

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

CENTRAL COAST REGION

San Luis Obispo, California

RESOLUTION NO. R3-2004-0029

MARCH 19, 2004

CONSIDERING

**A TOTAL MAXIMUM DAILY LOAD AND IMPLEMENTATION PLAN
FOR MERCURY IN CLEAR CREEK AND HERNANDEZ RESERVOIR**

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, toxicity or other appropriate measure [40 CFR §130.2(i)].
3. Clear Creek and Hernandez Reservoir were identified as impaired by mercury on the 1998 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).
4. Clear Creek and Hernandez Reservoir are located entirely within San Benito County.
5. The TMDL 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.
6. The Regional Board has determined that the TMDL for mercury in Hernandez Reservoir and Clear Creek is 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)).
7. The Regional Board finds that the solution to the impairment in Clear Creek and Hernandez Reservoir is being implemented by a non-regulatory action of the US Bureau of Land Management (USBLM), and finds that the solution will actually correct the impairment. Therefore, the Regional Board finds that the USBLM's action will implement the assumptions of the TMDL in lieu of adopting a redundant program.

8. USBLM is the owner and manager of the land on which the sources of mercury are located. The Regional Board therefore has authority to require technical and monitoring reports from USBLM pursuant to Water Code section 13267. With minor modifications, USBLM's existing monitoring plan will provide adequate documentation to determine whether the TMDL is being adequately implemented. The requested modifications are minor, and only require limited additional sampling and photo-documentation. The Regional Board intends to supplement the USBLM data through the Regional Board's own monitoring program. The USBLM reports are necessary to allow the Regional Board to determine whether the existing program is adequate to achieve water quality standards and if not, to identify additional measures to address the impairment. Therefore, the burden, including costs, of these reports bears a reasonable relationship to the need for and benefit of the additional monitoring. Any orders or requirements issued pursuant to Water Code section 13267 shall also consider whether the burden of monitoring and reporting requirements bears a reasonable relationship to the need for and benefit of the additional monitoring.
9. Regional Board Staff has conducted TMDL outreach by coordinating the TMDL with the US Bureau of Land Management, the San Benito County Water District, and local residents in the vicinity of Clear Creek. In addition, public review and comment through this board hearing process provides another formal opportunity for public input for adoption of this TMDL. Notice of public hearing was given by notifying newspapers of general circulation within the Region and by mailing a copy of the notice to all persons requesting such notice and affected government agencies.
10. The Regional Board 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). USBLM is not required to obtain Regional Board approval to continue its remediation plan. The Regional Board is not approving any activity; it is merely finding that an ongoing activity also satisfies other legislative requirements.
11. The TMDL and Implementation and Monitoring Plan do not allow degradation or lower 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.
12. This TMDL will become effective upon approval by the Regional Board.
13. On March 19, 2004 in Salinas, 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 Mercury in Hernandez Reservoir and Clear Creek shown in the Technical Support Document, page 16.
2. The Regional Board finds that the existing remediation program of the United States Bureau of Land Management (USBLM) is an appropriate plan of implementation of the TMDL, will be adequate to correct the impairment and is expected to result in attainment of water quality objectives for mercury in Hernandez Reservoir and Clear Creek. At this time, any further regulatory action to create another program of implementation by the Regional Board would be redundant.
3. The USBLM remediation program requires monitoring to confirm the TMDL is being attained. The USBLM has a monitoring program that requires minor modifications, as discussed in the Technical Support Document, pages 20 through 22. The USBLM is requested to submit a revised monitoring plan (including water quality sampling and photo documentation) by July 1, 2004 that includes the minor modifications and quarterly and annual reports described in the Technical Support Document. If the revised monitoring program is not adequate, the Executive Officer shall issue orders or requirements pursuant to Water Code section 13267 to ensure that USBLM provides the Regional Board with all monitoring reports necessary to evaluate progress toward attaining water quality objectives or to determine that the impairment has been resolved.
4. If the USBLM program does not correct the mercury impairment by March 31, 2009, USBLM shall submit by July 1, 2009, a revised implementation plan for Regional Board review.
5. These findings shall remain valid as long as Hernandez Reservoir and Clear Creek attain mercury objectives no later than March 31, 2009.
6. The Regional Board may revoke these findings if it finds that the USBLM program is not achieving its goals, is not adequately implemented or is no longer adequate to resolve the impairment.
7. The Regional Board's Executive Officer is directed to submit the TMDL to the U.S. Environmental Protection Agency (USEPA) for review.

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 **March 19, 2004**.


Executive Officer