

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

RESOLUTION NO. R3-2013-0058

**ADOPTION OF A TOTAL MAXIMUM DAILY LOAD AND AN IMPLEMENTATION
STRATEGY FOR BORON IN STREAMS OF THE ESTRELLA RIVER BASIN, SAN LUIS
OBISPO AND MONTEREY COUNTIES**

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

1. The Central Coast Water Board adopted the Water Quality Control Plan for the Central Coastal Basin (Basin Plan) on March 14, 1975. The Basin Plan designates beneficial uses and water quality objectives, implementation programs for achieving water quality objectives addressing point source and nonpoint source discharges, adopts prohibitions, and incorporates statewide plans and policies.
2. Section 303(d) of the Clean Water Act requires states to identify and prepare a list of waterbodies that do not meet water quality standards and to establish Total Maximum Daily Loads (TMDLs) for the listed water bodies. TMDLs can be expressed in terms of either mass per time, concentration, or other appropriate measure [40 CFR §130.2(i)].
3. On May 20, 2004, the State Water Board adopted the *Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List* (State Water Board Resolution No. 2004-0063), hereafter referred to as the *California 303(d) Listing Policy*. The *California 303(d) Listing Policy* describes the process by which the State Water Board and the Regional Water Quality Control Boards will comply with the listing requirements of the federal Clean Water Act (CWA). The objective of the *California 303(d) Listing Policy* is to establish a standardized approach for developing California's CWA section 303(d) list and to provide guidance for interpreting data and information to make decisions regarding water quality standards attainment.
4. The Estrella River Basin drains a 950-square-mile, sparsely populated, rural area of eastern San Luis Obispo County and southeastern Monterey County. The Estrella River Basin includes the Estrella River, San Juan Creek, and the Cholame Creek watersheds.
5. The Estrella River and Cholame Creek were listed on the 2010 Clean Water Act section 303(d) list on the basis of not meeting boron water quality objectives for agricultural water use. Due to the Clean Water Act 303(d) listing, the Central Coast Water Board is required to adopt a TMDL and an associated implementation plan (40 CFR 130.6(c)(1), 130.7, Water Code section 13242). This Resolution establishes a TMDL and associated allocations for these impairments..
6. On June 16, 2005, the State Water Board adopted the *Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options* (State Water Board Resolution 2005-0050), hereafter referred to as the *Impaired Waters Policy*. The *Impaired*

Waters Policy provides policy and procedures for adopting TMDLs and addressing impaired waters in California. The *Impaired Waters Policy* states that the Regional Water Quality Control Boards have independent discretion, broad flexibility, numerous options, and some legal constraints that apply when determining how to address impaired waters.

7. In accordance with the *Impaired Waters Policy*, a TMDL must be calculated for impairments caused by certain USEPA-designated pollutants. The two other common causes or categories of impairment are related to anthropogenic factors. They include waters impaired by pollution and waters impaired by certain USEPA designated pollutants. The Porter-Cologne Water Quality Control Act charges the State Water Resources Control Board and the regional water quality control boards with the responsibility of protecting the beneficial uses and quality of all waters of the state, irrespective of the cause of the impairment. Thus, if possible, the impairment should be corrected in either event. Presently, the USEPA has designated all pollutants as suitable for TMDL calculation under proper technical conditions.
8. The Central Coast Water Board's goal for establishing a boron TMDL and associated implementation strategy in the Estrella River Basin is to calculate the pollutant loading capacity of the streams for boron, taking into account natural background, and to implement a strategy to rectify the identified Clean Water Act 303(d) boron listings.
9. Based on available data, natural background sources are the major contributor of boron to surface waterbodies; irrigation water and fertilizer associated with irrigated agriculture are also a potential minor source of boron to surface waters.
10. Pending the acquisition of additional data and information, current water quality standards for boron applicable to the Estrella River Basin may be determined to be unattainable due to natural conditions even if all feasible controls on anthropogenic sources are verified to be in place.
11. In accordance with the *Impaired Waters Policy*, if failure to attain water quality standards is due to the fact that the applicable standards are not appropriate to natural conditions, an appropriate regulatory response is to correct the standards. In these cases, the *Impaired Waters Policy* states that the TMDL process may be used to undertake a limited review of the standards and that the TMDL process may be used to create or recommend a strategy to resolve the impairments by modification of the standards. For example, the TMDL may recommend a site-specific water quality objective or other appropriate modification of a water quality standard.
12. Consistent with the *Impaired Waters Policy*, the Central Coast Water Board may amend boron water quality criteria applicable to Estrella River Basin streams, if appropriate and on the basis of natural background loading. This may include development of site-specific water quality objectives to rectify the Clean Water Act 303(d)-listed impairments for boron in streams of the Estrella River Basin.
13. Development of this TMDL is consistent with the state anti-degradation policy which requires, in part, that when the existing quality of water is better than the quality of water established as objectives, such existing water quality shall be maintained unless otherwise provided for by the provisions of State Water Resources Control Board Resolution No. 68-16, "*Statement of Policy with Respect to Maintaining High Quality Waters in California*," hereafter referred to as State Water Resources Control Board Resolution 68-16.

14. State Water Resources Control Board Resolution 68-16 requires, in part, that when the existing quality of water is better than the quality of water established as objectives, such existing water quality shall be maintained unless otherwise provided for in provisions of the policy. High quality waters are determined on a pollutant-by-pollutant/parameter-by-parameter basis, by determining whether water quality is better than the criterion for each parameter using chemical or biological data. Therefore, waters can be of high quality for some constituents or beneficial uses, but not for others. In the Estrella River, designated aquatic habitat (WARM, SPWN, WILD), and livestock watering (AGR) beneficial uses are being supported on the basis of boron data, and thus the river waters constitute high quality waters on the basis of these data.
15. The final project report contains a problem statement, numeric targets, source analysis, total maximum load, waste load allocations, load allocations, margin of safety, and an implementation strategy to address the identified impairments. The final project report addresses impairments due to boron.
16. The elements of a TMDL are described in 40 CFR 130.2 and 130.7, section 303(d) of the Clean Water Act, and USEPA guidance documents. A TMDL is defined as “the sum of individual waste load allocations for point sources and load allocations for nonpoint sources and natural background” (40 CFR 130.2). The Estrella River Basin boron TMDL is set at a level necessary to attain and maintain the applicable numeric water quality standards, taking into account seasonal variations and any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7 (c) (1)). The regulations in 40 CFR 130.7 also state that TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters.
17. According to the *Impaired Waters Policy*, “[i]f the solution to an impairment can be implemented with a single vote of the regional board, it may be implemented by that vote...there is no legal requirement to first adopt the plan [TMDL] through a basin plan amendment.” The Central Coast Water Board finds that the TMDL for boron in streams of the Estrella River Basin will be achieved by developing and implementing an existing regulatory action of the Central Coast Water Board in conjunction with a possible future water quality standards action. Therefore, the Central Coast Water Board finds that this TMDL and associated implementation strategy may be adopted with a single vote and will result in attainment of water quality standards in lieu of adopting new or additional regulatory measures, such as permits, orders, or prohibitions.
18. The Central Coast Water Board's ambient monitoring program will provide information and data sufficient to confirm that the TMDL is being implemented, that currently unimpaired designated beneficial uses will continue to be supported, and to support development of site-specific water quality objectives if merited.
19. Central Coast Water Board staff implemented a process to inform interested persons and the public about the TMDL. Central Coast Water Board staff's efforts to inform the public and solicit comment included a public meeting with interested persons and a public notice and comment period. Public notice of the public hearing was given by mailing a copy of the public notice to all persons requesting such notice and applicable government agencies on February 22, 2013. Relevant documents and notices were also made available on the Central Coast Water Board website. The public notice provided the public a 30-day public comment period preceding the Central Coast Water Board hearing. Central Coast Water

Board staff responded to oral and written comments received from the public. The Central Coast Water Board considered all public comments.

20. Adoption of these TMDLs will not result in any degradation of water quality; in fact, they are designed to identify and protect existing high quality waters. The adoption of these TMDLs will not de-designate beneficial uses, and will not result in lowering of water quality due to controllable conditions. As such, these TMDLs comply with all requirements of both State and federal anti-degradation requirements (State Board Resolution 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*, and 40CFR 131.12).
21. Existing actions by the Central Coast Water Board make any further regulatory action (i.e., any "project") unnecessary. Therefore, this action is not a "project" that requires compliance with the California Environmental Quality Act (CEQA) (California Public Resources Code §21000 et seq.). The Central Coast Water Board is not directly undertaking an activity, funding an activity, or issuing a permit or other entitlement for use (Public Resources Code section 21065; 14 Cal. Code of Regs. §15378).
22. This TMDL will become effective upon approval of this resolution by the Central Coast Water Board.
23. On December 5-6, 2013, in San Luis Obispo California, the Central Coast Water Board held a public hearing and heard and considered all public comments and evidence in the record.

THEREFORE, be it resolved that:

1. The Central Coast Water Board, after considering the entire record, including the oral testimony at the hearing, hereby adopts the Total Maximum Daily Load for Streams of the Estrella River Basin, as shown in the Final Project Report.
2. The Central Coast Water Board finds that an existing action of the Central Coast Water Board, *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* and associated monitoring program, in conjunction with the development of site-specific water quality objectives, if merited, are an appropriate plan for implementation of the TMDL, will be adequate to correct the impairments, and is expected to result in attainment of water quality standards applicable to boron in streams of the Estrella River Basin. At this time, any further regulatory action to create another program of implementation by the Water Board would be redundant and unnecessary.
3. The Central Coast Water Board's Executive Officer is directed to submit the TMDL to the U.S. Environmental Protection Agency (USEPA) for review. If during its approval process the USEPA determines that minor, non-substantive corrections to the language of the TMDL are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Central Coast Water Board of any such changes.

I, Kenneth A. Harris Jr., 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 December 5, 2013.

Kenneth A. Harris Jr.
Executive Officer