STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place Suite 101
San Luis Obispo, CA 93401-7906

PUBLIC COMMENTS AND STAFF RESPONSES

FOR

SUBSTITUTE ENVIRONMENTAL DOCUMENTS FOR THE TOTAL MAXIMUM DAILY LOADS FOR TOXICITY AND PESTICIDES IN THE SANTA MARIA RIVER WATERSHED IN SANTA BARBARA, SAN LUIS OBISPO AND VENTURA COUNTIES, CALIFORNIA (DRAFT PROJECT REPORT - JANUARY 2013)

California Regional Water Quality Control Board, Central Coast Region (Water Board) staff implemented a process to inform and engage interested persons about the Substitute Environmental Documents (SED) for the proposed total maximum daily loads (TMDLs). Water Board staff's efforts to inform the public and solicit comments included a public notice and written comment period. Public notice for the SED provided interested parties a public comment opportunity preceding any proposed Water Board hearing regarding this matter.

The public comments and staff responses herein pertain to a recirculation of Substitute Environmental Documents (SED), including a revised California Environmental Quality Act (CEQA) Checklist and Analysis for a proposed TMDL.

The first public comment period was from January 28, 2013 to March 29, 2013. Staff made substantive changes to the SED following the first comment period, and then recirculated the SED for another comment opportunity from October 15, 2013 to November 29, 2013.

For the second comment period, Central Coast Water Board staff received comments from:

1. Mr. Shawn Hagerty, Best, Best & Kreiger Attorneys at Law, LLC., on behalf of the City of Santa Maria, in an email attachment received November 27, 2013.
2. Mr. Greg Kester, Director of Renewable Resource Programs, California Association of Sanitation Agencies, in an email attachment received March 26, 2013.

The Central Coast Water Board appreciates the comments provided by these interested parties. Their comments have prompted us to clarify and improve technical information in the TMDL project as noted herein.

Staff responses to these comments are provided in the "Comments and Responses" section beginning on page 2. Note that we reproduce direct transcriptions of the comments from each commenter and insert staff responses using ***bold, blue, italic text*.**

Summary of Changes Made to TMDL Project Report Based on Public Comments

Please review the document on Santa Maria Watershed Toxicity and Pesticide TMDL webpage entitled located at:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/tmdl/docs/santa_maria/pesticide/index.shtml

List of Acronyms and Abbreviations

303(d)	Federal Clean Water Act Section 303(d)
Ag Order	Agricultural Order (Conditional Waiver of Waste Discharge Requirements from Irrigated Lands)
Basin Plan	Water Quality Control Plan for the Central Coastal Basin
CCAMP	Central Coast Ambient Monitoring Program
CEQA	California Environmental Quality Act
CMP	Cooperative Monitoring Program for Irrigated Agriculture
DPR	California Department of Pesticide Regulations
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resources Conservation Service
RCD	Resource Conservation District
SED	Supplemental Environmental Documents
SWRCB	State Water Resources Control Board
USGS	U.S. Geological Survey
USEPA	U.S Environmental Protection Agency
Water Board	California Central Coast Regional Water Quality Control Board (RWQCB)

Comments and Staff Responses

#1 Shawn Hagerty, on behalf of the City of Santa Maria

1.1 Mr. Shawn Hagerty, on behalf of the City of Santa Maria

On behalf of the City of Santa Maria ("City"), we thank you for this opportunity to provide written comments on the Central Coast Water Board's revised Substitute Environmental Document ("SED") for the proposed Santa Maria Pesticide TMDL. Although the City has made detailed comments on the SED in this letter, we do recognize and appreciate the improvements the Regional Board has made in the revised SED. Overall, the revised SED substantially improves the original document. The City thanks the Regional Board for these improvements.

The City would also like to take this opportunity to let the Regional Board know that the City is actively working on a proposal to develop an integrated plan to address all of the City's water quality requirements, including those requirements contemplated in the proposed Santa Maria Pesticide TMDL. Currently, the City anticipates submitting an initial proposal regarding this integrated plan to the Regional Board in January of 2014. The City's hope is to work with the

Regional Board to develop an integrated, watershed-based approach to complying with the City's many different and overlapping water quality obligations. If the Regional Board is supportive of this approach, it is possible that many of the City's concerns about the pollutant-specific and somewhat piecemeal approach in this and other TMDLs would be mitigated, thereby allowing the City to focus more comprehensively on an integrated water quality approach.

With this information as a backdrop, the City provides these more detailed comments on the SED.

1.2 Mr. Shawn Hagerty, on behalf of the City of Santa Maria

SED Legal Requirements

While a substitute environmental review document is exempt from some of the formatting and procedural requirements of EIRs, ultimately it must include the same types of basic environmental information that an EIR would include. *(Friends of Old Trees v. Dept. of' Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1393; *Laupheimer v. State* (1988) 200 Cal.App.3d 440, 462.) For example, the SED must still: (1) describe the proposed project; (2) disclose and analyze potentially significant adverse project-specific environmental impacts; (3) consider cumulative impacts; (4) discuss alternatives and mitigation measures that could reduce or eliminate the project's significant impacts; (5) be made available for review and comment by the public and other agencies; and (6) be justified based on specific benefits, including economic, social, or other conditions. (Pub. Res. Code, § 21080.5(d)(3); State CEQA Guidelines, § I5252(a); *Sierra Club v. State Bd o,{Forestry* (1994) 7 Ca1.4th I2I5, I229; *Ebbetts Pass Forest Watch v. Dept. of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 943; *Katze.ff·v. Dept. o.f Forestry & Fire Protection* (20 I 0) I8I Cal.App.4th 601, 608; *County of Santa Cruz v. State Bd of Forestry* (1998) 64 Cal.App.4th 826, 830.) Just as with EIRs, the conclusions of SEDs must be based on scientific and other empirical evidence. *(Ebbetts Pass, supra,* at 957-958; Joy *Rd. Area Forest & Watershed Assn. v. Dept. o.f Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 677; *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cai.App.3dI 043, 1 047.)

Staff Response: Staff concurs with the City that while the TMDL Basin Plan Amendment process utilizes a SED instead of an EIR it has many of the same requirements. However the TMDL is a broad scale watershed planning document and level of detail analysis that the City is requesting is more appropriate for project level CEQA analysis.

The City's Specific Comments on the SED

1. Environmental Checklist. Pursuant to California Code of Regulations, title 23, section 3777(a)(2), a Draft SED must include a "completed Environmental Checklist," a sample of which is attached as Appendix A to Chapter 27 of Title 23 of the California Code of Regulations. While the regulations state that the sample checklist "may be modified as appropriate to meet the particular circumstances of a project," they further note that "[t]he issues identified in the Environmental Checklist must be evaluated in the checklist or elsewhere in the SED." (Cal. Code Regs., tit. 23, § 3777(a)(2) [emphasis added].) Instead of specially modifying the checklist for the proposed TMDL, the Regional Board has used an outdated and superseded version of the checklist. The Regional Board should note that a

new version of the checklist was created in 2011, and the questions and issues unique to the operative version must be addressed and evaluated for the SED to be in full compliance with CEQA and Section 3777(a)(2).

Staff Response: Staff notes the comment by the city regarding that the Water Board may be using an outdated and superseded CEQA checklist for the TMDL. Staff compared the TMDL CEQA checklist used for the TMDL with the 2012 CEQA guideline checklist; the questions used in the checklist are identical to the 2012 CEQA guideline questions, therefore, the city's comment is unfounded. Here is a link to the 2012 guidelines.
http://ceres.ca.gov/ceqa/docs/CEQA_Handbook_2012_wo_covers.pdf

2. Baseline. The SED appropriately discloses the environmental setting for a number of issues of environmental concern. However, it does not appear to identify what baseline is being used for the level of toxic substances it is seeking to regulate. Without a clear baseline level of these substances in the SED, it is impossible to understand the efficacy and impacts of the preferred alternative or the potential efficacy and impacts of the No Project or other alternatives.

Staff Response: The baseline is the existing physical environmental conditions before the project begins. The CEQA checklist and analysis report includes an introduction with a description of the watershed project area including a list of waterbodies assigned pesticide and toxicity TMDLs. The SED also includes the TMDL Technical report, which describes the levels of toxicity and pesticides in the Santa Maria watershed prior to implementing the TMDL. Section 2.5 TMDL Technical Report summarizes toxicity and pesticide monitoring data and exceedances in the watershed from the 303(d) list and additional exceedances that are the baseline for these substances in the project area.

3. Alternatives. The SED concludes that the No Project alternative would violate State and Federal law. (SED at 15.) However, this conclusion is not supported by any evidence. Even without the TMDL, there would be ways to address the problem that could comply with legal requirements.

Staff Response: Section 303(d) of the Federal Clean Water Act requires states to establish TMDLs for impaired waters and the Water Board is the state agency responsible for implementing the TMDL program in California and the Water Board is required to develop TMDLs for 303(d) listed impaired waters in the Santa Maria watershed. The basis of Water Board authorities with respect to TMDL development are also described in the TMDL Technical Report. Section 1 of the TMDL Technical Report discusses the requirements in Section 303(d) of the federal Clean Water Act for states to identify pollution problems in surface waters, prioritize problems and establish TMDLs. Section 1 also describes how the state Porter-Cologne Water Quality Control Act authorizes the Water Boards to develop water quality control plans and programs.

4. Level of Detail. In addition, the level of detail and analysis of essentially every environmental issue is so sparse that little can be gleaned from the SED other than the conclusion as to the resulting level of significance, and even that does not appear to ever be

quantified. This lack of information and oftentimes lack of any evidence to support the bare conclusion regarding significance violates CEQA.

Staff Response: In the Checklist and Analysis document, staff provided reasoning for conclusions for each environmental issue. For those issues where it is clear that the foreseeable methods of compliance would not result in an impact, staff provided a brief explanation supporting the conclusion. In cases where there foreseeable methods of compliance could result in an environmental impact, staff provided a more detailed explanation supporting the conclusion, often discussing potential mitigation to reduce the impact. For example, at II(a), beginning on page 34 of the Checklist and Analysis document, staff provided a more detailed explanation related to the issue of whether prime farmland could be converted to non-agricultural use, where the level of significance is "potentially significant impact." In contrast, at I(d), also on page 34, staff provided a less detailed explanation regarding the issue of whether a substantial light source or glare from foreseeable methods of compliance would affect views in the area, where the level of significance is "no impact;" the foreseeable methods of compliance discussed are simply not likely to cause a substantial light source or glare. The level of detail and analysis in the SED is consistent with planning level CEQA. The City is apparently requesting a level of detail that is more appropriate for project level CEQA, which the Water Board is not required to develop. See Title 23, Division 3, section 3777(c): "… the board shall not be required to conduct a site-specific level analysis of the methods of compliance, which CEQA may otherwise require of those agencies who are responsible for complying with the plan or policy when they determine the manner in which they will comply."

5. Agriculture: Definition of Prime Farmland. Regarding specific environmental issues, the SED acknowledges that the TMDL could force agricultural operations out of business because of the loss of productivity of farmland. It should also recognize that the cost of compliance could be a substantial factor in loss of additional farmland. In addition, the SED claims that, even if farming is discontinued, the land will likely remain in prime agricultural production. (SED at 35.) However, any land converted to buffer areas, for example, or fallowed due to the recognized "need [to] keep ground out of production due to high pest thresholds," that is not used for irrigated agricultural production at some time during a four-year period no longer meets the definition of prime farmland. (See, e.g., http://www.conservation.ca.gov/dlrp/fmmp/overvie w/Pages/prime_farmland_fmmp.aspx.) In addition, the amount of farmland that will foreseeably be affected is not disclosed, much less analyzed. This section should be revised to address these points.

Staff Response: The City's assertion that buffers and temporary fallow ground would change the land use is unfounded. For many common agricultural pesticides EPA already requires buffers between crops and adjacent aquatic habitats. These pesticides are used on prime agricultural lands without a change in land use designation. Buffers use only a small portion of a large parcel and are often on the fringe of a parcel. Staff reviewed existing pesticide buffers, and, for example, a buffer along a field with a Bifenthrin pyrethroid pesticide application requires a 10-foot-wide vegetative buffer strip of grass or other permanent vegetation between the field edge and down gradient aquatic habitat. Buffers are a component of a functioning prime agricultural farm system

as other non-crop areas such as access road, drainage ditches, and structures and these farm components do not change the land use designation of prime farmland.

The City also asserts that fallowing farmland would change the designation away from prime farmland if a field is not used for irrigated production for anytime during a four year period. Often during winter months fields lie fallow or are planted with a cover crop. While these periods do not produce a crop, they add to the productivity of the land and are considered an agricultural best management practices.

6. Agriculture: Indirect Impacts Related to Conversion of Farmland. The SED appropriately recognizes that the proposed TMDL may result in a significant impact to agricultural resources due to conversion of farmland to non-agricultural use. It fails to recognize that this could result in attendant indirect long-term air quality impacts and impacts to geology and soils due to loss of topsoil. (See, e.g., Westlands Water Dist. v. US. (E.D. Cal. 1994) 1994 U.S.Dist.LEXIS 6260, *7-8 [increased land fallowing has attendant increases in fugitive dust emissions]; Westlands Water Dist. v. United States (E.D. Cal. 1994) 1994 U.S.Dist.LEXIS 6276, *52 [finding lack of water for farmland could result in soil erosion and depletion of quality soil; Sharratt et al., Loss of Soil and PMl 0 from Agricultural Fields Associated With High Winds on the Columbia Plateau (2006) 32 Earth Surf. Process, Landforms, 621-630 [fallowing leads to increased levels of soil erosion]; Soil Erosion: A Food and Environmental Threat (2006) 8 Environment, Development and Sustainability 119-137, 124 (2006) [leaving cropland unplanted exposes soil to erosion; soil erosion in the United States costs billions of dollars in loss of productivity].) Increased fallowing can also result in aesthetic impacts relating to the degradation of the visual character of the land if it is converted from verdant farmland to weed- choked, barren fields, belying the SED's conclusion of "no impact" at all in this area. (SED at 34.) How much land could foreseeably be converted? How much fugitive dust emissions and loss of topsoil could this result in? The SED should be revised to recognize and analyze these potential indirect impacts.

Staff Response: The City asserts that the SED should evaluate the impacts to air quality and visual impacts from fallow ground that would result from the implementation of the TMDL. This assertion is unfounded. The impacts seem extremely unlikely given the highly productive nature of agricultural land in the Santa Maria valley and the diversity of crops grown there. Additionally the TMDL relies on existing regulatory programs such as the Ag Order, and DPR and EPA pesticide regulations; these regulatory programs are not new and they have not resulted in the conversion of farmland to bare ground in the Santa Maria Valley.

7. Biological Resources. The SED appropriately acknowledges that it will likely have a significant impact on the California red-legged frog. (SED, 38-42.) The SED notes that a number of other listed species have also been observed in the TMDL project area. (SED at 40-41.) However, there is no analysis of the TMDL's impact on these other listed species. This analysis should be added to a revised SED. In addition, the SED notes that consultation with the Wildlife Agencies will be required if significant earth-moving or land disturbance takes place. This is certainly not true of the federal Wildlife Agencies for areas in which there is otherwise no federal nexus, and unlikely to be true in many circumstances for the State Department of Fish and Wildlife as well, because most of the farm-based measures identified in the SED would not require any discretionary approvals from a local agency or trigger consultation requirements. In

addition, certain types of actions that do not require large amounts of grading or earth moving, such as increased efficiency in irrigation methods, can de-water areas and indirectly but significantly affect listed and other special-status species without triggering any consultation. This should be recognized and discussed, and the amount of land and species that could be impacted quantified.

Staff Response: As noted by the City, some farm-based measures described in the SED would not require discretionary approval from local agencies. The City asserts that these practices would have impacts to listed species. Staff disagrees with this assertion; on farm practices do not have direct impact to species because irrigated vegetable and berry cropland are not habitat for listed species. The drainages adjacent to farmland may be habitat for listed species and the on farm practices described in the SED are intended to prevent the movement of pesticides fields into adjacent sensitive aquatic habitats.

Increases in irrigation efficiency practices could have an impact on species that live in drainages that are supported by irrigation runoff. The SED acknowledges and discusses this potentially significant impact. The City would like the SED to include a quantification of impacts, including the amount of land and species that could be impacted. The SED CEQA analysis includes a summary of rare, sensitive, threatened or endangered species in the TMDL project area and it includes a summary of channels and numbers of California red-legged frogs found in surveys of channels supported by irrigation tailwater in the Santa Maria Valley (refer to Table 5 of the CEQA Checklist and Analysis). The survey is from the USFW 2005 Biological Opinion of the Santa Maria drainage channels.

8. Cultural Resources. Similar to the comments on Biological Resources, the SED should recognize that a cultural resources investigation will only occur if subsequent CEQA review is triggered through a discretionary action by a public agency. Many of the actions identified as potential methods of compliance may not trigger any future discretionary approvals, and thus the Board's action in approving the TMDL as proposed may result in significant impacts to cultural resources which are never studied or mitigated in future CEQA review.

Staff Response: Implementation actions that do not require additional discretionary approval are practices that would be implemented on lands that are currently under irrigated agricultural production and are not areas that would reasonably contain cultural resources susceptible to disturbance. Croplands in the Santa Maria Valley have been under cultivation for decades and most practices do not involve the excavation of soils that have not already been extensively disturbed or cultivated by agriculture.

9. Hydrology. Regarding Hydrology and Water Quality Impact (c) (substantially alter drainage patterns leading to erosion or siltation), the conclusion is "less than significant impact," but it refers to the installation of "appropriately designed mitigation measures." (SED at 29.) If mitigation is required to reduce an impact to a level of less than significant, the conclusion of significance should be changed to "less than significant with mitigation." However, because the referenced mitigation measures are not even identified, much less made enforceable or mandatory, the "mitigation" is illusory, and the conclusion as to these impacts should be identified as significant. In addition, Impact (d) (substantially alter existing drainage ... in a

manner that could cause flooding offsite) notes that if drainage systems "are sized properly, they should not cause flooding." (SED at 50.) There is no explanation of what "sized properly" means, or any requirement in the SED that drainage systems be "sized properly." The SED needs to disclose the likelihood of improper sizing and resulting impacts, and potentially change the conclusion regarding significance.

Staff Response: Staff reviewed the comment from the City regarding changing the determination from "less than significant" to "less than significant with mitigation." The City's assertion is based on a reference in the discussion on page 50 of the CEQA analysis to "mitigation measures." In the discussion staff is referring to "implementation alternatives" and not CEQA "mitigation measures" for CEQA impacts. In the CEQA analysis staff determined that the impacts will be less than significant, given the scale of the implementation alternatives and that the they would be properly designed to local conditions.

10. Noise. The SED states that none of the structural BMPs will be located within the vicinity of a private airstrip. The Santa Maria Watershed in Santa Barbara, San Luis Obispo, and Ventura Counties covers a large area. Is the implication that there are no private airstrips within the entire project area correct?

Staff Response: Staff reviewed maps and aerial photos of the project and has also conducted numerous field visits in the project area and did not find any private airstrips in areas with a high potential for implementation of management practices for the TMDL.

11. Utilities and Service Systems. Regarding the environmental checklist's Utilities and Service Systems Impact (c) (re: construction of stormwater drainage facilities), the SED notes that the affected local agencies respond to the proposed TMDL by making structural improvements or changes to stormwater drainage systems areas in urban and residential areas. (SED at 57.) The primary "Reasonably Foreseeable Method of Compliance" for reducing urban and suburban runoff identified for these agencies to meet these standards is through "Low Impact Development," which is "urban development with site drainage that has a high level of infiltration to runoff due to the use of onsite pervious [surfaces], native landscaping and infiltration and water reuse systems." (SED at 23.) The identified specific potential techniques for meeting these consist of "rain barrels and cisterns, green roofs, permeable paving surfaces for driveways and patios, rain interceptor trees, soil amendments to improve infiltration, directing roof downspouts to pervious areas and retention grading and vegetated swales." (Ibid.) The SED then merely states that, because the stormwater drainage systems are already in place, "staff does not anticipate that structural changes or large-scale construction, resulting in a substantial, or potentially substantial, adverse change in the environment, will occur." (Id. at 57.) However, there is no analysis of how these techniques could reduce the identified TMDLs, how much incorporation of these techniques will be required to meet the TMDL requirements, or what the environmental impacts of the total amount of implementation will be. In addition, it would not be possible to only incorporate these changes into new development, since the TMDL would apply to existing systems, and if these are currently insufficient, they will likely have to be changed, which would involve actions that must be disclosed, described, and analyzed as a potential impact of the TMDL. Accordingly, the SED's conclusion that a "less than significant impact" will result is entirely unsupported, and substantial evidence and

analysis must be added in order to support this conclusion of less-than-significant impact, if indeed it can be supported.

Staff Response: The commenter is referring to a list of potential implementation alternatives described on page 23 of the SED. The comment erroneously implies that staff intends that low impact development methods will be the primary method of compliance. In the City's prior comment letter on the TMDL the City stated that the primary means of meeting the standards was through the development of collaborative statewide multiagency approach that utilized the regulatory authorities of DPR and USEPA to control pesticide runoff. Now they are stating that the only way to meet the water quality standards is through low impact development, which they conclude would have potentially significant impacts on the storm water system and the City wants a quantification of required LID implementation. Staff concludes that the primary means of implements the TMDL in existing urban areas is through the use of DPR and EPA regulatory authorities. DPR has recently enacted urban pesticide regulations that should meet the water quality standards for urban pesticide runoff and staff does not anticipate the need retrofitting existing urban drainage systems to meet goals of the TMDL and therefore determined the impacts to be less than significant and the quantification of LID implementation and impacts is unnecessary.

12. Cumulative Impacts. CEQA requires a reasonable analysis of the cumulatively considerable impacts of a proposed project, and this requirement applies to SEDs as well. (Pub. Res. Code, § 21083(b); Env'l Protection Infh. Ctr., supra, 170 Cai.App.3d at 616.) "Cumulatively considerable" impacts means the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. (State CEQA Guidelines, §15064(h).)

The SED's less than one page devoted to cumulative impacts comes to a conclusion that only two impacts will be cumulatively significant: biological resources and utilities and service systems. (SED at 59-60.) However, the support for the implicit conclusion that no other cumulative impacts may result is non-existent. The SED recognizes that the proposed Pesticide TMDL may likely result in project-specific significant impacts relating to agriculture, hydrology and water quality, land use and planning, and noise (in addition to biology). As discussed herein, significant project-specific indirect impacts will also result to aesthetics and geology and soils, and potentially cultural resources and others that need to be revisited. However, there is no reasoning given whatsoever for the conclusion that these project-specific impacts will not also be cumulatively significant. The one- and two-sentence "analyses" of the potentially significant cumulative impacts to utilities and biology, respectively, are so devoid of analysis as to be meaningless. In addition, no mitigation is discussed. Much more analysis needs to be added to this section, the conclusion of significance revised as to the aforementioned impacts, with substantial evidence needed to support the cumulative impacts section.

Staff Response: As noted by the City, CEQA requires a reasonable analysis of the cumulative impacts. CEQA requires that the Water Board consider the impacts of the project in the context of all other projects in the Santa Maria watershed that might contribute to additive environmental impacts. Staff considered the Santa Maria Nutrient

TMDL to be a project in the watershed with similar project impacts. Since the Water Board cannot specify the specific methods implementation in the TMDLs, broadly determining the combined impacts of the two TMDLs is speculative. In addition, given the broad scale level of analysis and implementation in the TMDL, it is difficult or impossible to know the specific implementation actions that might be taken by dischargers. Therefore staff reasoned it was best to evaluate impacts from specific implementation types, which would have a high potential to impact the environment. These include reduced flows caused from methods aimed at irrigation efficiency and the implementation of regional treatment systems, such as woodchip bioreactor, which could have potentially significant cumulative impacts to biological resources and utilities.

Staff took a conservative approach and concluded potential significant impacts from cumulative effects could result from implementation of several approved TMDLs in the watershed. Note that implementing measures to achieve a nutrient TMDL, for example, might also help progress, if not fully achieve, the TMDLs for pesticides; in other words, that implementing once might achieve two or more TMDLs simultaneously. Hence, there would be no cumulative impact.

13. Mitigation. As noted above, the SED must discuss mitigation measures that could reduce or eliminate the project's significant impacts. To conclude that mitigation will reduce impacts to a level of less than significant, mitigation measures must be enforceable and mandatory. (Katzeff, supra, 181 Cal.App.4th at 613; Pub. Res. Code, § 21081.6(b).) While none of the mitigation measures referred to in the SED meet this standard because the Board disclaims the ability to require any particular method of compliance, this does not excuse the Board from discussing potential mitigation measures, even where that mitigation is outside the jurisdiction of the lead agency. (County of San Diego v. Grossmont-Cuyamaca Community College Dist. (2006) 141 Cal.App.4th 86, 104.) In County of San Diego, a community college district indicated in its environmental document that off-campus intersections and roadways would be affected by a Master Plan project, which would result in significant impacts unless mitigation were imposed. The district then concluded that mitigation was infeasible because the district lacked jurisdiction over the affected roads and could not ensure that the needed road improvements would actually be implemented. (Id. at 97.) The court rejected the finding of infeasibility based on a claimed lack of jurisdiction. (Id. at 104.) The Regional Board may be "prohibited from specifying the manner of compliance with its regulations" (SED at 2); however, that does not mean that mitigation measures can be overlooked not analyzed, or not adopted.

Mitigation measures should be discussed relating to every environmental impact that the SED recognizes could be significant. However, in multiple places the SED recognizes potentially significant impacts (see, e.g., SED at 53 recognizing significant impacts relating to noise), but fails to discuss any mitigation. This is improper and should be rectified.

In addition, the SED has repeated references to State CEQA Guidelines section 15091 (a)(3) and how application of that section will result in impacts being mitigated. However, the citations of this section, in the context in which they are cited, demonstrate an apparent lack of understanding of how CEQA and mitigation work. Multiple sections

claim that "mitigation measures are within the jurisdiction of the responsible parties listed in the TMDL for Toxicity and Pesticides .... These parties have the ability to implement these mitigation measures and should implement these mitigation measures, and are required under CEQA to implement mitigation measures unless mitigation measures are deemed infeasible through specific considerations (Title 14, California Code of Regulations, Section 15091(a)(3)). (Emphasis added.) However, Section 15091(a)(3) only applies to the approval of a project for which an EIR has been certified. Here, the Board has prepared a SED, and there is no discussion or analysis of whether this section nevertheless applies. In addition, unless a vegetated treatment system or other method of compliance requires a discretionary approval from a public agency, no future CEQA review will be triggered at all, and therefore there will be no adoption of any mitigation, much less a requirement to adopt all feasible mitigation measures. Moreover, because the "project" in each individual situation of compliance will likely be individually small and/or require no discretionary approval from a public agency, the vast majority of actions implementing the proposed TMDL will likely escape any further review. This is one reason it is so vital for the Board to discuss and analyze potential mitigation measures, to recognize that mitigation measures are unlikely to be implemented to reduce impacts, and thereby disclose that these impacts will be significant.

Staff Response: Staff appreciates the City's acknowledgement of some of the complexities of mitigation measures in the CEQA SED process for the Water Boards. As previously noted the Water Board does not dictate the specific manner a TMDL is implemented and moreover does not have the authority to require mitigation for potential implementation actions. Therefore the SED did not find in the CEQA analysis that potential significant impacts from TMDL could be mitigated. However, as noted by the City it is important to analyze and discuss potential mitigation measures to reduce project impacts and in the discussion of potential significant impacts to resources such as agriculture and biological resources, staff discusses the possible mitigation measures. With regard to the resource category of noise, where mitigation measures are not specifically discussed in the SED, note that these implementation actions, if they do occur, would likely be temporary, and would also require a permit, which would require additional environmental analysis and mitigation, such as for noise.

14. Recirculation. The requirements for recirculation apply the same way to an SED as they do to an EIR. (Joy Road Area, supra, 142 Cal.App.4th at 667-668.) The above-described detail, support, and analysis required to address the SED's deficiencies, including the need to change some conclusions regarding the significance of certain impacts, constitutes significant new information triggering recirculation. (Ibid.) Accordingly, to the extent the Regional Board elects to continue to pursue the TMDL, despite its many significant environmental impacts that the SED acknowledges will result, and those additional ones it does not recognize, the SED must be revised and then recirculated.

Staff Response: Staff reviewed and addressed the comments from the City and determined that there are no changes in the CEQA analysis and it is unnecessary to recirculate the SED CEQA Analysis and Checklist.

#2 Mr. Greg Kester, Director of Renewable Resource Programs, California Association of Sanitation Agencies

4.1 Mr. Greg Kester, California Association of Sanitation Agencies (CASA)

The California Association of Sanitation Agencies (CASA) is pleased to submit comments on the Central Coast Regional Water Quality Control Boards proposed Total Maximum Daily Load (TMDL) for toxicity and pesticides in the Santa Maria Watershed. CASA is a statewide association of cities, counties, special districts, and joint powers agencies that provide wastewater collection, treatment, water recycling, and biosolids management services to more than 90% of the sewered population of California.

CASA does not routinely comment on matters within individual regions, except in circumstances such as this, where the proposed regional action could ultimately have significant statewide implications. In this case, CASA is concerned about the potentially precedential nature of the TMDL for the Santa Maria watershed if adopted as proposed. Adoption of this TMDL will likely be mimicked in other watersheds and by other Regional Water Boards, which could have significant treatment and cost impacts on the essential public services provided by the wastewater sector, without a quantified benefit to the environment.

CASA is a sponsoring organization, along with the California League of Cities and the California Water Environment Association, of Tri-TAC. Tri-TAC shares the Water Boards' concern and goal of protecting watersheds from adverse impacts caused by pesticides or any other constituent. For many years, Tri-TAC has been working closely with the Department of Pesticide Regulation (DPR) and the Pyrethroid manufacturers known as the Pyrethroid Working Group (PWG) as part of the DPR pyrethroids re-evaluation process to determine potential impacts of pyrethroids on wastewater treatment facilities. An overarching theme of this joint effort—and all of DPR's recent proactive engagement with the Water Boards and municipalities in regard to pesticide water pollution—has been that the pesticide regulators, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and state statute, maintain the appropriate regulatory authority for pesticides as opposed to being regulated under the Clean Water Act (CWA) or Porter-Cologne.

It is our objective to continue working with DPR and the United States Environmental Protection Agency (US EPA) to determine whether adverse impacts may occur from pyrethroids in wastewater treatment plant discharges, and if confirmed, to then develop mitigating controls at the point of use or production. This represents a far more pragmatic approach than attempting to regulate pesticides like conventional pollutants under the CWA. Wastewater treatment plants and their local governing bodies do not have the authority to regulate pesticide production or use, nor their discharge to the sewerage system—but DPR and US EPA do. CASA, along with other impacted entities, has been working diligently with DPR, US EPA, and the PWG to find effective methods of mitigating potential impacts of pesticides to California's waters. We would urge the Central Coast RWQCB to reflect those efforts as well as DPR and US EPA's authority in any TMDL development process.

CASA appreciates this opportunity to comment on the proposed TMDL, and we would be glad to provide any clarification or further information that may be sought. We would likewise

welcome the opportunity to work with the Central Coast RWQCB to develop alternative strategies on a watershed approach to improve water quality.

Staff Response: Staff appreciates CASA's interest in the Santa Maria Toxicity and Pesticide TMDL and recognizes their concern about pesticide pollution discharge entering surface waters in discharge of waste water treatment plant. Staff understands their concern that the TMDL could set a president for addressing impairments in other watersheds. However in the Santa Maria Valley, the WWTPs only discharge to land and do not discharge directly to any surface waters. In the TMDL, WWTPs were not found to be a source of pesticide water quality impairment and did not receive a waste load allocation.

Staff notes that CASA advocates addressing pesticide impairments through proactive engagement with DPR, USEPA and the PWG and utilizing regulatory authority of DPR and USEPA to implement mitigation controls at point of use rather than through WWTP controls and staff supports these efforts. A similar approach was brought forth by the City of Santa Maria and the California Stormwater Quality Association (CASQA) regarding the regulatory approach to addressing pesticides in stormwater and the TMDL supports a collaborative statewide multiagency approach to control the discharge from the point of application using DPR and USEPA regulations.