

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION  
San Luis Obispo, California**

**RESOLUTION NO. R3-2004-0165  
DECEMBER 03, 2004  
ADOPTING A  
TOTAL MAXIMUM DAILY LOAD AND IMPLEMENTATION PLAN FOR NUTRIENTS  
IN LOS OSOS CREEK, WARDEN CREEK, AND WARDEN LAKE WETLAND**

**The California Regional Water Quality Control Board, Central Coast Region, hereby finds:**

1. The California Regional Water Quality Control Board, Central Coast Region (Regional Board), adopted the Water Quality Control Plan for the Central Coastal Basin (Basin Plan), on September 8, 1994. The Basin Plan includes beneficial use designations, water quality objectives, implementation plans for point source and nonpoint source discharges, and statewide plans and policies.
2. Section 303(d) of the Clean Water Act requires states to identify and prepare a list of water bodies that do not meet water quality standards and establish TMDLs for the listed water bodies. A TMDL is the loading capacity of a pollutant that a water body can accept while protecting beneficial uses. TMDLs can be expressed in terms of either mass per time, concentration, or other appropriate measure [40 CFR §130.2(i)].
3. Los Osos Creek was identified in 1998 as impaired by nutrients and is included on the 2002 Clean Water Act Section 303(d) list of impaired water bodies. Therefore, the Regional Board is required to adopt a TMDL and associated Implementation Plan (40 CFR 130.6(c)(1), 130.7, Water Code section 13242). However, the listing does not specify whether it was based on violations of the narrative objective for biostimulatory substances, for violations of objectives for particular nutrients, or a combination.
4. Los Osos Creek is located entirely within San Luis Obispo County.
5. The Final Project Report contains a Problem Statement, Numeric Targets, Source Analysis, Total Maximum Load, Linkage Analysis, Load Allocations, Margin of Safety, an Implementation Plan, and a Monitoring Plan. The report addresses the nitrate portion of the nutrient impairment in the Los Osos Creek watershed and discusses follow-up monitoring to address the remaining impairment to ensure that beneficial uses are protected.
6. The Regional Board has determined that the TMDL for nutrients in Los Osos Creek, Warden Creek, and Warden Lake Wetland (the Los Osos Creek watershed) is set at levels necessary to attain and maintain the applicable numeric water quality objectives for nitrates 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)).
7. The Regional Board finds that the solution to the impairment in the Los Osos Creek watershed is being implemented by an existing action of the Regional Board, the Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands in the Central Coast Region (conditional waivers), and finds that the solution will actually correct the impairment. Therefore, the Regional Board finds that the existing conditional waivers of waste discharge requirements will implement the assumptions of the TMDL in lieu of adopting a redundant program.

8. The Regional Board further finds that the follow-up monitoring to be conducted by Regional Board staff will ensure that beneficial uses are protected.
9. The Morro Bay Volunteer Monitoring Program (VMP) currently monitors nitrate levels in Los Osos Creek and Warden Creek on a monthly basis. Additionally, monitoring for nitrate by landowners, as required according to the Monitoring and Reporting Program set forth in the conditional waivers, will provide information to confirm that this TMDL is sufficient to attain the nitrate objective. Monitoring by the VMP and landowners will provide adequate documentation to determine whether the nitrate portion of the nutrient TMDL is being adequately implemented.
10. Regional Board staff will conduct further monitoring to investigate and obtain information to determine causes of algal blooms and dissolved oxygen conditions that may be causing impairments. Regional Board staff will develop a monitoring plan to address the remaining impairment to ensure that beneficial uses are protected as soon as protocols to meet the objectives of monitoring are developed, or in conjunction with the first three-year review. Regional Board staff will implement the monitoring plan and collect data for three years; this period of data collection should be sufficient to make a definitive assessment of whether there are exceedances of the narrative biostimulatory objective in the Los Osos Creek watershed. Regional Board staff will review the continuing and expanded monitoring results every three years. At each three-year review, Regional Board staff will determine whether these studies result in improved information by which to evaluate whether there are exceedances of the narrative biostimulatory objective and, if so, to set numeric targets for such impairment. Regional Board staff will also review the TMDL to determine if revisions are necessary. Regional Board staff will present any necessary revisions of this TMDL (problem statement, numeric targets, implementation plan, etc.) to the Regional Board for approval, or, if appropriate, a separate TMDL for overall nutrient or biostimulatory substance impairment to address the algal growth and corresponding low dissolved oxygen. However, if protection of beneficial uses is demonstrated (i.e., the data do not show exceedances of the biostimulatory objective and the nitrate objectives are attained) then Regional Board staff will propose de-listing of the waterbody for nutrient impairments.
11. Regional Board staff has conducted TMDL outreach by coordinating TMDL development with agencies and individuals in the Los Osos Creek watershed. In addition, public review and comment through The December 3<sup>rd</sup> Regional Board meeting provides another formal opportunity for public input prior to adoption of this TMDL. Notice of public hearing was given by notifying newspapers of general circulation within the Region and a copy of the notice was mailed to all persons requesting such notice and affected government agencies.
12. The Regional Board finds that an existing action of the Regional Board (the conditional waiver for irrigated agriculture and associated monitoring), along with monitoring by the VMP makes 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 (California Public Resources Code §21000 et seq.). The Regional 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). Irrigated agricultural landowners are not required to obtain Regional Board approval to continue complying with the conditional waivers. The Regional Board is not “approving” any activity (14 Cal. Code of Regs. §15352); it is merely finding that ongoing activities also satisfy other legislative requirements.
13. The TMDL and Implementation and Monitoring Plan do not allow degradation or a decrease in water quality, and do not approve an activity that produces or may produce a waste or increased volume or concentration of waste or an activity that discharges or proposes to discharge to existing high quality waters. This resolution therefore complies with Resolution 68-16 and 40 CFR §131.12.

14. This TMDL will become effective upon approval by the Regional Board.
15. On December 3, 2004 in San Luis Obispo, California, the Regional Board held a public hearing and heard and considered all public comments and evidence in the record.

**THEREFORE, BE IT RESOLVED,**

1. The Regional Board, after considering the entire record, including oral testimony, adopts the Total Maximum Daily Load for Nutrients in Los Osos Creek, Warden Creek, and Warden Lake Wetland shown in the Final Project Report.
2. The Regional Board finds that the existing action of the Regional Board (the conditional waiver for irrigated agriculture along with associated monitoring), is an appropriate plan for implementation of the TMDL, will be adequate to correct the impairment and is expected to result in attainment of water quality objectives for nutrients in Los Osos Creek. At this time, any further regulatory action to create another program of implementation by the Regional Board would be redundant and unnecessary.
3. These findings shall remain valid as long as Los Osos Creek, Warden Creek, and Warden Lake Wetland attains nutrient objectives no later than January 1, 2015.
4. The Regional Board may revoke these findings if it finds that the conditional waivers are not achieving their goals, are not adequately implemented or are no longer adequate to resolve the impairment.
5. The Regional 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 U.S. EPA 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 Regional Board of any such changes.

**I, Roger W. Briggs, Executive Officer,** do hereby certify the foregoing is a full, true, and correct copy of the resolution adopted by the California Regional Water Quality Control Board, Central Coastal Region, on **December 03, 2004.**

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Executive Officer