

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING DECEMBER 3, 2004

Prepared on November 8, 2004

ITEM: 27

SUBJECT: ADOPTING THE DAIRY CREEK TOTAL MAXIMUM DAILY LOAD FOR DISSOLVED OXYGEN AND IMPLEMENTATION PLAN

BACKGROUND

In 2002 Dairy Creek was listed on California's section 303(d) list of impaired waters for dissolved oxygen. Section 303(d) requires the Regional Water Quality Control Board (Regional Board) to adopt a Total Maximum Daily Load (TMDL) for listed waterbodies. The solution that will correct the impairment addressed by the TMDL is being implemented by a non-regulatory agency, the County of San Luis Obispo.

The Natural Resources Conservation Service, in partnership with the County of San Luis Obispo, and land managers have voluntarily implemented Management Practices along Dairy Creek. Rangeland Management Practices implemented at Dairy Creek included cattle exclusionary fencing with water gaps and riparian revegetation. Improvements to approximately one mile of Dairy Creek were completed during the summer of 1994, with an additional half-mile of the creek fenced during the summer of 1995.

Significant increases in dissolved oxygen levels have been observed as a result of Management Practice implementation, however the water quality objectives for the freshwater habitat beneficial use (COLD) are not yet being met. Management practices that address dissolved oxygen may take several years to be recognized.

The dissolved oxygen TMDL for Dairy Creek is set at 1) a minimum concentration for dissolved oxygen of 7 mg/l to protect the COLD beneficial use and 2) a median value equal to or greater than 85 percent saturation. The allocations, which include background levels, are also equal to the numeric targets. The County of San Luis Obispo Parks Department is given a load allocation equal to the two numeric targets. Monthly

concentrations may not fall below 7 mg/l and annual median values may not fall below 85 percent saturation.

As mentioned, improvements in dissolved oxygen levels are already occurring and should continue to improve as a result of management practice implementation, and are expected to ultimately resolve the impairment and result in TMDL achievement. The County of San Luis Obispo is the owner and land manager of the land on which grazing practices resulted in removing riparian cover such that dissolved oxygen levels were likely impacted due to multiple factors (e.g. decreased canopy, increased temperature). The County of San Luis Obispo's voluntary program does not involve a discharge, and discharges to the waterbodies do not appear to be the cause of the dissolved oxygen impairment. Therefore, the State Water Resources Control Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program does not require a prohibition, waiver, or waste discharge requirements. As such, staff recommends approval of a resolution to adopt a TMDL and implementation plan that consists of existing efforts to improve dissolved oxygen in Dairy Creek.

PUBLIC INVOLVEMENT

Regional Board Staff has conducted TMDL outreach by coordinating the TMDL with agencies and individuals in the Dairy Creek watershed. In addition, public review and comment through this board hearing process provides another formal opportunity for public input for adoption of this TMDL. A public hearing notice was circulated with local newspapers and a copy of the notice was mailed to all persons requesting such notice and affected government agencies.

The Final Project Report for this proposed Board action is available at the Region 3 website at <http://www.swrcb.ca.gov/rwqcb3/Board/Meetings/documents/DEC04agn.pdf>. Staff did not include the entire document in the staff report in order to save paper. Paper copies are available upon request.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

This Board resolution finds that an existing project 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). The Regional Board is not approving any activity; it is merely finding that an ongoing activity also satisfies other legislative requirements.

ANTI-DEGRADATION

This resolution does not allow degradation or lower water quality, and does 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.

COMMENTS

Notice of this item being proposed to the Regional Board was distributed to a list of interested parties and agencies that have indicated interest in the Dairy Creek area.

The public comment period ends on November 22, 2004. Written comments (via mail, e-mail, and fax) concerning the proposed TMDL for Dissolved Oxygen in Dairy Creek received prior to the Regional Board meeting will be considered prior to Board approval.

RECOMMENDATION

Adopt Resolution R3-2004-0166 approving the TMDL for Dissolved Oxygen in Dairy Creek, finding the existing activities of the County will achieve the TMDL.

ATTACHMENTS:

- A. Resolution R3-2004-0166
- B. Final Project Report - available at the Region Three website at <http://www.swrcb.ca.gov/rwqcb3/Board/Meetings/documents/DEC04agn.pdf>

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