

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

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

August 2022

This Memorandum memorializes the understanding of the stakeholder members¹ 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) (collectively, “Parties”) 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 proposed 2018 TMDL Revisions to the Santa Ana Water Board. The purpose of the proposed 2018 TMDL Revisions was to support revising 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 and implementation activities, and considering results from watershed and lake water quality modeling. Santa Ana Water Board staff conducted a CEQA scoping meeting in January 2019 concerning proposed revisions to the 2004 TMDLs and initiated consultation with local tribes.

On May 3, 2019, the Santa Ana Water Board staff held a public workshop on the proposed 2018 TMDL Revisions. During the public workshop, questions/concerns were raised regarding certain components of the proposed 2018 TMDL revisions. Staff from U.S. Environmental Protection Agency had also earlier raised similar concerns. In November 2019, the Santa Ana Water Board staff received comments from peer reviewers assigned to review the proposed 2018 TMDL Revisions. Further, staff responsible for updating the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) section relating to the 2004 TMDLs for Canyon Lake and Lake Elsinore and for interfacing with the LE/CL TMDL Task Force changed. Likewise, regulatory consultant staff supporting the LE/CL TMDL Task Force also changed during this time period. The change in staffing impacted the amendment process significantly, as new staff needed additional time to develop a sound knowledge base regarding the existing TMDLs and proposed 2018 TMDL Revisions.

In March 2020, the LE/CL TMDL Task Force provided feedback on the Peer Review comments received concerning the proposed 2018 TMDL Revisions. Based on the Peer Review comments, the LE/CL TMDL Task Force feedback, and internal staff reviews, Santa Ana Water Board staff in October 2020 requested further information from the LE/CL TMDL Task Force regarding the models used to calculate TMDL

¹ The reference to stakeholder members is intended to mean those members of the Lake Elsinore and Canyon Lake TMDL Task Force that provide funding for Task Force efforts.

targets, and wasteload (WLAs) and load allocations (LAs) contained in the proposed 2018 TMDL Revisions. Santa Ana Water Board staff also raised 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. Discussions between the LE/CL TMDL Task Force consultants and Santa Ana Water Board staff, which included five modeling workshops, 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 proposed 2018 TMDL Revisions because of the model's use of median TP and TN values from the Cranston Guard Station to calculate targets and WLAs and LAs.. The Santa Ana Water Board staff indicated that use of the 25th percentile was more appropriate, as it was more conservative. LE/CL TMDL Task Force stakeholder members expressed significant concerns with such a substantial change and shift from the proposed 2018 TMDL Revisions that were based on multiple lines of evidence and 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 among LE/CL TMDL Task Force stakeholder members, their representatives, and Santa Ana Water Board staff, all Parties now agree to consider revising the proposed 2018 TMDL Revisions in an incremental manner. The agreed-on steps include the development of key principles to guide ongoing efforts and to look potential revisions in an incremental manner, by first addressing potential revisions to implementation language related to the proposed 2018 TMDL Revisions. The key principles in this document reflect mutual agreements between LE/CL TMDL Task Force stakeholder members and Santa Ana Water Board staff that will be used to guide ongoing efforts related to revising the report for the proposed 2018 TMDL Revisions.

Key Principles

The parties agree to the following key principles:

- Discussions regarding changes to the proposed 2018 TMDL Revisions shall be phased based on a timeline that is agreed on by the Parties. It is intended that the timeline will be a road map of topics for discussion that may need to be addressed in the proposed 2018 TMDL Revisions.
- The first of the discussions will be focused on Section 7 – Implementation of the proposed 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 Language”). The Implementation Language as referred to in this Agreement is intended to mean and incorporate the requirements of a program of implementation as specified in Water Code section 13242, which is a program of implementation for achieving water quality objectives.
- Implementation Language for discussion will include, but not be limited to:

- 1) A phased approach for a revised TMDL whereby interim targets and WLAs and LAs would be based on median values for TP and TN from Cranston Guard Station with attainment of the interim targets identified at some future specified time as part of proposed draft revisions to the Implementation Language.
- 2) In setting attainment deadlines in the TMDL² for achieving interim and final targets and WLAs and LAs in the TMDL, consideration will be given to what is reasonable, feasible, and practicable, considering all data and information currently available and that may become available in the future through Task Force special studies and other means.
- 3) In setting attainment deadlines in the TMDL for achieving interim and final targets, WLAs and LAS, consideration will be given to the ability of permittees to reasonably comply with the interim and final targets and WLAs and LAs. Considerations of reasonableness include technical and economic feasibility.
- 4) The appropriate length of time to be identified in the TMDL Implementation section for meeting milestones and for conducting Task Force special studies.
- 5) The inclusion of language in the TMDL Implementation section that conceptually allows 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 meet interim and final WLAs and LAs.
- 6) The inclusion of identified special studies that may be performed by the Task Force to determine appropriate TP and TN reference nutrient concentrations for the San Jacinto River watershed and additional watershed reference sites.
- 7) TMDL revision/re-opener language that acknowledges that the TMDL may be revised/re-opened due to additional information being obtained through special studies regarding San Jacinto River watershed reference conditions. The changes may result in revisions and/or updates to interim and final targets and WLAs and LAs.
- 8) Task Force special studies to evaluate if site specific objectives or variances should be sought, considering the man-made changes to the lakes that now exist. These special studies may also include use attainability analyses of existing designated beneficial uses.
- 9) TMDL revision/re-opener language due to results of special studies regarding site specific objectives, variances and use attainability analysis, as applicable, which may result in revisions and/or updates to interim and final targets and WLAs and LAs.
- 10) Task Force special studies to determine other alternative methods to demonstrate attainment of interim and final targets and WLAs and LAs.

² The term attainment deadlines in this Agreement refers to schedules or attainment deadlines that are adopted as part of a TMDL. Where a TMDL has been approved with a attainment deadline, regional water boards may incorporate such attainment deadlines into permits as an in-permit compliance schedule.

11) TMDL revision/re-opener language that allows changes based on the results of special studies regarding alternative methods to demonstrate attainment, which may result in revisions and/or updates to the TMDL.

12) Language in the TMDL that may identify certain circumstances in which the TMDL is reopened for potential revision.

- Assuming that the LE/CL TMDL Task Force stakeholder members and Santa Ana Water Board staff reach agreement on the TMDL Implementation Plan and attainment deadlines, they then agree to discuss and identify additional changes to the proposed 2018 TMDL Revisions that may be appropriate.
- The Parties agree to make every effort to use as much of the proposed 2018 TMDL Revisions as possible, consistent with agreements reached on topics for discussion, 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 proposed 2018 TMDL Revisions are likely necessary in response to peer review comments, but that such changes should not trigger new or additional peer review. However, in the event that the changes or the results of any new special studies are considered a new scientific basis for the proposed 2018 TMDL Revisions that may trigger peer review under Health and Safety Code section 57004,³ Santa Ana Water Board staff agree to work with the Task Force stakeholder members to let them know in advance what activities or changes could trigger additional peer review. Then, with this additional information and knowledge, the Task Force stakeholders can decide whether to proceed forward with any special study that may trigger peer review.
- After working cooperatively and in good faith on changes to the 2018 TMDL Revisions, Santa Ana Water Board staff are committed bringing an amendment to the 2004 nutrient TMDLs to Santa Ana Water Board for consideration. The Parties agree to work cooperatively and make good faith efforts towards reaching mutual agreement on proposed changes to the proposed 2018 TMDL Revisions for Santa Ana Water Board consideration.
- The LE/CL TMDL Task Force stakeholder members understand that the Santa Ana Water Board staff who participate in these discussions are unable to bind the Santa Ana Water Board to any action, and that adoption of any Basin Plan and/or TMDL revisions must be by action of the Santa Ana Water Board. Further, the LE/CL TMDL Task Force stakeholder members understand that proposed TMDL revisions to the 2004 TMDL do not go into effect until they are also approved by the State Water Resources Control Board and Office of Administrative Law, and as appropriate, by the U.S. Environmental Protection Agency.

³ Health and Safety Code section 570004 requires that external peer review be conducted on the scientific basis portion of any rule or regulation adopted by a California Environmental Protection Agency, including the State Water Resources Control Board and the regional water boards.

- Santa Ana Water Board staff understand that the efforts of the LE/CL TMDL Task Force stakeholder members and their willingness to provide funding for consultants to prepare additional changes to the proposed 2018 TMDL Revisions is voluntary. Because the Task Force stakeholder members provide funding and assistance voluntarily, Santa Ana Water Board staff understand that the LE/CL TMDL Task Force stakeholder members, individually or collectively, may decide to discontinue funding efforts related to revising the proposed 2018 TMDL Revisions for a variety of reasons, including because the Parties are unable to reach agreement on key components of the program of implementation or because the costs are more than the Task Force stakeholder members are able to bear.
- It is understood that special studies mentioned in this Agreement will be studies funded by the LE/CL TMDL Task Force.

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

This Agreement shall remain in place until such time that the proposed 2018 TMDL Revisions are modified and 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 of such termination.

Signed by:

Mark Norton, on behalf of LE/CL TMDL Task Force Stakeholder members	Date
Jayne Joy, Executive Officer, Santa Ana Water Board	Date