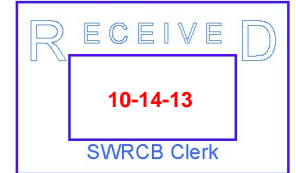




CITY OF SANTA MARIA
UTILITIES DEPARTMENT

Business Services • Regulatory Compliance
Solid Waste Services • Water Resources

2065 EAST MAIN STREET • SANTA MARIA, CALIFORNIA 93454-8026 • 805-925-0951, EXT. 7270 • FAX 805-928-7240



October 14, 2013

VIA ELECTRONIC MAIL [commentletters@waterboards.ca.gov]

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

SUBJECT: COMMENT LETTER – SANTA MARIA NUTRIENT TMDL

Dear Ms. Townsend:

The City of Santa Maria (“City”) submits these written comments to the State Water Resources Control Board (“State Board”) in connection with its consideration of the Santa Maria Nutrient TMDL. These written comments satisfy the requirements of 23 Cal. Code Regs. § 3779(f) because they focus on the final version of the Santa Maria Nutrient TMDL approved by the Central Coast Regional Water Quality Control Board (“Central Coast Regional Board”), demonstrate that the comments were timely made to the Central Coast Regional Board¹, and explain why the Central Coast Regional Board’s responses to those comments were inadequate or incorrect.

Before presenting the City’s specific comments on the TMDL, the City wishes to emphasize how the State Board’s pending consideration of the receiving water limitations (“RWL”) language for MS4 permits relates to and informs the City’s comments. As the City explained to the State Board during the recent RWL workshop, the current RWL approach, as interpreted by the courts, undermines the type of comprehensive and collaborative approaches that will be required to address nutrient problems in the Santa Maria watershed. The current RWL language forces an “end of pipe,” jurisdictional focus and requires strict and immediate compliance with water quality standards which the Santa

¹ The City submitted detailed comment letters on February 11, 2013 and May 29, 2013, both of which are attached. The City also appeared at the May 30, 2013 hearing before the Central Coast Regional Board and reiterated its comments.

María Nutrient TMDL determines will take decades to achieve. Addressing the RWL approach to encourage more collaboration and to reflect the time needed to deal with the scale of the nutrient problem would go a long way toward easing some of the City's key concerns about the TMDL.

With this point as an important backdrop, the City would like to stress, in addition to the attached comments, the following comments on the TMDL:

1. The Concentration-Based Approach: A main concern the City has about the Santa María Nutrient TMDL is that it uses concentration-based allocations rather than load-based allocations. As the City and others pointed out during the comment period and at the Central Coast Regional Board hearing, a concentration-based approach focuses too narrowly on individual discharges and does not support a broader, comprehensive approach to addressing nutrients. As staff has acknowledged, "a concentration-based load allocation expression may not adequately provide meaningful connection to on-the-ground implementation decisions." (See Response to Comments #13 and #19.) Such an approach is problematic in both an urban setting (because it focuses narrowly on urban discharges that have no large-scale nutrient reduction benefits) and provides perverse incentives to agricultural sources who, as one commenter pointed out, "will actually have an incentive to increase irrigation discharges to decrease the concentration of nitrogen and orthophosphate in waters." (See Response to Comment #13.)

The City acknowledges the Central Coast Regional Board has made some positive changes to the TMDL based on these comments. For irrigated lands, the Central Coast Regional Board provided an alternative load-based approach as an optional metric to gauge progress towards reducing nutrient discharges. The Central Coast Regional Board also attempted to revise the metrics applicable to urban discharges to provide additional flexibility. These changes are appreciated, but do not address the fundamental problem that defining final allocations in terms of concentrations will not foster the best water quality results. This approach will:

- Ultimately mean that concentration allocations will become an enforceable requirement inhibiting the City's ability to participate in or fund the development of more productive solutions, such as its agricultural tailwater denitrification system in the Bradley Channel. To protect the City's narrow interests, the City may need to focus solely on achieving the concentration-based requirements at its urban discharge points, which will have no meaningful regional water quality benefit. A broader, load-based approach would promote more collaboration and broader water quality solutions. The City is willing to participate in these solutions but needs regulatory certainty to make such investments.
- Ultimately undermine the "pump-and-fertilize" approach to addressing legacy groundwater pollution. Although the Central Coast Regional Board added language to the TMDL supporting this approach, the narrow concentration-based focus undermines the "pump-and-fertilize" approach because the concentration levels of the polluted groundwater exceed the allocations.

For all these reasons, the City requests that the State Board send the TMDL back to the Central Coast Regional Board with direction to express the final allocations as loads rather than concentrations.

2. Application of the TMDL to Man-Made Flood Control Channels that are not "Water Bodies": The City has long-urged the Central Coast Regional Board and the State Board to treat the Bradley Channel, Blosser Channel, and the Main Street Canal for what they really are – man-made flood control channels constructed in or about the 1960s in areas where no previous watercourses existed. These channels carry agricultural flows and have no natural tributaries. They are not "water bodies" as used in the Central Coast Basin Plan. For this reason, they should not be included in this TMDL.

The City appreciates the Central Coast Regional Board's sensitivity to this issue, and acknowledges that staff has worked to provide flexibility regarding how the TMDL might apply to the channels. More is needed, however. Rather than include these channels in the TMDL, the State Board should direct the Regional Board to consider these channels as part of the upcoming 303(d) listing process and to use that process to more accurately characterize the nature of these channels.

The City thanks the State Board for its consideration of these issues and looks forward to working with the Central Coast Regional Board to revise the TMDL consistent with these comments.

Sincerely,



RICHARD G. SWEET, P.E.
Director of Utilities

Attachments: (A) Comment Letter – Santa Maria Nutrients TMDL – February 11, 2013
(B) Responses to Comments on Santa Maria Nutrients TMDL – May 29, 2013

ATTACHMENT A



CITY OF SANTA MARIA
UTILITIES DEPARTMENT
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February 11, 2013

Via Electronic Mail [lharlan@waterboards.ca.gov]

Larry Harlan
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

SUBJECT: COMMENT LETTER – SANTA MARIA NUTRIENTS TMDL

Dear Mr. Harlan:

The City of Santa Maria appreciates the opportunity to provide the Regional Board with the following comments on the Total Maximum Daily Loads for Nitrogen Compounds and Orthophosphate in the Lower Santa Maria River and Oso Flaco Lake Watersheds ("TMDL"). The City shares the Regional Board's goal of reducing the loading of nitrogen compounds and orthophosphate in these watersheds. However, as currently structured, the TMDL will undermine the ability of stakeholders to implement more comprehensive efforts to address these pollutants through integrated, watershed-based approaches. For this reason, the City does not support adoption of the TMDL as currently proposed.

The City's comment letter first summarizes the two key concerns the City has with the approach taken by the Regional Board in the TMDL. The letter next provides more detailed comments on the TMDL.¹ Finally, the letter provides detailed comments on the Regional Board's substitute environmental document and analysis. It is hoped that after reviewing these comments, the Regional Board will agree to work with the City and other stakeholders on a better approach to addressing the loading of nitrogen compounds and orthophosphate in these watersheds.

I. SUMMARY OF THE CITY'S TWO KEY CONCERNS

The City's two key concerns with the TMDL stem from the TMDL's use of concentration-

¹ This comment letter generally refers to all of the TMDL-related documents generically as the TMDL, without always distinguishing between the Draft Staff Report, Draft Resolution, Draft Project Report, Draft Basin Plan Amendment and other documents. However, when a specific reference is cited, the letter refers to the specific document at issue.

based final allocations, interim allocations, and targets for nitrate and orthophosphate.² The concentration-based approach used in the TMDL is not an appropriate regulatory approach to address these two pollutants for at least the following two key reasons.

3.1 The Narrow Concentration-Based Approach Undermines a More Comprehensive Solution to the Problem. The use of the concentration-based approach will undermine efforts to address the loading of nitrate and orthophosphate in a comprehensive fashion. In the report entitled "Addressing Nitrate in California's Drinking Water" prepared for the California State Water Resources Control Board in connection with Senate Bill X2 1 (Perata),³ the use of the "pump-and-fertilize" approach to nitrate contamination in groundwater is identified as a key long-term remediation strategy for large groundwater basins that are nitrate impacted. The "pump-and-fertilize" approach uses existing agricultural wells to gradually remove nitrate-contaminated groundwater and to treat that water through nitrate uptake by crops. Implementing this long-term remediation strategy demands a load-based approach, because nitrate concentrations in some existing agricultural wells will not meet the concentration-based standards used in the TMDL. In contrast, the TMDL's concentration-based approach will inhibit implementation of this "pump-and-fertilize" approach because compliance with the TMDL will likely require reduced usage of nitrate-contaminated groundwater for agricultural irrigation. Thus, even though the "pump-and-fertilize" approach would reduce overall loading of nitrogen compounds and address legacy groundwater problems in a way that is consistent with State policy, the approach could not be implemented in light of the narrow concentration-based allocations and targets in the TMDL.

The Regional Board, in its responses to comments on the Salinas River Nutrient TMDL, has acknowledged that "legacy pollution in groundwater can be considered a beneficial economic resource – it is well established that resource professionals do encourage growers to credit nitrate irrigation water towards their fertilization practices; this certainly could be considered one type of 'viable holistic implementation practice'." (Responses to Comments, p. 6.) Further support for this approach is found on page 8 of the University of California's Farm Water Quality Planning Reference Sheet No. 8066. To accommodate such a "viable holistic implementation practice," the Regional Board should express the allocations and targets as mass loads not as concentrations. To do otherwise will undermine the implementation of a "viable holistic implementation practice" that the State Board has identified as a key long-term remediation strategy to address legacy nitrate problems. Indeed, in its responses to comments on the Salinas River Nutrient TMDL, Regional Board staff noted that "staff is aware that a concentration-based load allocation expression may not adequately provide meaningful connection to on-the-ground implementation decisions." (Responses to Comments, p. 14.) Since Regional Board staff is aware of this problem, it should address the problem by expressing the TMDL as a mass load allocation.

² The City does not object to the use of a concentration-based approach for unionized ammonia because the concentrations of this pollutant and related acute toxicity are directly relevant to the protection of beneficial uses, in contrast to nitrate and orthophosphate.

³ This report is available at <http://www.groundwaternitrate.ucdavis.edu/files/138956.pdf>

The concentration-based approach has other impacts on the ability of stakeholders to implement comprehensive solutions to addressing the nutrient problem. For example, use of a concentration-based approach will inhibit the ability of stakeholders to implement nutrient trading approaches that may be a cost-effective way to reduce overall loading. The City requests that the Regional Board change the TMDL from a concentration-based approach to a mass loading approach to allow for these more flexible and comprehensive implementation options.

3.2 The Narrow Concentration-Based Approach will Impact the City's Water Supply. A second reason the TMDL should not contain concentration-based allocations and targets for nitrate and orthophosphate is that the TMDL's concentration-based approach could result in overuse and possible contamination of the lower aquifer that is relied upon by the City for a portion of its water supply. The lower aquifer does not currently experience the nitrate contamination existing in the shallow groundwater. Because the agricultural community will be unable to satisfy the concentration-based allocations and targets, the community may seek to use the groundwater in the lower aquifer as a substitute for the groundwater they currently use. Increased use of the lower aquifer could impair the City's rights to use the groundwater in the lower aquifer. It could also cause long-term contamination of the lower aquifer as legacy contaminants in the shallow groundwater migrate to the lower aquifer. To avoid these potentially catastrophic results, the Regional Board should use a mass load-based, rather than a concentration-based approach. The load-based approach would allow for the "viable holistic implementation" solutions that are needed to address the existing problem while avoiding these significant impacts on the lower aquifer.

There is ample evidence that there is a distinction between the shallow, upper aquifer and the deeper, lower aquifer. Based on information related to the City's Well #14S, the general demarcation between the upper and lower aquifer is somewhere between 300 to 500 feet. Several years ago, the City began experiencing nitrate issues at its Well #14S, which pulled from the basin starting at 270 feet. Through the installation of a packer assembly, the City was able to isolate the upper from the lower aquifer and draw only from the lower. The nitrate issues at Well #14S were thus eliminated, demonstrating that the lower aquifer did not face the same contamination issues. However, the City is deeply concerned that the TMDL's approach will encourage increased use of the lower aquifer, resulting in the two problems noted here.

II. DETAILED COMMENTS ON THE TMDL

In addition to the two key concerns expressed above, the City also has the following detailed comments on the TMDL:

3.3 Project Area Description (Draft Project Report, pp. 1-3). The TMDL indicates that Regional Board staff scoped the entire 1.2 million acre project area of the Santa Maria River watershed, but eventually decided to narrow the scope of the TMDL to the lower portion of the Santa Maria River watershed downstream from the Sisquoc River confluence including the Oso Flaco Lake watershed. The TMDL further indicates that information necessary to develop a nutrient TMDL for Oso Flaco Lake is not

currently available. Thus, Regional Board staff has recognized that the Santa Maria River watershed contains distinct components that require individualized analysis.

Despite Regional Board staff's conclusion that the Santa Maria River watershed contains distinct components, the TMDL is based in large measure on the Lower Salinas River Watershed Nutrient TMDL Draft Project Report. This includes, as described on page 9 of the Draft Staff Report, reliance on the scientific peer review for the Salinas River Nutrient TMDL. Given the unique nature of the Santa Maria River watershed and its individual components, the Regional Board's reliance on the Salinas River Nutrient TMDL is not appropriate. The TMDL fails to establish a factual and legal basis to support the use of the Salinas River Nutrient TMDL for the unrelated Santa Maria River watershed. The Regional Board has therefore not satisfied its obligations under Health & Safety Code section 57004 to perform an external scientific peer review of the TMDL. The Regional Board must comply with Section 57004 by obtaining an external scientific peer review of the TMDL prior to adoption by the Regional Board.

3.4 Beneficial Uses (Draft Project Report, pp. 10-15). The TMDL acknowledges that the Basin Plan does not identify beneficial uses for Bradley Channel, Blosser Channel, and the Main Street Canal. Nevertheless, the TMDL assumes that these waterbodies have the beneficial uses of REC-1, REC-2, and MUN, along with all beneficial uses associated with aquatic life. This approach is not warranted for these three flood control channels.

The Bradley Channel, the Blosser Channel, and the Main Street Canal were constructed in or about the 1960s in areas where no previous watercourse existed. The three channels are fully or partially concrete. They are not open to the public and are not (and have not been) used for recreational purposes. They are therefore not appropriately designated by default with the beneficial uses of REC-1, REC-2, and MUN, along with all beneficial uses associated with aquatic life.

The TMDL's treatment of these three flood control channels as having these beneficial uses is inconsistent with the law and the facts. First, recent case law makes clear that a Regional Board has a mandatory duty to assess whether "default" beneficial uses are appropriate. (*California Association of Sanitation Agencies v. State Water Resources Control Board* (2012) 208 Cal.App. 4th 1438.) The Regional Board has failed to perform its mandatory duty here. The TMDL simply assumes, without analysis, that the beneficial uses apply to these three channels. In addition, the Regional Board's approach to the beneficial uses for these three channels is inconsistent with State Board Resolution 2005-0050, which makes clear that a key starting point for the development of a TMDL is to assess the water quality standards applicable to the waters in question. Regional Board staff should assess whether the application of these beneficial uses to the three channels in question is appropriate prior to moving forward with the TMDL. Either through the Use Attainability Process or through the De-Listing process, the Regional Board staff should assess whether the TMDL should have any application to these three channels. Failure to engage in such an assessment will perpetuate an improper default designation that has no basis in reality and is not consistent with the Regional Board's mandatory duties.

3.5 303(d) Listings (Draft Project Report, p. 19). Table 3-3 of the TMDL identifies waterbodies in the Santa Maria River and Oso Flaco Lake watersheds that are listed as impaired on the 2008-2010 303(d) list. Table 3-3 shows Blosser Channel as listed as being impaired for nitrate. However, Table 6-2 on page 108 of the Draft Project Report shows that Blosser Channel has a 0% reduction goal for nitrate, indicating that it is not impaired for that pollutant. Rather than including Blosser Channel in the TMDL's nitrate requirements, it should be de-listed for that pollutant.

3.6 Groundwater Conditions (Draft Project Report, pp. 54-55). The TMDL discusses groundwater conditions in the Santa Maria Basin, but does not differentiate between the upper and lower aquifer. There are significantly different conditions within the upper and lower aquifer. The Draft Project Report should include a discussion of the different portions of the basins, and assess how the concentration-based approach in the TMDL could impact the lower aquifer through both increased groundwater demands on the lower aquifer (as growers seek cleaner water) and the migration of contaminants from the upper to the lower aquifer.

3.7 Groundwater/Surface Water Connectivity (Draft Project Report, pp. 56-58). The TMDL discusses the general connectivity between shallow groundwater and surface flow, and the potential loading from groundwater. However, the Draft Project Report should more fully assess this relationship in the context of the use of the concentration-based approach to the final allocations, interim allocations, and targets. The concentration-based approach will likely increase the loading to surfaces from shallow groundwater underflows as agricultural users reduce the use of shallow groundwater for irrigation purposes. The TMDL should assess this possibility and account for increased loading from shallow groundwater. The City believes that the concentration-based approach will ultimately make it difficult to meet the final allocations, interim allocations, and targets, because it will not allow stakeholders to comprehensively address the legacy groundwater problem.

3.8 Biostimulatory Conditions in Bradley and Blosser Channels (Draft Project Report, p. 68). The City appreciates the Regional Board's decision not to propose numeric targets, TMDLs, or allocations to protect against biostimulatory conditions in these two channels. As the Regional Board is aware, the City is working with all stakeholders within the Santa Maria Valley to pursue treatment systems to improve water quality within these flood control structures that will provide significant pollutant reduction within the watershed. This includes an agricultural tailwater denitrification system for the treatment of flows conveyed within the Bradley Channel. However, just as with biostimulatory conditions, neither should concentration-based nitrate allocations and targets be applied to these channels. The concentration based allocations and targets will also likely prevent the implementation of these valuable treatment systems. Consistent with the Regional Board's approach to the biostimulatory conditions, the Regional Board should not impose a concentration-based allocation that will undermine the potential to implement these treatment systems.

3.9 Numeric Targets (Draft Project Report, pp. 71-85). Consistent with the City's other comments, the City believes that the numeric targets (other than for

unionized ammonia) should be expressed in terms of mass load rather than concentrations. While the City understands that the numeric targets expressed in a TMDL are derived from the Basin Plan and are not enforceable through the TMDL alone, the numeric targets and interim allocations of a TMDL drive implementation options. Here, as noted above, the concentration-based approach will impair viable implementation options.

3.10 Annual Loads (Draft Project Report, pp. 85-103). Based upon comments from Regional Board staff at the public workshop on the TMDL, the City understands that the Regional Board staff may be reluctant to express the allocations and targets in the TMDL as mass loads because of technical difficulties in quantifying such allocations and targets. However, this section of the Draft Project Report, as well as the TMDL Allocations section discussed in the following comment, appears to contain more than sufficient information to express the allocations and targets as mass loads rather than concentrations. The City urges the Regional Board to use this existing information to express the TMDL in terms of mass loads.

3.11 TMDL Allocations (Draft Project Report, pp. 104-119). The Draft Project Report asserts on page 104 that “[e]xpressing the TMDL as a nitrate concentration equal to the water quality objectives and numeric targets provides a direct measure of the nitrogen compounds and orthophosphate levels in the watershed to compare with water quality objectives and provides a measureable target for sources to monitor and with which to comply.” There are several reasons why the City disagrees with this statement. First, as the Regional Board staff itself acknowledged on page 14 of its responses to comments on the Salinas River Nutrient TMDL, “a concentration-based load allocation expression may not adequately provide meaningful connection to on-the-ground implementation decisions.” It may not tell “us much about how much pollution is being reduced or the efficacy of implementation practices.” Since the fundamental goal of a TMDL is to reduce the overall load of pollutants to impaired waters, the concentration-based approach will not help the stakeholders measure the load reduction and efficacy of their implementation practices. Second, and for similar reasons, the concentration-based approach does not provide *meaningful* measureable targets for sources to monitor and with which to comply. The concentration-based approach may actually impair meaningful implementation measures that would result in better overall load reduction as concentrations increase with decreased flow. It may force implementation approaches that are designed to achieve the concentration targets, but that do not reduce overall loading. Third, the Regional Board staff has the information to express the allocations as mass loads, and such mass load allocations and interim reduction targets would provide meaningful measureable targets for sources to monitor and with which to comply.

3.12 Implementation for Discharges from Irrigated Lands (Draft Project Report, pp. 129-131). As the Draft Project Report identifies on page 101, cropland and groundwater sources are the dominant sources of nutrient loading in the TMDL project area. Therefore, the TMDL and its implementation options must be fashioned in a holistic way to allow the maximum reduction in loads from irrigated lands. This will provide the most “bang for the buck”. Without load reductions from cropland and

groundwater sources, it will be infeasible to address the impairment. In this regard, the City is concerned about the statement that the "current Agricultural Order provides the requirements necessary to implement this TMDL." The City is concerned that the concentration-based approach of the TMDL may ultimately drive regulatory decisions, including decisions about the Agricultural Order, that are not in the overall best interests of all the stakeholders in the watershed. For example, the City questions whether the use of the "pump-and-fertilize" approach will ultimately be consistent with the concentration-based allocations in the TMDL. The City recognizes that page 131 of the Draft Project Report allows Regional Board staff to assess compliance with the load allocations using, among other things, "annual and seasonal receiving water mass load reductions consistent with current load reduction estimates" However, that same page indicates that compliance may also be measured by achievement of the concentration-based allocations and targets alone. Since the measurement of compliance is phrased to give the Regional Board, not the discharger, flexibility in this compliance assessment, dischargers have no assurance that compliance with mass load reductions alone will be sufficient for compliance purposes. This will, in turn, drive the poor implementation decisions discussed throughout this letter. To avoid this result, the Regional Board should be specific that compliance with the mass load reductions will be sufficient to establish compliance with the TMDL even if the concentration-based allocations are not achieved.

3.13 Implementation for Discharges from MS4 Stormwater Entities (Draft Project Report, pp. 132-136). The City has the same concerns about the implementation actions and compliance options for MS4s as expressed above with regard to irrigated lands. First, the City requests that the Regional Board revise the TMDL to make it clear that BMP implementation or the demonstration of load reductions on a mass basis is sufficient, standing alone, to demonstrate compliance. Second, the City believes that more time to develop the Wasteload Allocation Attainment Program should be provided. The City believes that the WAAP would best achieve its purpose if developed in the context of a more comprehensive approach to load reduction. This will likely require more than one year to develop. Finally, the City requests that the Regional Board confirm that the allocations in the TMDL will be incorporated into applicable NPDES permits, if at all, only through a BMP-based approach.

3.14 Non-Regulatory Interim Reduction Goals (Draft Project Report, pp. 136-137). The City thanks the Regional Board staff for establishing a 30 year TMDL achievement date. The City also understands that the interim reduction goals set forth on page 137 are not waste load allocations or enforceable water quality standards. However, in practice, these interim goals often are used by the Regional Boards or third-parties as a measuring stick akin to enforceable requirements. Therefore, care should be taken in how they are expressed and measured. The City therefore requests that the TMDL be revised to make it clear that achievement of the interim reductions goals will not be measured through a concentration-based approach. Rather, achievement should be measured through BMP implementation or mass load reductions only. The City acknowledges that on page 138 of the Draft Project Report the Regional Board provides that "measures of TMDL implementation process will not necessarily be limited to receiving water column concentration-based metrics"

However, this does not provide sufficient flexibility for the City to measure its achievement of the interim goals through only a BMP based or mass load based approach.

3.15 Suggested Management Measures (Draft Project Report, pp. 138-141). The City believes that the Regional Board should add a discussion of "pump-and-fertilize" as a management measure for agricultural sources.

3.16 Monitoring (Draft Project Report, pp. 141-144). The City believes that the monitoring requirements should focus on mass load reductions and not on concentration-based approaches.

3.17 Timeline and Milestones (Draft Project Report, pp. 144-148). As noted above, the City appreciates the 30 year timeline for achievement of the allocations. However, even this period of time may be insufficient to achieve the concentration-based allocations. For this reason, the City believes that the TMDL's allocations should be expressed only in terms of mass loads. If the TMDL's allocations are expressed only in terms of mass loads, the 30 year timeline may be sufficient to address the impairment.

3.18 Review of Water Quality Standards/Delisting Decisions (Draft Project Report, pp. 150-151). As noted already in this comment letter, the City urges the Regional Board to address the water quality standards and potential delisting of the Blosser Channel, Bradley Channel, and Main Street Canal now. Addressing these issues now, rather than later, will allow the City and other stakeholders to focus on the real problems and comprehensive solutions to them. Also, addressing these issues now may facilitate treatment approaches that could rely upon these flood control facilities for conveyance purposes.

3.19 Nutrient Trading. The Draft Project Report does not address nutrient trading in any detail and the concentration-based approach taken in the TMDL will undermine nutrient trading approaches. The Draft Project Report should address nutrient trading as a compliance approach. If the Regional Board does not convert the allocations to a mass load basis only, the Draft Project Report should also assess the impacts of the concentration-based approach on a nutrient trading system and allow for exceptions from the concentration-based allocations if necessary to achieve load reductions through nutrient trading.

3.20 Cost Estimate (Draft Project Report, pp. 152-161). The cost estimates contained in the Draft Project Report do not take into account the groundwater treatment costs that will be required because of the TMDL's concentration-based approach. Because the TMDL's approach will impair the ability to implement a "pump-and-fertilize" approach, legacy contamination in shallow groundwater will not be addressed. The costs associated with addressing this contamination should be assessed as a direct result of TMDL implementation. Similarly, the cost of alternative groundwater supply for municipal purposes must be assessed as a direct result of the TMDL. As noted in this comment letter, the concentration-based approach will cause

increased demands on groundwater currently used for municipal supply and could also cause contamination of that water. To assess the true costs of the TMDL, these costs should be estimated and included in the Draft Project Report.

III. COMMENTS ON THE SUBSTITUTE ENVIRONMENTAL DOCUMENT AND ANALYSIS

As the Regional Board correctly acknowledges, it is exempt from certain aspects of CEQA compliance pursuant to its status as a certified regulatory program. (Pub. Res. Code, § 21080.5, Cal. Code of Reg., tit. 14 ["State CEQA Guidelines"], § 15251(g); Cal. Code Regs., tit. 23, § 3720 et seq.) Accordingly, the Regional Board may use a substitute environmental document ("SED") instead of preparing an Environmental Impact Report ("EIR"). (*San Joaquin River Exch. Contractors Water Auth. v. SWRCB* (2010) 183 Cal.App.4th 1110, 1125.) However, the Regional Board remains subject to all of those aspects of CEQA outside the scope of the exemption for certified regulatory programs, including CEQA's policy goals and substantive standards. (State CEQA Guidelines, § 15250; *City of Arcadia v. SWRCB* (2006) 135 Cal.App.4th 1392, 1422; *Env'l Protection Info. Ctr. v. Johnson* (1985) 170 Cal.App.3d 604, 616; *Californians for Native Salmon & Steelhead Assn. v. Dept. of Forestry* (1990) 221 Cal.App.3d 1419, 1422.)

Accordingly, CEQA's basic policy goal to "[i]nform governmental decision makers and the public about the potential, significant environmental effects of proposed activities" still applies. (State CEQA Guidelines, § 15002(a)(1).) SEDs, like EIRs, achieve this objective by, among other things, eliminating or minimizing a proposed action's significant effects by identifying reasonable alternatives and mitigation measures. In assessing the impact of a proposed project on the environment, an agency normally examines the changes in existing environmental conditions in the affected area that would occur if the proposed activity is implemented. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 660.) In evaluating the significance of environmental effects of a project, the lead agency must consider direct and reasonably foreseeable indirect physical changes in the environment which may be caused by the project. (Pub. Res. Code, § 21065; *Citizens for Responsible & Open Gov't v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1333.)⁴

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 as an EIR would. (*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

⁴ "Direct impacts" are those occurring at the same time or place as the project, while "indirect impacts" are those that are reasonably foreseeable to occur at some distance or at a later time. (State CEQA Guidelines, § 15358.)

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, § 15252(a); *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1229; *Ebbetts Pass Forest Watch v. Dept. of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 943; *Katzeff v. Dept. of Forestry & Fire Protection* (2010) 181 Cal.App.4th 601, 608; *County of Santa Cruz v. State Bd. of Forestry* (1998) 64 Cal.App.4th 826, 830.) Just as for EIRs, the conclusions of substitute environmental documents must be based on scientific and other empirical evidence. (*Ebbetts Pass, supra*, at 957-958; *Joy Rd. Area Forest & Watershed Assn. v. Dept. of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 677; *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1047.)

The TMDL appropriately acknowledges that the Regional Board must comply with CEQA when it considers the TMDL, and the Board has accordingly prepared the SED. Unfortunately, the City has several concerns with the SED's sufficiency as a CEQA document, and is concerned that the SED does not sufficiently assess and analyze the TMDL's impacts in, among other things, the areas of water resources, agricultural resources, biological resources, cumulative impacts, and mitigation measures. In addition, the SED fails to consider feasible alternatives that could reduce the TMDL's significant environmental impacts and eliminate some of the above-described problems. The City's specific comments on the SED are set forth below:

3.1 Baseline. The SED does not appear to identify what baseline is being used to measure the impacts of the Project. (See, e.g., SED at 3.) Because an understanding of the existing environmental baseline/current conditions is necessary to measure the impacts of a project, a disclosure of the baseline being used to assess the different environmental impacts is vital. The SED is deficient as currently drafted because it fails to identify the environmental baseline/current conditions.

3.2 Water Resources. The TMDL concentration-based approach will likely have a significant impact on water resources that has not been disclosed or analyzed in the SED. Under the TMDL as proposed, it is reasonably foreseeable that many farmers will not continue to irrigate using nitrate-contaminated shallow groundwater, but will instead install deeper wells. This will, in turn, create two interrelated impacts to water resources. First, it will impact current use of the lower aquifer by the City for municipal supply purposes. By increasing demand for the water in the lower aquifer, the TMDL may create water rights issues and impact supply. Second, increased use of the lower aquifer will result in the migration of nitrate-contaminated shallow groundwater into the lower aquifer. This will reduce the value of the lower aquifer for water supply purposes and create expensive clean-up requirements. These reasonably foreseeable impacts need to be disclosed and analyzed in the SED, and the conclusion of impact significance for Hydrology and Water Quality Issue (f) changed accordingly.

In addition, the SED notes that "[r]easonably foreseeable structural compliance methods that involve land disturbance could cause increases in turbidity and suspended sediment loads . . . episodically and at local-scales, which may violate Basin Plan water

quality standards for turbidity and suspended [solids]." (SED at 37.) Additional analysis should be included in the SED explaining why short term violations of Basin Plan standards as to turbidity and suspended solids do not constitute a violation of water quality standards or a significant impact, and how those violations are fully counter-balanced by long-term improvements to nutrient contamination, a completely different kind of environmental issue.

3.3 Agriculture. Adoption and implementation of the TMDL may also have negative impacts on agricultural resources in the region. In the SED, the Regional Board expresses a concern about the pollution of surface and ground waters caused by irrigation (SED at 4) and has proposed aspects of the TMDL accordingly. While the SED states that the TMDL does not "require" that any agricultural lands be taken out of production (SED at 25), that is not CEQA's standard. It is a reasonably foreseeable result of the Project that some agricultural operations may cease in response to the limitations of the TMDL and the expense of complying. The SED does not recognize this foreseeable, potentially adverse impact, and has no discussion of the potential cost of compliance or the foreseeable impacts of such. If the Project results in farmland being fallowed, which is a reasonably foreseeable result of discontinuation of use, that could lead to additional indirect impacts to air quality, biological resources, and geology and soils (due to loss of topsoil). (See, e.g., *Westlands Water Dist. v. U.S.* (E.D. Cal. 1994) 1994 U.S. Dist. LEXIS 6260, *7-8 [increased land fallowing has attendant increases in fugitive dust emissions]; Brian E. Gray, *The Market and the Community: Lessons from California's Drought Water Bank* (2008) 14 *Hastings W.-N.W. J. Env. L. & Pol'y* 41, 87 [fallowing land reduces food and nesting habitat for wildlife]; *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 PM10 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 24.) The SED should be revised to recognize and analyze these potential direct and indirect impacts.

While the SED does recognize that 233 acres of land could be taken out of production if all growers choose to install buffer strips, it finds that conversion of 233 acres to a non-agricultural use is not a significant project-specific impact. However, nowhere does the SED disclose the past, present, or reasonably foreseeable future projects that may also be resulting in the conversion of farmland to non-farm uses or evaluate the cumulative impacts of the loss of 233 acres in addition to these other losses. The County of Santa Barbara alone lost more than 10,000 acres of agricultural land between 2006-2008 (http://www.conservation.ca.gov/dlrp/fmmp/pubs/2006-2008/Documents/0608appendix_a.pdf) and this loss of agricultural land has continued. Loss of much less farmland than is anticipated in the SED has been found to be a significant environmental impact in published CEQA

cases. (*Citizens for Open Govt. v. City of Lodi* (2012) 205 Cal.App.4th 296, 320-21 [conversion of 40 acres of prime farmland to non-agricultural uses a cumulatively considerable impact]; *Cherry Valley Pass Acres v. Sunny-Cal Egg & Poultry Co.* (2010) 190 Cal.App.4th 316, 347-350 [conversion of 200-acre site to non-farm uses a significant impact on agricultural resources].) This section, or at least the cumulative impacts analysis, should be revised accordingly and the impact conclusion revisited.

3.4 Air Quality. For Air Quality Issue (c), the SED states that " The implementation of structural BMPs that could result in fine particulate matter and vehicle emissions, such as the BMPs [for] land disturbance and excavation[,] could contribute to the problems with these pollutants. However, any contribution would be very small, and nominal given both the temporary nature of any such impacts and the fairly small nature of any such construction activity given the size of the basin." (SED at 27.) The SED then comes to a conclusion of less than significant for Air Quality Issue (c), as well as for Issue (d).

Unfortunately, little or no evidence is given that supports these conclusions. How much would the contribution be? Is the air basin in compliance with all the pollutants of concern that could be generated? What is the extent of the structural BMPs that might be implemented, resulting in how much construction and how much air pollution/traffic? The discussion as to these impacts is too conclusory, with no substantial evidence put forth to support the conclusions of no impact. It also appears to conflict with the analysis in other sections of the SED, including the Biological Resources section, which states that there are structural compliance methods that "involve significant earth-moving or land disturbance" (*id.* at 28) and the cultural resources section, which recognizes that the Project may result in "construction of large-scale infrastructure." (*id.* at 33.) These sections should be made consistent, and the facts and estimates supporting the conclusion of less than significant should be disclosed and the conclusions revisited. In addition, the air quality standard for issue (e) is whether the Project will create any objectionable odors. (*id.* at 28.) However, the analysis of this impact appears to have been cut and pasted wholesale from the analysis in air quality issue (d), without any discussion of odors at all.

3.5 Biological Resources. Adoption and implementation of the TMDL could also have potentially adverse impacts to biological resources. Because the Project may result in the discontinuation of agriculture on some land within the Project area, it is reasonably foreseeable that some owners of this land could choose to develop that land into residential or commercial uses. More intense land uses could result in adverse impacts upon wildlife. Birds, rodents, and listed and special status species have historically used wildlands and farmlands as habitat, and this fauna could be displaced upon land use conversion. While the SED recognizes potentially significant impacts to biological resources due to implementation of structural compliance and other measures (SED at 29), it does not analyze or mitigate for this additional impact to biological resources.

3.6 Greenhouse Gases ("GHGs"). The SED concludes that there will be a less-than-significant impact related to the generation of GHG emissions as a result of

the Project. (SED at 35.) The SED admits that short-term increases in traffic during the construction and installation of structural compliance methods are a foreseeable impact of the Project, but states that they “would not be anticipated to rise to the level of a substantial adverse change on the climate.” (*Ibid.*) However, this discussion is largely conclusory, with little or no facts or data supporting the conclusion of less than significant and no impact. How much GHGs may be generated as a result of the Project upon wide-spread adoption of the structural compliance method? Are there any applicable thresholds of significance? Would the amount of GHGs violate any threshold that has been set? In order to understand and fully support the conclusions as to significance, this section should be revised and additional data and analysis added.

3.7 Transportation/Traffic. The Traffic section of the SED states that the Project will not result in any potentially substantial adverse increase in traffic. (SED at 43.) However, the GHG section admits that a short-term increase in traffic during construction and installation of the structural compliance methods is a foreseeable impact of the Project. (*Id.* at 35.) This potential level of increase in traffic should be disclosed in the traffic section as well, and the impacts analyzed in both sections.

3.8 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 Info. Ctr.*, *supra*, 170 Cal.App.3d at 616.) “Cumulatively considerable” impacts means that 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 has less than half a page devoted to cumulative impacts, and comes to a conclusion of less than significant. However, the support for this conclusion appears insufficient, as the analysis does not identify any other past, present, or future projects that the Project's impacts are being evaluated with. In addition, its conclusion of “Less than Significant” is puzzling, since the Project itself will result in two identified, project-specific significant impacts. (See SED at 16, 23.) The SED does not support how the Project alone can have a significant impact, but, when the impact is added to the impacts of all other past, present, and future projects, the impacts are less than significant. In addition to the two identified project-specific impacts that should also be found to be cumulatively significant, as discussed above the Project will also likely result in significant cumulative impacts to agriculture, even if the potential loss of 233 acres of agricultural land is not significant on a project-specific level. This is especially true because of the insufficiency of the mitigation for reducing those impacts (discussed below).

3.9 Mitigation. The Regional Board has an independent obligation to rely upon substantial evidence to support its conclusion that impacts are mitigated to a less-than-significant level. (*Communities for a Better Env't v. Cal. Resources Agy.* (2002) 103 Cal.App.4th 98.) For the two impacts to agricultural resources that are identified as less than significant with mitigation, the Regional Board provided no such evidence. Mitigation measures must be enforceable and mandatory, but the Regional Board

merely identifies “[p]ossible mitigation strategies” rather than enforceable mitigation. It does not fully define what these measures consist of, much less make them mandatory and enforceable, or analyze any potential environmental impacts that the mitigation measures themselves may have. (SED at 26.)

The fact that mitigation is outside the jurisdiction of the lead agency does not excuse the agency from meaningfully analyzing and mitigating for an impact if information is available to determine the impact. (*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.) Merely because the Regional Board may be “prohibited from specifying the manner of compliance with its regulations” (SED at 2) does not signify that mitigation measures can be overlooked, not analyzed, or not adopted as part of the Project approvals.

3.10 Alternatives Analysis. In a SED, the Regional Board is required to include “[a]n analysis of reasonable alternatives to the project.” (Cal. Code Regs., tit. 23, § 3777(b)(3); *Friends of the Old Trees, supra*, 52 Cal.App.4th at 1403-1405.) However, in analyzing only the proposed Project, a No Action alternative, and a patently infeasible alternative that would require the elimination of all farming and other activities that contribute to discharge of nutrients, the alternatives analysis does not comport with CEQA’s requirements. Other alternatives could avoid some of the significant environmental impacts of the Project, and these should be included and analyzed.

For example, the Regional Board should include a mass load based approach as an alternative to the concentration-based approach of the Project. This alternative would allow for the implementation of “pump-and-fertilize” approaches that would reduce some or all of the impacts associated with the Project. This alternative would study a more “holistic” approach to the impairment, not the narrow, concentration-based approach taken in the TMDL. This alternative could also include an assessment of alternative treatment approaches that are designed to significantly reduce the mass loading of nitrate.

The City acknowledges that in its responses to comments on the Salinas Nutrient TMDL, the Regional Board staff took the position that it is “not required in a CEQA-SED to consider alternatives [to] the concentration-based numeric targets and TMDLs for biostimulatory substances.” (Response to Comments, p. 21.) The City believes that the Regional Board’s position is not consistent with the requirements of CEQA. The City further believes that if the Regional Board were to analyze the mass load approach, it would conclude that such an approach is significantly better from both the CEQA and pollutant reduction perspectives.

IV. CONCLUSION

For all the reasons expressed above, the City requests that the Regional Board not move forward with the TMDL as currently proposed. To achieve the shared goal of load reductions, the City urges the Regional Board to prepare and consider adoption of a TMDL using a mass load approach that will allow for more "holistic" implementations options. The City stands ready to work with the Regional Board on such an approach.

The City appreciates your time in considering these comments. If you have any questions or need further information, please feel free to contact Shannon Sweeney, Water Resources Manager, at (805) 925-0951, extension 7416.

Sincerely,



FOR

RICHARD G. SWEET, P.E.
Director of Utilities

ATTACHMENT B



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May 29, 2013

VIA ELECTRONIC MAIL [LHARLAN@WATERBOARDS.CA.GOV]

Larry Harlan
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Re: Responses to Comments on Santa Maria Nutrients TMDL

Dear Mr. Harlan:

Best Best & Krieger LLP represents the City of Santa Maria and submits this letter on its behalf. The City submitted comments in February 2013 on the Regional Board's proposed Total Maximum Daily Loads for Nitrogen Compounds and Orthophosphate in the Lower Santa Maria River and Oso Flaco Lake Watersheds ("TMDL") and associated Substitute Environmental Document ("SED"). The City has reviewed the responses to comments ("RTCs") on the TMDL and SED, but is concerned that the RTCs do not adequately address the deficiencies identified in detail in the City's comment letter, including the SED's deficiencies pursuant to California Environmental Quality Act ("CEQA") compliance. While the City appreciates that some of its comments appropriately led to revisions in the SED, many of the serious issues identified in the comment letter remain. Because many of the City's comments are not adequately addressed in the RTCs, those comments remain valid and relevant.

Because of the continuing legal deficiencies in the TMDL and the SED, the City remains adamantly opposed to adoption of the TMDL as drafted. The City hereby requests that the Regional Board revise the SED to make it fully compliant with CEQA and recirculate it, and revise the TMDL accordingly, before taking action.

The Responses to Comments Fail to Adequately Respond to the City's and Others' Comments

The responses to comments fail to adequately respond to all comments submitted on the SED, including failing to adequately respond to comments submitted by the City. Certified regulatory programs must issue written responses to significant environmental points raised during the evaluation process, particularly those raised by agencies having jurisdiction over the proposed project. (Pub. Res. Code, § 21080.5(d)(2)(D); *Ebbetts Pass Forest Watch v. Dept. of Forestry & Fire Protection* (2008) 43 Cal.4th 1373, 1381; *Env'l Protection Info. Ctr. v. Maxxam Corp.* (1992) 4 Cal.App.4th 1373, 1381.) The standard for responses to comments on environmental



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documents prepared for a certified regulatory program is generally the same as the standard for EIRs. (*Ebbetts Pass Forest Watch v. Dept. of Forestry & Fire Protection* (2004) 123 Cal.App.4th 1331, 1356; *Dunn-Edwards Corp. v. SCAQMD* (1993) 19 Cal.App.4th 519, 534.)

The Responses to Comments violate CEQA because they fail to adequately address comments, suggestions, and recommendations made by the City and others. These include, but are not limited to, comments relating to the SED's failure to adequately analyze cumulative impacts (or come to a correct conclusion as to their significance); the improper deferral of analysis based on the fact that the SED is a program-level document; the failure to add significant additional information to the SED and recirculate it; the mitigation measures remain uncertain and unenforceable; and the SED's continuing failure to analyze feasible alternatives to the TMDL (such as lesser requirements or a longer timeframe for adopting them), which could reduce some of the TMDL's impacts. Approval of a proposed activity must be denied if there are feasible alternatives or mitigation measures that would substantially lessen any significant adverse environmental impact. (Pub. Res. Code, § 21080.5(d)(2)(A).)

Regarding additional issues raised by specific RTCs, the RTCs admit that the baseline/environmental setting is not included in the SED. Instead, the baseline/environmental setting is set forth in a different document that was incorporated by reference. However, there are specific requirements for incorporation by reference, which were not met, and such incorporation was inappropriate for baseline conditions in any case. The SED also does not contain an adequate project description, and such is also not properly incorporated by reference. Additionally, the SED and RTCs admit that the Regional Board does not have the power to require any of the proposed mitigation measures, an admission that the mitigation measures discussed in the SED are illusory. Because the mitigation cannot be required, it cannot be assured of lessening impacts, and therefore the impacts that are or would be less than significant with mitigation incorporated must be found to be significant. Furthermore, the RTCs regarding farmland appear confused, improperly dismiss cumulative impacts to agriculture in the region, and appear to both make the statement that the loss of Farmland of Local Importance is of no concern to CEQA (which is not true) and that, if the other categories of Important Farmland are merely downgraded to Farmland of Local Importance (or Grazing Lands), there is no impact (which is contradictory with the previous statement and also not true). In addition, it relies only on the numbers relating to agriculture from 2006-2008, ignoring earlier trends from 2004-2006 (available at: http://redirect.conservation.ca.gov/DLRP/fmmp/pubs/2004-2006/conversion_tables/sbacon06.xls) and more recent trends from 2008-2010 (available at: http://redirect.conservation.ca.gov/DLRP/fmmp/pubs/2008-2010/conversion_tables/sbacon10.xls).

In addition to the concerns discussed above, the existence of other related actions, including the promulgation of other TMDLs in the same geographic area and completely separate



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environmental review, appears to entail improper project segmenting, and the SED relies on an outdated environmental checklist and therefore fails to analyze certain environmental issues. Also, there does not appear to be any Mitigation Monitoring and Reporting Program or appropriate findings, including a Statement of Overriding Considerations, that are being adopted as part of TMDL approvals. The lack of these also constitute violations of CEQA. To the extent any are relied upon, these were not made available to the public prior to approval, making review of (and exhaustion on) these impossible.

Conclusion

The City believes that the TMDL and associated SED remain legally inadequate in a large number of respects, including those identified above and in their previous letter. For this reason, the City urges the Regional Board to address these inadequacies fully before taking any action on the proposed TMDL. The City urges the Regional Board to reject premature action on the inadequately reviewed TMDL in order to prevent the City, its constituents, and others from unnecessarily suffering the brunt of the TMDL's significant, inadequately analyzed and disclosed environmental impacts.

As always, the City would be happy to discuss any of the above and other ways to ameliorate the identified problems, in order to determine the best way to address all concerns in a satisfactory manner.

Sincerely,

A handwritten signature in black ink, appearing to read 'SHAWN HAGERTY'.

Shawn Hagerty
of BEST BEST & KRIEGER LLP