Draft Key Principles For Potential Revision of the *TMDL Technical Report: Revision to the Lake Elsinore and Canyon Lake Nutrient TMDLs (December 1, 2018)*

Agreement Among the Lake Elsinore and Canyon Lake TMDL Task Force Members and Executive Officer for the Santa Ana Regional Water Quality Control Board

This Memorandum memorializes the understanding of the stakeholder members of the Lake Elsinore and Canyon Lake TMDL Task Force (LE/CL TMDL Task Force) and the Executive Officer of the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) regarding potential revisions to the *TMDL Technical Report: Revision to the Lake Elsinore and Canyon Lake Nutrient TMDLs (December 1, 2018)* (2018 TMDL Revisions).

**Background**

On December 1, 2018, the Lake Elsinore and San Jacinto Watersheds Authority (LESJWA) in collaboration with the LE/CL TMDL Task Force submitted 2018 TMDL Revisions for public and peer review and for Santa Ana Water Board consideration. The purpose of the 2018 TMDL Revisions was to support the revision of the 2004-adopted nutrient total maximum daily loads (TMDLs) for Lake Elsinore and Canyon Lake. The document represented a multi-year effort that included collecting and analyzing extensive scientific data, evaluating findings from project planning/implementation activities and considering results from watershed and lake water quality modeling.

On May 3, 2019, the Santa Ana Water Board held a public workshop on the 2018 TMDL Revisions, and in the fall of 2019, the Santa Ana Water Board received comments from Peer Reviewers assigned to review the 2018 TMDL Revisions. Further, during this period of time, staff responsible for the Water Quality Control Plan (Basin Plan) and its 2004 TMDL provisions for Canyon Lake and Lake Elsinore, and that interact with the LE/CL TMDL Task Force, changed.

In late 2019/early 2020, based on the Peer Review comments as well as internal staff reviews, Santa Ana Water Board staff requested further information regarding the 2018 TMDL Revisions and the models used to calculate targets, wasteload and load allocations contained in the 2018 TMDL Revisions. Santa Ana Water Board staff also raised its preliminary concerns with the use of median total phosphorus (TP) and total nitrogen (TN) values of water quality observations from the San Jacinto River Cranston Guard Station reference site rather than a more conservative 25th percentile value. In response, the LE/CL TMDL Task Force directed its consultants to work with Santa Ana Water Board staff to answer questions regarding the modeling and update the modeling with newer versions as was previously anticipated. Discussions between the LE/CL TMDL Task Force consultants and Santa Ana Water Board staff were completed in the spring of 2021 and presented to the Task Force at the May 17, 2021 meeting.

Upon completion of the revised modeling, Santa Ana Water Board staff conveyed that they were not comfortable with moving forward with the 2018 TMDL Revisions as is because of its use of median TP and TN values from the Cranston Guard Station to calculate targets, wasteload and load allocations. Rather, the Santa Ana Water Board staff indicated that use of the 25th percentile was more appropriate at this time as it was more conservative. LE/CL TMDL Task Force members expressed significant concerns with such a substantial change and shift from the 2018 TMDL Revisions that were based on multiple lines of evidence and that were presented to the Santa Ana Water Board in 2019. Concerns regarding the process moving forward were also conveyed by LE/CL TMDL Task Force members to Santa Ana Water Board staff. After much deliberation between LE/CL TMDL Task Force members, its representatives and Santa Ana Water Board staff, all parties agreed to consider revising the 2018 TMDL Revisionsin an incremental fashion.

The agreed on incremental steps would include the development of key principles to guide ongoing efforts, and to look at potential revisions in a phased approach by first addressing potential revisions to the Implementation Plan. The key principles in this document reflect mutual agreements between LE/CL TMDL Task Force members and Santa Ana Water Board staff that will be used to guide ongoing efforts related to revising the 2018 TMDL Revisions report.

**Key Principles**

The parties agree to the following key principles:

* Discussions regarding changes to the 2018 TMDL Revisions shall be incremental in nature.
* The first of the discussions will be focused on Section 7 – Implementation of the 2018 TMDL Revisions as well as proposed implementation language contained in Attachment A to Draft Tentative Resolution No. R8-2019-0041, dated April 2, 2019 (collectively “Implementation Provisions”).
* Implementation Provisions for discussion include, but are not limited to:
	+ 1) A phased approach for the TMDL whereby application of interim targets, wasteload and load allocations based on median values for TP and TN from Cranston Guard Station would apply first at some future specified time to be proposed as part of draft revisions to the Implementation Provisions.
	+ 2) Compliance schedules for meeting interim and final targets, wasteload and load allocations that are reasonable, feasible and practicable considering all of the data and information currently available, and that may become available in the future through Task Force special studies and other means.
	+ 3) In setting the length of compliance schedules, consideration will be given to the ability of permittees to reasonably comply with the interim and final targets, wasteload and load allocations.
	+ 4) Compliance schedules for reaching identified milestones and for conducting specified studies.
	+ 5) Offset language in the Implementation Provisions that allow for the use of offsets and a process for approval of new watershed and/or in-lake offsets that can be implemented by the LE/CL TMDL Task Force members individually or collectively to achieve compliance with the wasteload and load allocations.
	+ 6) Special studies to determine appropriate TP and TN reference nutrient concentrations for the San Jacinto River watershed, including the option to consider additional watershed reference sites.
	+ 7) TMDL revision/re-opener provisions due to results of special studies regarding San Jacinto River watershed reference conditions, which may result in revisions and/or updates to interim and final targets, wasteload and load allocations.
	+ 8) Special studies to determine appropriate beneficial uses, water quality objectives, site specific objectives or variances to meeting water quality standards considering the permanent, man-made changes to the lakes that now exist.
	+ 9) TMDL revision/re-opener provisions due to results of special studies regarding appropriate beneficial uses, water quality objectives, site specific objectives or variances, which may result in revisions and/or updates to interim and final targets, wasteload and load allocations.
	+ 10) Special studies to determine other alternative compliance options or demonstrations.
	+ 11) TMDL revision/re-opener provisions due to results of special studies regarding alternative compliance options or demonstrations, which may result in revisions and/or updates to the Implementation Provisions.
* Assuming that the Parties mutually agree on Implementation Provisions, the Parties then agree to discuss and identify additional changes to the 2018 TMDL Revisions that may be necessary.
* The Parties agree to make every effort to use as much of the 2018 TMDL Revisions as possible to avoid the need for extensive time, effort and resources for making such changes.
* Santa Ana Water Board staff have indicated that further changes to the 2018 TMDL Revisions are in response to Peer Review comments and thus any such changes would not trigger new or additional Peer Review.
* Santa Ana Water Board staff are committed to making the 2018 TMDL Revisions and the development of potential changes a priority, and upon reaching mutual agreement on potential changes, are committed to moving the 2018 TMDL Revisions forward for Santa Ana Water Board consideration in a timely manner.
* The Parties agree to work cooperatively and make good faith efforts towards reaching mutual agreement on proposed changes to the 2018 TMDL Revisions for Santa Ana Water Board consideration.
* The LE/CL TMDL Task Force members understand that the Santa Ana Water Board staff that participate in these discussions are unable to bind any action of the Santa Ana Water Board and that ultimately, adoption of any Basin Plan and/or TMDL revisions must be an action of the Santa Ana Water Board.
* Santa Ana Water Board staff understand that the efforts of the LE/CL TMDL Task Force members and their willingness to provide funding for consultants to prepare additional changes to the 2018 TMDL Revisions is voluntary and not required by state or federal law. Because the Task Force provides funding and assistance voluntarily, Santa Ana Water Board staff understand that the LE/CL TMDL Task Force members reserve the right to discontinue to providing funding in the event that the Task Force members find that the discussions are no longer productive, or because the costs are more than the Task Force members are willing to bear for any reason.

With these understandings in place, the Parties agree to approach changes to the 2018 TMDL Revisions incrementally.

These agreements shall remain in place until such time that the 2018 TMDL Revisions are noticed for public review and comment and for consideration by the Santa Ana Water Board, unless one of the parties terminates this agreement by providing written notice to the other parties of such termination.

Signed by: