

**State of California
California Regional Water Quality Control Board, Los Angeles Region**

**RESOLUTION NO. R12-xxx
October 4, 2012**

**Amendment to the Water Quality Control Plan for the Los Angeles Region to
Incorporate a Total Maximum Daily Load for Algae, Eutrophic Conditions, and
Nutrients in Ventura River, including the Estuary, and its Tributaries**

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) finds that:

1. The Federal Clean Water Act (CWA) requires the Regional Board to establish water quality standards for each waterbody within its region. Water quality standards include beneficial uses, water quality objectives that are established at levels sufficient to protect those beneficial uses, and an antidegradation policy to prevent degrading waters. Waterbodies that do not meet water quality standards are considered impaired.
2. Section 303(d)(1) of the CWA requires each state to identify the waters within its boundaries that do not meet water quality standards. Those waters are placed on the state's "303(d) List" or "Impaired Waters List". For each listed water, the state is required to establish the Total Maximum Daily Load (TMDL) of each pollutant impairing the water quality standards in that waterbody. Both the identification of impaired waters and TMDLs established for those waters must be submitted to the United States Environmental Protection Agency (U.S. EPA) for approval pursuant to CWA section 303(d)(2).
3. A consent decree between U.S. EPA, Heal the Bay, and Santa Monica BayKeeper was approved on March 22, 1999, which resolved litigation between those parties relating to the pace of TMDL development in the Los Angeles Region. The consent decree directs the U.S. EPA to ensure that TMDLs for all 1998-listed impaired waters in the Los Angeles Region be established within 13 years of the consent decree. The consent decree combined waterbody pollutant combinations in the Los Angeles Region into 92 TMDL analytical units. In accordance with the consent decree, the Algae, Eutrophic Conditions, and Nutrients TMDL for Ventura River (including the Estuary and its Tributaries) addresses the listing for algae, eutrophic conditions, nitrogen, and low dissolved oxygen in Ventura River Estuary, Ventura River Reaches 1 and 2, San Antonio Creek and Cañada Larga (Analytical Unit 88). In 2010, the consent decree was modified to include an extension for Analytical Unit 88 until March 2013. Based on the consent decree schedule, TMDLs addressing these listings must be approved or established by U.S. EPA by March 2013.

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4. The elements of a TMDL are described in sections 130.2 and 130.7 of Title 40 of the Code of Federal Regulation (40 CFR) and section 303(d)(1), subdivisions (C) and (D), of the CWA, as well as in U.S. EPA guidance documents (Report No. EPA/440/4-91/001). A TMDL is defined as the sum of the individual waste load allocations for point sources, load allocations for non-point sources, and natural background. (40 CFR § 130.2.) TMDLs must be set at levels necessary to attain and maintain the applicable narrative and numeric water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. (40 CFR § 130.7(c)(1).) Section 130.7 of Title 40 of the Code of Federal Regulations also dictates that TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters. TMDLs typically include one or more numeric “targets”; i.e., numerical translations of the existing water quality standards that represent attainment of those standards, contemplating the TMDL elements described above. Since a TMDL must represent the “total” load, TMDLs must account for all sources of the relevant pollutants, irrespective of whether the pollutant is discharged to impaired or unimpaired upstream reaches.
5. Neither TMDLs nor their targets or other components are water quality objectives, and thus their establishment does not implicate California Water Code section 13241. Rather, under California law, TMDLs are programs to implement existing standards (including objectives), and are thus established pursuant to California Water Code section 13242. Moreover, TMDLs do not create new bases for direct enforcement against dischargers apart from the existing water quality standards they translate. Like most other parts of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), TMDLs are not generally self-implementing. The targets merely establish the bases through which load allocations (LAs) and waste load allocations (WLAs) are calculated. The LAs and WLAs may be implemented in any manner consistent with the Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options, adopted by the State Water Resources Control Board (State Board) on June 16, 2005 (Resolution No. 2005-0050). Federal regulations also require that National Pollutant Discharge Elimination System (NPDES) permits be consistent with the assumptions and requirements of available WLAs. (40 CFR § 122.44(d)(vii)(B).)
6. As envisioned by California Water Code section 13242, the TMDL contains a “description of surveillance to be undertaken to determine compliance with objectives.” The Compliance Monitoring element of the TMDL recognizes that monitoring will be necessary to assess the progress of pollutant load reductions and improvements in water quality in the Ventura River Watershed. The TMDL establishes the types of data and information that will be necessary to obtain. The Regional Board’s Executive Officer will ensure that appropriate entities develop and submit monitoring programs and technical reports necessary to achieve the purposes of the TMDL. The Executive Officer will determine the scope of these

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programs and reports, taking into account any legal requirements, including this TMDL, and if necessary issue appropriate orders to appropriate entities.

7. Upon establishment of TMDLs by the State or U.S. EPA, the State is required to incorporate, or reference, the TMDLs into the State Water Quality Management Plan. (40 CFR §§ 130.6(c)(1), 130.7.) The Basin Plan and applicable statewide plans serve as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Los Angeles Regional Board. Attachment A to this resolution contains the language to be incorporated into the Basin Plan for this TMDL.
8. The Ventura River watershed is located in the northwestern portion of Ventura County with a small portion in the southeastern portion of Santa Barbara County. The watershed is characterized by rugged mountains in the upper basins transitioning to less steep areas and valleys. The watershed drains an area of about 220 square miles with an elevation ranging from 6,000 feet to sea level. Major tributaries to the river, include Matilija Creek, North Fork Matilija Creek, San Antonio Creek, Coyote Creek, and Cañada Larga. The river starts at the confluence of Matilija Creek and North Fork Matilija Creek and flows for about 16 miles in a southern direction to the estuary and Pacific Ocean. The river has intermittent direct discharges to the ocean; longshore transport of sand can cause a sand bar to form at the mouth of the estuary in the late summer and early fall obstructing flow.
9. In addition to natural variations in flow, flow regimes in the Ventura River have been altered to support water supply. Lake Casitas and Matilija Reservoir are the two reservoirs within the watershed. Perennial flow occurs from the headwaters to the Robles Diversion Dam, located about two miles downstream from the Matilija Dam. The flow downstream of the Robles Diversion Dam to the confluence with San Antonio Creek is intermittent, particularly during the dry summer months. Flow in the river is disrupted at Foster Park due to subsurface diversions and groundwater extraction. However, the river flow below Foster Park to the estuary increases due to effluent discharges from the Ojai Valley Wastewater Treatment Plant.
10. Eighty-five percent of the land use in the Ventura River watershed is classified as open space and with approximately half of the watershed located within the Los Padres National Forest. Approximately 4.5 percent of the watershed consists of agricultural land with the developed area being small compared to the open space and agriculture. The cities of Ojai and Ventura are the largest urban areas in the watershed and the communities of Casitas Springs, Foster Park, Oak View, Valley Vista, Mira Monte, Meiners Oaks, Upper Ojai, and Live Oak Acres are within the unincorporated Ventura County.
11. The Regional Board's goal in establishing the TMDL for algae, eutrophic conditions, and nutrients in the Ventura River Watershed is to protect the water

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contact recreation (REC-1) and non-contact water recreation (REC-2) beneficial uses, as well as uses associated with habitat preservation and protection as applicable including: warm fresh water habitat (WARM), cold fresh water habitat (COLD), estuarine habitat (EST), wetland habitat (WET), marine habitat (MAR), wildlife habitat (WILD), rare, threatened, or endangered species (RARE), migration of aquatic organisms (MIGR), and spawning, reproduction, and/or early development (SPWN).

12. Regional Board staff have prepared a detailed technical document that analyzes and describes the specific necessity and rationale for the development of this TMDL. The technical document entitled "Algae, Eutrophic Conditions, and Nutrients Total Maximum Daily Loads for Ventura River and its Tributaries" is an integral part of this Regional Board action and was reviewed, considered, and accepted by the Regional Board before acting. Further, the technical document provides the detailed factual basis and analysis supporting the problem statement, numeric targets (interpretation of the narrative and numeric water quality objectives used to calculate the waste load and load allocations), source analysis, linkage analysis, waste load allocations (for point sources), load allocations (for non-point sources), margin of safety, and seasonal variations and critical conditions of this TMDL.
13. On December 6, 2012, prior to the Regional Board's action on this resolution, a public hearing was conducted on this TMDL. Notice of the hearing was published in accordance with the requirements of California Water Code section 13244. This notice was published in the Ventura County Star on July 20, 2012.
14. The public has had a reasonable opportunity to participate in the review of this TMDL. A draft of the TMDL was released for public comment on July 20, 2012; a Notice of Hearing was published and circulated 45 days preceding Regional Board action. The draft of the TMDL was also made available on the Regional Board's website. Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on December 6, 2012 to consider adoption of the TMDL.
15. In amending the Basin Plan to establish this TMDL, the Regional Board considered the requirements set forth in sections 13240 and 13242 of the California Water Code.
16. Because the TMDL implements existing narrative and numeric water quality objectives (i.e., water quality objectives in the Basin Plan), the Regional Board (along with the State Board) has determined that adopting a TMDL does not require the Regional Board to consider the factors of California Water Code section 13241. The consideration of the California Water Code section 13241 factors, by section 13241's express terms, only applies "in establishing water quality objectives." Here, the Regional Board is not establishing water quality objectives, but as required by section 303(d)(1)(C) of the Clean Water Act is

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adopting a TMDL that will implement the previously established objectives that have not been achieved. In making this determination, the Regional Board has considered and relied upon a legal memorandum from the Office of Chief Counsel to the State Board's basin planning staff detailing why TMDLs cannot be considered water quality objectives. (See Memorandum from Staff Counsel Michael J. Levy, Office of Chief Counsel, to Ken Harris and Paul Lillebo, Division of Water Quality: *The Distinction Between a TMDL's Numeric Targets and Water Quality Standards*, dated June 12, 2002.)

17. While the Regional Board is not required to consider the factors of California Water Code section 13241, it nonetheless has developed and received significant information pertaining to the California Water Code section 13241 factors and has considered that information in developing and adopting this TMDL. Section 13241, at a minimum, requires that water quality objectives ensure reasonable protection of beneficial uses. The designated beneficial uses in the Ventura River Watershed include aquatic life habitat uses, water contact recreation, and non-water contact recreation, navigation, ground water recharge, agricultural supply, municipal and domestic supply, and industrial service supply. The estuary has the designated use of navigation, commercial and sport fishing, and shellfish harvesting. In addition upstream reaches along with the listed tributaries are also designated for industrial service supply. The past, present and probable future beneficial uses of water have been considered in that the Ventura River Watershed is designated for a number of beneficial uses in the Basin Plan.
18. The environmental characteristics of the watershed are spelled out at length in the Basin Plan and in the technical documents supporting this Basin Plan amendment, and have been considered in developing this TMDL. Water quality conditions that reasonably could be achieved through the coordinated control of all factors that affect water quality in the area have been considered. This TMDL provides several compliance options, including improved nitrification-denitrification at the WWTP, structural best management practices (BMPs) such as constructed wetlands, biofiltration, agricultural BMPs and source reduction BMPs, as well as non-structural BMPs and alternatives such as pollution prevention, inspection and proper servicing of onsite waste treatment systems, and outreach and education. These options provide flexibility for responsible parties to reduce nutrient loading to the river, its tributaries, and the estuary. Attainment of the water quality standards through the compliance options is a reasonably achievable water quality condition for the watershed. However, to the extent that there would be any conflict between the consideration of the factor in California Water Code section 13241(c), if the consideration were required, and the Clean Water Act, the Clean Water Act would prevail.
19. Economic considerations were considered throughout the development of the TMDL. Some of these economic considerations arise in the context of Public Resources Code section 21159 and are equally applicable here. The implementation program for this TMDL recognizes the economic limitations on

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achieving immediate compliance and allows a flexible implementation schedule of 6 to 10 years to meet the load and waste load allocations, depending on the source. The need for housing within the region has been considered, but this TMDL is unlikely to affect housing needs. Whatever housing impacts could materialize are ameliorated by the flexible nature of this TMDL and the 6 to 10year implementation schedule.

20. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), and the federal Antidegradation Policy (40 CFR § 131.12), in that it does not allow degradation of water quality, but requires restoration of water quality and attainment of water quality standards.
21. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Boards’ basin planning process as a “certified regulatory program” that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 *et seq.*) requirements for preparing environmental documents. (14 Cal. Code Regs. § 15251(g); 23 Cal. Code Regs. § 3782). The Regional Board staff has prepared “substitute environmental documents” for this project that contain the required environmental documentation under the State Board’s CEQA regulations. (23 Cal. Code Regs. § 3775-3781.) The project itself is the establishment of a TMDL for algae, eutrophic conditions, and nutrients in the Ventura River Watershed. While the Regional Board has no discretion to not establish a TMDL (the TMDL is required by federal law), the Board does exercise discretion in assigning waste load allocations and load allocations, determining the program of implementation, and setting various milestones in achieving the water quality standards. The CEQA checklist and other portions of the substitute environmental documents contain significant analysis and numerous findings related to impacts and mitigation measures.
22. A CEQA Scoping meeting was conducted on May 30, 2012 at the Ventura City Hall Community Meeting Room to solicit input from the public and interested stakeholders in determining the appropriate scope, content, and implementation options of the proposed TMDL. At the meeting, staff presented the regulatory background, description of the project, location of the project, project purpose, and potential implementation alternatives. Staff received input from members of the regulated community, the Ventura River Watershed Council, the environmental community, and other stakeholders regarding reasonably foreseeable methods of compliance, reasonably foreseeable environmental impacts of the methods of compliance, reasonably foreseeable mitigation measures, reasonably foreseeable alternative means of compliance, and alternatives to the project. This meeting fulfilled the requirements under CEQA. (Public Resources Code § 21083.9; 23 Cal. Code Regs. § 3775.5). A notice of the CEQA Scoping meeting was sent to interested parties on May 16, 2012.

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23. In preparing the substitute environmental documents, the Regional Board has considered the requirements of Public Resources Code section 21159 and section 15187 of Title 14 of the California Code of Regulations, and intends those documents to serve as a tier 1 environmental review. This analysis is not intended to be an exhaustive analysis of every conceivable impact, but an analysis of the reasonably foreseeable consequences of the adoption of this regulation, from a programmatic perspective. The “Lead” agencies for tier 2 projects will assure compliance with project-level CEQA analysis of this programmatic project. Project level impacts will need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2.
24. The reasonably foreseeable methods of compliance for this TMDL include improved nitrification-denitrification at the WWTP; structural BMPs including constructed wetlands, alum injection systems, and biofiltration systems; agricultural BMPs including filter strips, improved irrigation efficiency, manure management, and grazing management; an anaerobic biodigester; onsite wastewater treatment system upgrades; and watershed-wide implementation, including riparian buffer strips and stream bank stabilization. Foreseeable methods of compliance also include non-structural BMPs, such as onsite wastewater treatment system inspections and servicing, manure management plans, illicit discharge ordinances and prevention plans, and outreach and education.
25. Consistent with the Regional Board’s substantive obligations under CEQA, the substitute environmental documents do not engage in speculation or conjecture. The substitute environmental documents only consider the reasonably foreseeable environmental impacts, including those relating to the reasonably foreseeable methods of compliance, reasonably foreseeable feasible mitigation measures to reduce those impacts, and the reasonably foreseeable alternative means of compliance, which would avoid or reduce the identified impacts.
26. The proposed Basin Plan amendment could have a potentially significant adverse effect on the environment. However, there are feasible alternatives, feasible mitigation measures, or both, that if employed, would substantially lessen the potentially significant adverse impacts identified in the substitute environmental documents. Such alternatives or mitigation measures are within the responsibility and jurisdiction of other public agencies, and not the Regional Board. California Water Code section 13360 precludes the Regional Board from specifying the design, location, type of construction, or particular manner in which responsible parties comply with Regional Board orders. When the parties responsible for implementing this TMDL determine how they will proceed, the parties responsible for those parts of the project can and should incorporate such alternatives and mitigation into any subsequent projects or project approvals. These feasible alternatives and mitigation measures are described in more detail

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elsewhere in the substitute environmental documents. (14 Cal. Code Regs. § 15091(a)(2).)

27. The substitute environmental documents for this TMDL, and in particular the Environmental Checklist and staff's responses to comments, identify broad mitigation approaches that should be considered at the project level.
28. To the extent significant adverse environmental effects could occur, the Regional Board has balanced the economic, legal, social, technological, and other benefits of the TMDL against the unavoidable environmental risks and finds that specific economic, legal, social, technological, and other benefits of the TMDL outweigh the unavoidable adverse environmental effects, such that those effects are considered acceptable. The basis for this finding is set forth in the substitute environmental documents. (14 Cal. Code Regs. § 15093.)
29. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act. (Gov. Code, section 11353(b).) As specified above, federal law and regulations require that TMDLs be incorporated, or referenced, in the state's water quality management plan. The Regional Board's Basin Plan is the Regional Board's component of the water quality management plan, and the Basin Plan is how the Regional Board takes quasi-legislative planning actions. Moreover, the TMDL is a program of implementation for existing water quality objectives and is, therefore, appropriately a component of the Basin Plan under Water Code section 13242. The necessity of developing a TMDL is established in the TMDL staff report, the section 303(d) list, and the data contained in the administrative record documenting the algae, eutrophic conditions, nitrogen, and low dissolved oxygen impairments in the Ventura River Watershed.
30. The Basin Plan amendment incorporating a TMDL and implementation schedule for algae, eutrophic conditions, and nutrients in the Ventura River Watershed must be submitted for review and approval by the State Board, the State Office of Administrative Law (OAL), and pursuant to CWA section 303(d) and/or 303(c) (as appropriate) by the U.S. EPA. The Basin Plan amendment will become effective upon approval by U.S. EPA. Once effective, a Notice of Decision will be filed with the Resources Agency.
31. If during the State Board's approval process, Regional Board staff, the State Board or State Board staff, or OAL determine that minor, non-substantive modifications to the language of the amendment are needed for clarity or consistency, the Executive Officer should make such changes consistent with the Regional Board's intent in adopting this TMDL, and should inform the Regional Board of any such changes.
32. Considering the record as a whole, this Basin Plan amendment is expected to result in an effect, either individually or cumulatively, on wildlife resources.

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THEREFORE, be it resolved that pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board hereby amends the Basin Plan as follows:

1. The Regional Board hereby approves and adopts the CEQA substitute environmental documentation, which was prepared in accordance with Public Resources Code section 21159 and section 15187 of Title 14 of the California Code of Regulations, and directs the Executive Officer to sign the environmental checklist.
2. Pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record including oral testimony at the hearing, hereby adopts the amendments to Chapter 7 of the Water Quality Control Plan for the Los Angeles Region, as set forth in Attachment A hereto, to incorporate the elements and implementation schedule of the Algae, Eutrophic Conditions, and Nutrients Total Maximum Daily Loads for Ventura River, including the Estuary, and its Tributaries.
3. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.
4. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to the OAL for review and approval and finally, for review and approval pursuant to CWA sections 303(d) and/or 303(c), as appropriate, to the U.S. EPA.
5. If during the State Board's approval process, Regional Board staff, the State Board or State Board staff, or OAL determine that minor, non-substantive modifications to the language of the amendment are needed for clarity or consistency, the Executive Officer is authorized to make such changes, and shall inform the Regional Board of any such changes.
6. The Executive Officer is authorized to request a "No Effect Determination" from the Department of Fish and Game, and/or transmit payment of the applicable fee as may be required to the Department of Fish and Game.

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I, Samuel Unger, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 6, 2012.

Samuel Unger, P.E.
Executive Officer

Date