



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

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

**RESOLUTION NO. R3-2022-0002
AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE CENTRAL
COASTAL BASIN TO ADOPT TOTAL MAXIMUM DAILY LOADS FOR TURBIDITY IN
THE GABILAN CREEK 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 Water Code section 13240 and following.
3. The Central Coast Water Board has determined the Basin Plan requires further revision and amendment to incorporate Total Maximum Daily Loads (TMDLs) for turbidity and an implementation plan for the Gabilan Creek watershed, as identified in the attached proposed Basin Plan amendment. The Gabilan Creek watershed includes the following waterbodies: Alisal Creek, Alisal Slough, Espinosa Slough, Gabilan Creek, Merritt Ditch, Natividad Creek, Old Salinas River, Salinas Reclamation Canal, Santa Rita Creek, and Tembladero Slough.
4. Pursuant to 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. 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 proposed Basin Plan amendment promotes the state policy and Resolution No. R3-2017-0004 by establishing TMDLs for turbidity in the Gabilan Creek watershed. Streams 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 water recreation and municipal and domestic water supply.

7. Consistent with the human right to water law and Resolution R3-2017-0004, the public process to consider this TMDL Project 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 R3-2017-0004, this TMDL Project minimizes impediments to data access and maximizes the availability and accessibility of data and information regarding drinking water quality and sources of pollution to support the development of solutions and inform all stakeholders, including communities that lack adequate, affordable, or safe drinking water.
9. The geographic scope of this TMDL Project encompasses the approximately 160 square mile Gabilan Creek watershed. Gabilan Creek is the major stream in the watershed that flows out of the Gabilan Mountains into an alluvial coastal valley. Gabilan Creek is the first of a series of interconnected waterbodies including the Salinas Reclamation Canal, Tembladero Slough, and Old Salinas River that drain to Moss Landing Harbor and the Pacific Ocean. 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 150,000.
10. Multiple waterbodies within the Gabilan Creek watershed are listed on the federal Clean Water Act section 303(d) List for water quality impairments due to turbidity. Consequently, the Central Coast Water Board is required to adopt TMDLs (40 C.F.R. sections 130.6, subd. (c)(1), 130.7) and an associated implementation plan. (Wat. Code, section 13242.)
11. The Central Coast Water Board proposes to amend the Basin Plan by inserting amendments into Chapter 4, Section 9 (Total Maximum Daily Loads).
12. 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 (see [Resolution No. 2004-0030](#)).³ This TMDL Project is consistent with the NPS Policy. The NPS

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

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 Water Code, Regional Water Boards regulate nonpoint source discharges with waste discharge requirements, waivers of waste discharge requirements, and/or waste discharge prohibitions. Nonpoint sources of discharges in the Gabilan Creek watershed such as grazing, agricultural pumps, pump stations, and rural roads are not regulated using Water Board administrative permitting authorities. The NPS Policy requires both regulatory and non-regulatory programs (NPS programs) to contain the five key elements of the NPS Policy (see NPS Policy, ch. IV, pt. C, at pp. 11-15).

13. 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 the listing requirements of the federal Clean Water Act (33 U.S.C. sections 1251 *et seq.*). 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.
14. 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 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.
15. The U.S. Environmental Protection Agency's (USEPA) published TMDL guidance⁹ states that implementation of TMDLs and water quality-based

⁴https://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

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

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 turbidity in the Gabilan Creek watershed.

16. The elements of a TMDL are described in 40 Code of Federal Regulations 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 [waste load allocations] for point sources and [load allocations] for non point sources and natural background.” (40 C.F.R. section 130.2, subd. (i).) The Central Coast Water Board has determined that the TMDLs for turbidity in the Gabilan Creek 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 lack of knowledge concerning the relationship between effluent limitations and water quality, consistent with 40 Code of Federal Regulations section 130.7(c)(1).
17. 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. (40 C.F.R. sections 130.6, subd. (c)(1), 130.7.) In accordance with Water Code sections 13050, subdivision (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.
18. The TMDLs for turbidity in the Gabilan Creek watershed are based on sound scientific knowledge, methods, and practices in accordance with Health and Safety Code section 57004. Health and Safety Code section 57004 requires external scientific peer review for certain water quality control policies. This TMDL Project received scientific peer review by experts with substantial research experience in freshwater ecology, watershed sciences and modeling, and hydrogeomorphology. Consequently, the Central Coast Water Board has fulfilled the requirements of Health and Safety Code section 57004.
19. Central Coast Water Board staff (Staff) will conduct a review of implementation activities when monitoring and reporting data are submitted as required by the existing or future permit regulating the discharge of waste from irrigated agricultural land, other existing or future waste discharge requirements permits, and existing or future National Pollutant Discharge Elimination System (NPDES) stormwater permits, or when other monitoring data and/or reporting data are submitted outside the requirements of existing permits and orders. Staff will pursue modification of permit conditions or other regulatory means,

as necessary, to address remaining impairments resulting from turbidity during the TMDL implementation phase.

20. Adoption of these TMDLs and 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](#),¹⁰ *Statement of Policy with Respect to Maintaining High Quality of Waters in California*; 40 C.F.R. section 131.12.)
21. Pursuant to 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) (Pub. Res. Code, § 21000 *et seq.*) for preparing environmental documents. (Cal. Code Regs., tit. 14, section 15251, subd. (g); Cal. Code Regs., tit. 23, section 3775.) Staff has prepared Substitute Environmental Documentation (SED) for this project, which contains all required materials set forth in California Code of Regulations, title 23, section 3777. The SED includes the TMDL Project's Staff Report and several of its attachments, including the following:
- (1) Resolution and Basin Plan amendment language (Staff Rep., Att. 1);
 - (2) Technical Report (Staff Rep., Att. 2);
 - (3) CEQA Environmental Checklist and Analysis Report (Staff Rep., Att. 3);
 - (4) Economic Analysis (Staff Rep., Att. 4);
 - (5) Scientific Peer Review and Staff Responses (Staff Rep., Att. 5);
 - (6) Notice of Public Hearing-Notice of Opportunity to Comment (Staff Rep., Att. 6); and
 - (7) the Public Comments and Staff Responses (Staff Rep., Att. 7).
- The Environmental Checklist, based on Appendix G to the CEQA Guidelines (Cal. Code Regs., tit. 14, sections 15000 *et seq.*), and other portions of the SED contain significant analysis and numerous findings related to impacts and mitigation measures.
22. 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 through 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.
23. Public Resources Code section 21159, subdivision (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
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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 (Division 25.5 (commencing with section 38500) of the Health and Safety Code), the analysis shall also include reasonably foreseeable greenhouse gas emission impacts of compliance with the rule or regulation.

24. 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 proposed Basin Plan amendment, in particular the CEQA Environmental Checklist and analysis (Attachment 3), provides the environmental analysis required by Public Resources Code section 21159 and is hereby incorporated as findings in this Resolution.
25. In preparing the SED, the Central Coast Water Board considered the requirements of 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 consequences of 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 Public Resources Code section 21159.2. To the extent applicable, this SED may be used to satisfy subsequent CEQA obligations of those agencies.
26. 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.

27. The Staff Report, draft Basin Plan amendment, and CEQA Environmental Checklist and associated analysis provide the necessary information pursuant to state law to conclude that the proposed TMDL Project and associated reasonably foreseeable methods of compliance will not have a significant adverse effect on the environment, with the exception of the impacts summarized in the following Findings 28, 29, and 30. This determination is based on best available information in an effort to fully inform the interested public and decision makers of potential environmental impacts. “Significant effects” on the environment are 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.” (Cal. Code Regs., tit. 14, section 15382.)
28. Analysis of potential environmental impacts listed in the CEQA Appendix G Environmental Checklist suggests that TMDL compliance and associated implementation may have potentially significant effects on the following:
- Environmental Impact Category II, subdivision (a), Agricultural Resources – convert Farmland to non-agricultural use or reduce productivity; and
 - Environmental Impact Category XXI, subdivision (b), Mandatory Finding of Significance – cumulative effects in connection to past TMDL Projects.

This determination is based on best-available information in an effort to fully inform the interested public and the decision makers of potential environmental impacts. “Significant effects” on the environment are defined in Finding 27. When the entities and responsible parties responsible for implementing these TMDLs determine how they will precede, the agencies responsible for those parts of the project can and should incorporate such alternatives and mitigation measures into any subsequent projects or project approvals. Feasible alternatives and mitigation measures are described in more detail in the SED. (Cal. Code Regs., tit. 14, section 15091, subd. (a)(2).) Legal considerations may make some of the mitigation measures that could be implemented infeasible.

29. Analysis pursuant to the CEQA Environmental Checklist suggests there may be potentially significant impacts to agricultural lands from the loss of productive farmland associated with CEQA Environmental Impact Category II, subdivision (a). Agricultural management practices to meet the TMDLs could be constructed on existing farmland, which could result in growers taking land out of production. Some practices that could impact farmland include the construction of sediment basins and vegetative filter strips. In addition to the agricultural management practices impacting farmland, construction of regional stormwater treatment systems could result in conversion of farmland for large treatment basins and wetlands.

30. Analysis pursuant to the CEQA Environmental Checklist suggests there may be potential adverse effects resulting from cumulatively considerable impacts associated with CEQA Environmental Impact Category XXI, subdivision (b), Mandatory Findings of Significance. “Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, other current projects, and probable future projects. There are several approved TMDLs addressing water quality impairments in the lower Salinas River watershed that encompasses the Gabilan Creek watershed. Implementation of the proposed TMDLs for turbidity in the Gabilan Creek watershed, in connection to other TMDLs in the larger lower Salinas River watershed, could have potentially significant impacts on the environment due to overlapping implementation schedules and milestones. With multiple TMDLs being implemented in the larger lower Salinas River watershed, there could be an increase in funding available for implementation, which could accelerate activities to implement management practices.

31. Pursuant to the CEQA Guidelines (Cal. Code Regs., tit. 14, section 15093), the Central Coast Water Board hereby finds that the project’s benefits override and outweigh its potential significant adverse impacts, for the reasons more fully set forth in the Staff Report and attachments thereto. Specific environmental benefits justify the adoption of these TMDLs and the TMDL Implementation Plan despite the project’s potential significant adverse short-term environmental impacts. The Central Coast Water Board has the authority and responsibility to regulate discharges of waste associated with the sources of pollution causing impairment to water quality. Many of those discharges have caused significant widespread degradation and/or pollution of waters of the state as described in the *Total Maximum Daily Loads for Turbidity in the Gabilan Creek Watershed, Monterey County, California* and associated reference materials. This TMDL Project would result in actions to restore the quality of the waters of the state and protect the beneficial uses, including aquatic habitat, recreation, and drinking water supply. While some impacts could occur from implementing other actions to comply with this TMDL Project, the benefits, which include contributing to the present and future restoration of beneficial uses and reducing or eliminating pollution, nuisance, and contamination, warrant approval of this TMDL Project.

32. Staff informed interested persons about the proposed TMDLs for turbidity in the Gabilan Creek watershed and draft SED through public outreach meetings with interested persons, public notice of the availability of the proposed Basin Plan amendment and draft SED, and a 45-day written comment period. Notice of public hearing was given by advertising 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. Staff responded to oral and written comments received from the public and to each potentially significant environmental issue raised in those comments regarding the draft SED. All public comments were considered.

33. Upon adoption of this Resolution No. R3-2022-0002, 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 incorporating the TMDLs for turbidity in the Gabilan Creek watershed. This TMDL Project will become effective upon approval by the California Office of Administrative Law. USEPA must also approve this TMDL Project.
34. 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 California Fish and Game Code section 711.4.
35. The proposed Basin Plan amendment meets the "Necessity" standard of the Administrative Procedures Act. (Gov. Code section 11353, subd. (b).) 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 Staff Report, the Clean Water Act section 303(d) List, and the data contained in the administrative record documenting the water quality impairments in Gabilan Creek watershed.
36. Consistent with Water Code section 13141, the Basin Plan amendment includes an estimate of the total cost of implementation of the agricultural related portions of this TMDL Project and identifies potential sources of financing. In addition, Water Code section 13141 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.
37. The Central Coast Water Board is adopting this TMDL Project as a Basin Plan amendment and CEQA Certified Regulatory Program regulations apply. 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.

38. On February 17-18, 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. R3-2022-0002.
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 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 Water Code sections 13245 and 13246 and forward the Basin Plan amendment to the California 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 Public Resources Code section 21080.5 and Cal. Code Regs., tit. 23, sections 3775-3782 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 February 17-18, 2022.

Matthew T. Keeling Executive Officer

Attachment: Attachment A to Resolution No. R3-2022-0002: Amendment to the Water Quality Control Plan for the Central Coastal Basin to Incorporate Total Maximum Daily Loads for Turbidity in the Gabilan Creek watershed, Monterey County, California

