

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2010-0038**

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE CENTRAL COAST REGION (BASIN PLAN) TO (1) ADD THE APTOS CREEK WATERSHED TO THE HUMAN FECAL MATERIAL DISCHARGE PROHIBITION AND THE DOMESTIC ANIMAL WASTE DISCHARGE PROHIBITION, AND
(2) ESTABLISH TOTAL MAXIMUM DAILY LOADS FOR PATHOGENS IN APTOS CREEK, VALENCIA CREEK, AND TROUT GULCH

WHEREAS:

1. On May 08, 2009, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) adopted Resolution No. R3-2009-0025 ([Attachment I](#)) amending the Basin Plan to add the Aptos Creek Watershed to the Human Fecal Material Discharge Prohibition, add the Aptos Creek Watershed to the Domestic Animal Discharge Prohibition, and establish Total Maximum Daily Loads (TMDLs) for pathogens in Aptos Creek, Valencia Creek, and Trout Gulch.
2. The elements of a TMDL are described in 40 Code of Federal Regulations (CFR) sections 130.2 and 130.7 and section 303(d) of the Clean Water Act (CWA), and U.S. Environmental Protection Agency 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 Central Coast Water Board has determined that the TMDLs for pathogens in the Aptos Creek Watershed have been set at levels necessary to attain and maintain the applicable numeric water quality objectives, 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 section 130.7 also state that TMDLs must take into account critical conditions for stream flow, loading, and water quality parameters. TMDLs are often expressed as a mass load of the pollutant but can be expressed as a unit of concentration if appropriate (40 CFR §130.2(i)). Expressing these TMDLs as units of concentration is appropriate because in this case an existing concentration-based water quality objective was used as the basis for the TMDLs’ numeric target.
3. The Central Coast Water Board may, pursuant to California Water Code section 13243, specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted (i.e., prohibitions). The Implementation Plan for the TMDLs for the Aptos Creek Watershed requires compliance with the Human Fecal Material Discharge Prohibition and the Domestic Animal Waste Discharge Prohibition for discharges in the Aptos Creek Watershed. Supporting documentation for adding the Aptos Creek Watershed is provided in the Final Project Reports for Total Maximum Daily Loads for Pathogens in Aptos Creek, Valencia Creek and Trout Gulch. Consistent with California Water Code section 13244, the Central Coast Water Board complied with public notice and hearing requirements for adding the Aptos Creek Watershed to the Human Fecal Material Discharge and the Domestic Animal Waste Discharge Prohibitions.

4. The Central Coast Water Board found that the establishment of these TMDLs is consistent with the provisions of the State Water Resources Control Board (State Water Board) Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California" and 40 CFR 131.12. Adoption of these TMDLs will result in improved water quality throughout the region and maintain the level of water quality necessary to protect present and potential beneficial uses.
5. The Central Coast Water Board concurred with the analysis contained in the Final Project Report, the California Environmental Quality Act substitute environmental documentation for the Basin Plan Amendment, including the CEQA Checklist, the staff report and the responses to comments, and found that these analyses comply with the requirements of the State Water Board's certified regulatory CEQA process, as set forth in California Code of Regulations, Title 23, section 3775 et seq. Furthermore, the Central Coast Water Board found that these analyses fulfill the Central Coast Water Board's obligations attendant with the adoption of regulations "requiring the installation of pollution control equipment, or a performance standard or treatment requirement," as set forth in section 21159 of the Public Resources Code. The Central Coast Water Board's environmental analysis has taken into account a reasonable range of environmental, economic, and technical factors.
6. The State Water Board finds that the Basin Plan amendment is in conformance with Water Code section 13240, which specifies that Regional Water Quality Control Boards may revise Basin Plans; section 13242, which requires a program of implementation to achieve water quality objectives; and section 13243 which authorizes Regional Water Quality Control Boards to specify certain conditions or areas where the discharges of certain types of waste will not be permitted. The State Water Board also finds that the three TMDLs, as reflected in the Basin Plan amendment, are consistent with the requirements of federal CWA section 303(d).
7. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subd. (b). The necessity of developing a TMDL is established in the TMDLs staff report, the CWA section 303(d) List of Water Quality Limited Segments, and the data contained in the administrative record documenting the pathogen impairments of the Aptos Creek Watershed.
8. A Basin Plan amendment does not become effective until approved by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law (OAL). The TMDLs must also receive approval from the U.S. Environmental Protection Agency (U.S. EPA).

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendment to the Basin Plan adopted under Central Coast Water Board Resolution No. R3-2009-0025.

2. Authorizes the Executive Director or designee to submit the amendment adopted under Central Coast Water Board Resolution No. R3-2009-0025, as approved, and the administrative record for this action to the OAL and the TMDLs to the U.S. Environmental Protection Agency for approval.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 3, 2010.

AYE: Chairman Charles R. Hoppin
 Vice Chair Frances Spivy-Weber
 Board Member Arthur G. Baggett, Jr.
 Board Member Tam M. Doduc
 Board Member Walter G. Pettit

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board