STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

CERTIFICATION OF FECAL INDICATOR BACTERIA TMDLS AND ALTERNATIVE IMPLEMENTATION PROGRAMS FOR THE LOWER SAN ANTONIO RIVER, TULARCITOS CREEK, CHOLAME CREEK, SAN LORENZO CREEK, AND ARROYO DE LA CRUZ WATERSHEDS

STAFF REPORT

Prepared April 19, 2011

INTRODUCTION

The staff of the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) developed proposed total maximum daily loads (TMDLs) and alternative programs of TMDL implementation for indicator bacteria for five waterbodies - the Lower San Antonio River (below Lake San Antonio dam), Tularcitos Creek, Cholame Creek, San Lorenzo Creek, and Arroyo de la Cruz located in Monterey, San Luis Obispo, and San Benito counties (see Figure 1). This staff report presents information and recommendations pertaining to these proposed TMDLs.

DISCUSSION

The *Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options* (State Water Resources Control Board (State Water Board), adopted by Resolution 2005-0050), hereafter referred to as the *Impaired Waters Policy*, states that the Regional Water Quality Control Boards (Water Boards) have broad flexibility and discretion in fashioning TMDL implementation programs. In accordance with the *Impaired Waters Policy*, in some circumstances the Water Boards may rely upon actions by non-regulatory entities if the Water Board makes findings, supported by substantial evidence in the project record, that a program being implemented by a nonregulatory entity will be adequate to correct the impairment. The State Water Board Impaired Waters Guidance *(California State Water Resources Control Board, June 2005 - Approved by Resolution 2005-0050)* states:

> "The fact Regional Boards have limited resources to accomplish their water quality mission can and should be used as a basis to encourage interested persons to undertake to abate impairments in the time before the Regional Boards may otherwise be able to address them…Employing these abbreviated procedures when warranted is a matter of efficiency and resource allocation. California is obligated to establish and implement 800 or more TMDLs over the next ten years for over 1,800 pollutant/water body combinations. Given existing resource constraints (both financial and personnel), to the extent California can consolidate regulatory actions or eliminate unnecessary regulatory processes when fulfilling our obligations under Section 303(d), the State and Regional Boards can expedite their responsibility to address and correct impaired waters in California, and expend resources on more TMDLs instead of redundant processes." *
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> **Emphasis added*
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> From: *STATE OF CALIFORNIA S.B. 469 TMDL GUIDANCE A PROCESS FOR ADDRESSING IMPAIRED WATERS IN CALIFORNIA (California State Water Resources Control Board, June 2005 - Approved by Resolution 2005-0050)*

Consequently, the *Impaired Waters Policy* establishes a certification process whereby the Water Boards can formally recognize appropriate regulatory or nonregulatory actions of other entities as alternative implementation programs when the Water Boards determine those actions will result in attainment of standards. The *Impaired Waters Policy* also provides that a Water Board may delegate the authority to make the certification to its Executive Officer for non-controversial TMDLs.

In accordance with the *Impaired Waters Policy*, specific findings that demonstrate that the proposed non-regulatory actions are consistent with the assumptions and requirements of the TMDLs are presented in Attachment 1A through Attachment 5A – the Executive Officer Certification Orders.

Accordingly, staff proposes that the Water Board Executive Officer certify the California Rangeland Water Quality Management Plan as the mechanism for implementing these TMDLs. Note that consistent with the State Water Board Impaired Waters Guidance the Water Board may use its independent discretion to implement TMDLs through Memorandums of Understanding (MOUs), Management Agency Agreements (MAAs), or Water Quality Management Plans (WQMPs). The California Rangeland Water Quality Management Plan was accepted by the State Water Board in 1995 (SWRCB Resolution No. 95-43). It summarizes authorities and mandates for water quality and watershed protection on non-federal rangelands, and specifies a framework for the cooperative development of ranch management strategies for water quality protection. The State Water Board Nonpoint Source Program Plan identifies the California Rangeland Water Quality Management Plan (along with several other MOUs, MAAs, and WQMPs) as recognized and viable nonpoint source pollution control tools (see Table 10 –*Summary of Existing MAAs and MOUs* located in *Plan for California's Nonpoint Source Pollution Control Program,* SWRCB 2000*)*.

The nature and scope of the impairment in these watersheds (moderate, not severe, water quality impairments); the fact that only one identifiable controllable source is contributing to the impairment (livestock); the location of the watersheds in sparsely populated rural areas; the absence of any identifiable point sources (sanitary sewer systems, urban runoff, wastewater treatment plants); and the fact that the State has formally recognized the California Rangeland Water Quality Management Plan (Rangeland Plan) as a viable nonpoint source pollution control tool all constitute findings that certification of a non-regulatory alternative program of implementation may be appropriate at this time. The California Rangeland Plan was developed by a broad array of State agencies and interest groups, including livestock interests, and is supported by the grazing industry. At this time staff proposes to rely on the California Rangeland Plan, the expertise of resource professionals (e.g., Natural Resource Conservation Service), and the collaboration and expertise of landowners themselves to protect and restore beneficial uses of surface waters in these watersheds.

While the *Impaired Waters Policy* recognizes that certification of alternative programs of implementation may be merited as appropriate and as a matter of efficiency, it is important to emphasize the Water Board retains the authority to commence a regulatory response if an impairment has not been adequately addressed by a non-regulatory action within a specified time period. The Water Board may not indefinitely defer taking necessary action if another entity is not properly addressing a problem. As such, the proposed TMDL implementation plans provide a fallback provision which identifies the point at which regulatory intervention will be triggered.

PUBLIC INVOLVEMENT

Staff conducted stakeholder outreach efforts for these TMDL projects. Staff mailed a TMDL project summary Fact Sheet, and a "Frequently Asked Questions" (FAQs) sheet to landowners and stakeholders in the five project watersheds. The Fact Sheet and FAQ sheet contained summary information about the proposed TMDL projects and Water Board staff's contact information. Staff engaged with interested persons during the development of the TMDLs and held public workshops in San Luis Obispo (January 20, 2011) and King City (February 9, 2011). Staff responded orally to numerous questions and comments received at these workshops.

Interested persons that participated in TMDL development workshops and outreach included representatives of the following:

- California Cattlemen's Association
- University of California Cooperative Extension
- Hearst Ranch
- California Polytechnic University, San Luis Obispo
- District Representative for State Senator Sam Blakeslee
- Commercial ranches and private landowners
- Agricultural Water Quality Coalition
- Natural Resources Conservation Service
- Resource Conservation District, Monterey County
- Santa Barbara County Cattlemen's Association
- Monterey County Farm Bureau
- San Luis Obispo Farm Bureau
- San Luis Obispo County Cattlemen's Association
- Monterey County Cattlemen's Association

During the public outreach efforts, staff received informal input and comment from private landowners and representatives of the grazing industry indicating that they could support and participate in these proposed alternative programs of TMDL implementation.

This Staff Report, Executive Officer Certification Orders, and technical project reports were made available for a 45-day public comment commencing on February 3, 2011. Water Board staff solicited public comment from a wide range of stakeholders including livestock industry representatives, environmental representatives, and public agency representatives. Water Board staff responded in writing to public comments received during the public comment period.

Public comments were received from:

1. Mr. Jeff Walter, Carmel Valley, in an email attachment received March 18, 2011
2. Mr. Robert Reynolds, Manager – Carmel Ranch Company, Carmel Valley, in an email attachment received March 18, 2011.
3. Mr. Kenneth Eade, President/CEO Eade Ranch Management, Inc., San Ardo, in an email attachment received January 27, 2011.
4. Mr. Scott Violini, Salinas, in an email attachment received on March 18, 2011.
5. Mr. William Askew, Ranch Manager – Rana Creek Ranch, in a letter dated March 18, 2011 and received March 21, 2011.
6. Mr. Steve Dorrance, Dorrance Ranches, L.P., Salinas, in an email attachment received on March 19, 2011.

7. Mr. Bill Rist, Livestock Operator, San Lorenzo Creek watershed, in a letter received March 23, 2011.
8. Mr. Dan Daniels, in an email received March 23, 2011.
9. Mr. Martin Cepkauskas, Hearst Corporation, San Francisco, in a letter dated March 17, 2011 and received March 18, 2011
10. Mr. Kevin Kester, Bear Valley Ranch, Parkfield, in an email attachment received on March 21, 2011.
11. Mr. Jay Brown, President – Monterey County Cattlemen's Association, Soledad, in an email attachment received on March 21, 2011.
12. Mr. Joe Morris, Central Coast Cattlemen's Leadership Group, in an email attachment received on March 21, 2011
13. Mr. Royce Larsen, Natural Resource Advisor, in a letter dated March 21, 2011

Staff made minor changes to the proposed TMDL project reports as a result of these comments. Public comments and staff responses are included in Attachment 6 to this Staff Report.

RECOMMENDATION

Staff recommends the Executive Officer certify the fecal indicator bacteria TMDLs and alternative implementation programs for

1) The lower San Antonio River (below Lake San Antonio dam)
2) Tularcitos Creek
3) Cholame Creek
4) San Lorenzo Creek (Monterey County)
5) Arroyo de la Cruz

ATTACHMENTS:

The attachments are available at:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/tmdl/public_comment_participation.shtml

-**Attachment 1A**: Certification of TMDLs for Indicator Bacteria for the Lower San Antonio River
-**Attachment 1B:** TMDL Project Report for Indicator Bacteria in the Lower San Antonio River Watershed
-**Attachment 2A:** Certification of TMDLs for Indicator Bacteria for the Tularcitos Creek Watershed
-**Attachment 2B**: TMDL Project Report for Indicator Bacteria in the Tularcitos Creek Watershed
-**Attachment 3A**: Certification of TMDLs for Indicator Bacteria for the Cholame Creek Watershed
-**Attachment 3B**: TMDL Project Report for Indicator Bacteria in the Cholame Creek Watershed
-**Attachment 4A**: Certification of TMDLs for Indicator Bacteria for the San Lorenzo Creek Watershed
-**Attachment 4B**: TMDL Project Report for Indicator Bacteria in the San Lorenzo Creek Watershed
-**Attachment 5A**: Certification of TMDLs for Indicator Bacteria for the Arroyo de la Cruz Watershed
-**Attachment 5B:** TMDL Project Report for Indicator Bacteria in the Arroyo de la Cruz Watershed
- Attachment 6: Public Comments and Staff Response

Figure 1. Location of TMDL Project Watersheds.