015_0005.pdf

⁷ https://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/iw_policy.pdf

⁸ https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2005/rs2005-0050.pdf

waters in California. The Impaired Waters Policy states that the Regional Water Boards have independent discretion, broad flexibility, numerous options, and some legal constraints that apply when determining how to address impaired waters. This TMDL Project is consistent with the Impaired Waters Policy.

16. The U.S. Environmental Protection Agency's (USEPA) published TMDL guidance⁹ states that implementation of TMDLs and water quality-based controls should not be delayed due to lack of information or uncertainties about pollution problems, particularly with respect to nonpoint sources. More information about the spatial extent and nature of water quality impairments can be collected during TMDL implementation. Currently, there is sufficient information to develop and implement TMDLs for organophosphate pesticides and toxicity in the lower Salinas River watershed.
17. The elements of a TMDL are described in Code of Federal Regulations, title 40, sections 130.2 and 130.7, Clean Water Act section 303(d), and USEPA guidance documents. A TMDL is defined as "the sum of the individual [wasteload allocations] for point sources and [load allocations] for nonpoint sources and natural background." (40 Code of Federal Regulations section 130.2(i).) The Central Coast Water Board has determined that the TMDLs for organophosphate pesticides and toxicity in the lower Salinas River watershed are set at levels necessary to attain and maintain the applicable narrative and numeric water quality objectives, taking into account seasonal variations and any uncertainty concerning the relationship between effluent limitations and water quality, consistent with 40 Code of Federal Regulations section 130.7(c)(1).
18. Upon establishment of a TMDL by the State or USEPA, the State is required to incorporate the TMDL into the State Water Quality Management Plan. (Code of Federal Regulations, title 40, section 130.6(c)(1) and 130.7.) In accordance with California Water Code sections 13050(j) and 13242, the State must also identify appropriate programs of implementation and implementation measures. The Basin Plan and applicable statewide plans serve as the State Water Quality Management Plan governing the watersheds under the jurisdiction of the Central Coast Water Board.
19. The TMDLs and implementation plans for organophosphate pesticides and toxicity in the lower Salinas River watershed were developed using sound scientific knowledge, methods, and practices in accordance with California Health and Safety Code section 57004. Health and Safety Code section 57004 requires external scientific peer review for certain water quality control policies. Scientific portions of these TMDLs are drawn exclusively from the TMDLs for Toxicity and Pesticides in the Santa Maria River watershed (Central Coast Water Board Resolution No. R3-2014-0009), which received independent scientific peer review in September 2012. As a result, the scientific methodologies used in development of these TMDLs have

⁹ USEPA, *Guidance for Water Quality-Based Decisions: The TMDL Process*, ch. 1, Policies and Principles, EPA 440/4-91-001, April 1991

already undergone external, scientific peer review. Consequently, the Central Coast Water Board has fulfilled the requirements of Health and Safety Code section 57004 and this amendment does not require further peer review.

20. Central Coast Water Board staff (staff) will conduct a review of TMDL implementation activities when monitoring and reporting data are submitted as required by the existing or future permits and orders regulating the discharges into the lower Salinas watershed, including stormwater discharges and waste discharges from irrigated agricultural land, or when other monitoring and reporting data is submitted under other regulatory requirements. Staff will pursue modification of permit conditions or other regulatory means, as necessary, to address remaining impairments resulting from organophosphate pesticides and toxicity during the TMDL implementation phase.
21. Establishment of these TMDLs and adoption of this Basin Plan amendment will not result in any degradation of water quality; in fact, they are designed to improve water quality. As such, these TMDLs and this Basin Plan amendment comply with all requirements of both state and federal anti-degradation requirements. (State Water Board Resolution No. 68-16, [Statement of Policy with Respect to Maintaining High Quality of Waters in California](#);¹⁰ Code of Federal Regulations, title 40, section 131.12.)
22. Pursuant to California Public Resources Code section 21080.5, the California Natural Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies the requirements of the California Environmental Quality Act (CEQA) (California Public Resources Code, section 21000 and following) for preparing environmental documents. (California Code of Regulations, title 14, section 15251(g); California Code of Regulations, title 23, section 3775.) Staff has prepared Substitute Environmental Documentation (SED) for this TMDL Project, which contains all required materials set forth in California Code of Regulations, title 23, section 3777. The SED includes the TMDL Project's Central Coast Water Board Meeting staff report (Staff Report) and several of its attachments, including the following:
 - (1) Resolution No. R3-2022-0020 and Basin Plan amendment (Staff Report, Attachment 1);
 - (2) TMDL Project Technical Report (Staff Report, Attachment 2);
 - (3) CEQA Checklist and Analysis Report (Staff Report, Attachment 3);
 - (4) Notice of Opportunity to Comment (Staff Report, Attachment 4); and
 - (5) Notice of Public Hearing- (Staff Report, Attachment 5).

The Environmental Checklist, based on Appendix G to the CEQA Guidelines (California Code of Regulations, title 14, section 15000 and following), and other portions of the SED contain detailed analyses and numerous findings related to foreseeable environmental impacts and potential mitigation measures.

¹⁰ https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/1968/rs68_016.pdf

23. A CEQA scoping meeting was conducted on April 21, 2021, by remote participation; a notice of the CEQA scoping meeting was sent to interested persons on March 22, 2021. The notice included the background of the project, the project purpose, a meeting schedule, and directions for obtaining more detailed information on the Central Coast Water Board website. The notice and project summary were available on the website or by requesting hard copies via telephone or email.

24. California Public Resources Code section 21159(a) provides that an agency shall perform, at the time of the adoption of a rule or regulation requiring the installation of pollution control equipment or a performance standard or treatment requirement, an environmental analysis of the reasonably foreseeable methods of compliance. That section further states:

The environmental analysis shall, at minimum, include all of the following:

- (1) An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.
- (2) An analysis of reasonably foreseeable feasible mitigation measures.
- (3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation.
- (4) For a rule or regulation that requires the installation of pollution control equipment adopted pursuant to the California Global Warming Solutions Act of 2006 (California Health and Safety Code, division 25.5, commencing with section 38500), the analysis shall also include reasonably foreseeable greenhouse gas emission impacts of compliance with the rule or regulation.

25. California Public Resources Code section 21159(c) requires that the environmental analysis take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites. The Staff Report prepared for this Basin Plan amendment, in particular the CEQA Checklist and Analysis Report (Attachment 3), provides the environmental analysis required by California Public Resources Code section 21159 and is hereby incorporated as findings to this Resolution.

26. In preparing the SED, the Central Coast Water Board considered the requirements of California Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187. Pursuant to these requirements, the SED contains an analysis of the reasonably foreseeable environmental impacts that may result from the adoption of this regulation from a programmatic perspective. The SED is not intended to be an exhaustive analysis of every conceivable impact. Compliance obligations will be undertaken directly by public agencies that may have their own obligations under CEQA. The SED identifies mitigation approaches that should be considered at the project level and project level impacts that may need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to California Public Resources Code section 21159.2. To the

extent applicable, this SED may be used to satisfy subsequent CEQA obligations of those agencies.

27. Consistent with the Water Board's substantive obligations under CEQA, the SED does not engage in speculation or conjecture and only considers reasonably foreseeable environmental impacts, including those relating to methods of compliance, reasonably foreseeable feasible mitigation measures to reduce those impacts, and reasonably foreseeable alternative means of compliance that would avoid or reduce the identified impacts.
28. The TMDL Project Technical Report, Basin Plan amendment, and CEQA Checklist and Analysis Report provide the necessary information pursuant to state law to conclude that the TMDL Project and associated reasonably foreseeable methods of compliance will not have a significant adverse effect on the environment. This determination is based on best available information in an effort to fully inform the interested public and decision makers of potential environmental impacts. A "significant effect" on the environment is defined as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." (California Code of Regulations, title 14, section 15382.)
29. Staff informed interested persons about the TMDLs for organophosphate pesticides and toxicity in the lower Salinas River watershed and draft SED through public outreach meetings with interested persons and public notice of the availability of the Basin Plan amendment and draft SED, and provided a 45-day written comment period. Notice of public hearing was given by publication in newspapers of general circulation within the project area and by emailing a copy of the notice to applicable government agencies and all persons requesting such notice. Relevant documents and notices were also made available on the Central Coast Water Board website. No written comments were received from the public during the comment period *and [no oral comments were made during the public hearing] OR if oral comments made during the hearing on the SED [Staff considered and responded to each potentially significant environmental issue raised in oral comments regarding the draft SED].*
30. Upon adoption of this Resolution No. R3-2022-0020, the Central Coast Water Board will request that the State Water Board and California Office of Administrative Law review and approve the Basin Plan amendment establishing the TMDLs for organophosphate pesticides and toxicity in the lower Salinas River watershed. This TMDL Project will become effective upon approval by the California Office of Administrative Law. USEPA must also approve this TMDL Project.
31. The Basin Plan amendment may have an effect on fish and wildlife. The Central Coast Water Board will, therefore, forward fee payments to the California Department of Fish and Wildlife pursuant to Fish and Game Code section 711.4.

32. The Basin Plan amendment meets the “Necessity” standard of the Administrative Procedures Act. (See Government Code, sections 11353 and 11349(a).) As specified in Finding 17, federal regulations require that TMDLs be incorporated into the Water Quality Management Plan. The Central Coast Water Board’s Basin Plan is the Central Coast Water Board’s component of the Water Quality Management Plan, and the Basin Plan is how the Central Coast Water Board takes quasi-legislative planning actions. Moreover, this TMDL Project defines programs of implementation for existing water quality objectives and is, therefore, appropriately a component of the Basin Plan under Water Code section 13242. The necessity of developing this TMDL Project is established in the TMDL Project Technical Report, the federal Clean Water Act section 303(d) List, and the data contained in the administrative record documenting the water quality impairments in the lower Salinas River watershed.
33. Consistent with Water Code section 13141, the Basin Plan amendment includes an estimate of the total cost of implementation of the agriculture-related portions of this TMDL Project and identifies potential sources of financing. In addition, Water Code section 13241 requires the Central Coast Water Board to consider economic factors when adopting water quality objectives or more stringent requirements than required under the federal Clean Water Act. However, this TMDL Project does not include new water quality objectives or more stringent requirements.
34. The Central Coast Water Board is adopting this TMDL Project through a Basin Plan amendment, and CEQA Certified Regulatory Program regulations apply (see California Code of Regulations, title 23, section 3775 and following). In accordance with California Code of Regulations, title 23, section 3777, the SED includes a reasonable range of economic factors for the reasonably foreseeable methods of compliance with this TMDL Project.
35. On June 16-17, 2022, the Central Coast Water Board held a public hearing to consider the Basin Plan amendment and SED and heard and considered all public comments and evidence in the record. Notice of the public hearing was given to all interested persons and published in accordance with Water Code section 13244. Notice of updated public hearing information was given to all interested persons in accordance with Government Code section 11125.

THEREFORE, be it resolved that:

1. The Central Coast Water Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the Basin Plan amendment in Attachment A to this Resolution No. R3-2022-0020.
2. The Central Coast Water Board Executive Officer is directed to forward copies of the Basin Plan amendment to the State Water Board in accordance with the requirements of California Water Code section 13245.

3. The Central Coast Water Board requests that the State Water Board approve the Basin Plan amendment in accordance with the requirements of California Water Code sections 13245 and 13246 and forward the Basin Plan amendment to the Office of Administrative Law and to the USEPA for approval.
4. The Executive Officer is authorized to sign a Certificate of Fee Exemption or transmit payment of the applicable fee, as may be required, to the Department of Fish and Wildlife.
5. If, during the approval process, Central Coast Water Board staff, State Water Board staff, the State Water Board, or the California Office of Administrative Law determine that minor, non-substantive corrections to the language of the Basin Plan amendment are needed for clarity or consistency, the Executive Officer or their designee may make such changes, and shall inform the Central Coast Water Board of any such changes.
6. The SED prepared by the Central Coast Water Board staff pursuant to California Public Resources Code section 21080.5 and California Code of Regulations, title 23, section 3775 and following are hereby approved and adopted.

I, Matthew T. Keeling, 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 Coast Region, on June 16-17, 2022.

Matthew T. Keeling, Executive Officer

Attachment A: Amendment to the Water Quality Control Plan for the Central Coastal Basin to Establish Total Maximum Daily Loads for Organophosphate Pesticides and Toxicity in the Lower Salinas River Watershed, Monterey County, California.