

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

RESOLUTION NO. R10-007
July 09, 2010

**Amendment to the *Water Quality Control Plan for the Los Angeles Region* to
Incorporate a Total Maximum Daily Load for Indicator Bacteria
in the Los Angeles River Watershed**

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

1. The Federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board, Los Angeles Region (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. CWA section 303(d)(1) 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). For all waters that are not identified as impaired, the states are nevertheless required to create TMDLs pursuant to CWA section 303(d)(3).
3. During the 1998 Water Quality Assessment, the Los Angeles River Reaches 1, 2, 4, and 6, Arroyo Seco Reaches 1 and 2, Bell Creek, Compton Creek, Rio Hondo Reaches 1 and 2, Tujunga Wash, and Verdugo Wash Reaches 1 and 2 were included on the 303(d) list for high coliform count. In 2002, Dry Canyon Creek and McCoy Canyon Creek were added to the 303(d) list. In 2006, Aliso Canyon Wash was added to the 303(d) list. In July 2009, the Regional Board approved the Los Angeles Region Integrated Report Clean Water Act Section 305(b) Report and Section 303(d) List of Impaired Waters adding Bull Creek to the 303(d) list.
4. A consent decree between U.S. EPA, Heal the Bay, Inc. and Santa Monica BayKeeper, Inc. 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 court order 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. Analytical Unit 15 lists consists of segments of the Los Angeles River and tributaries with impairments related to coliform bacteria. Based on the consent decree schedule, TMDLs must be approved or established by U.S. EPA by March 2012.
5. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d)(1)(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)). 40 CFR 130.7 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, which 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.
 6. 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 Cal. Water Code section 13242. Moreover, they 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 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 C.F.R. 122.44(d)(vii)(B)).
 7. The Los Angeles River Bacteria TMDL does not dictate whether an NPDES municipal separate storm sewer system (MS4) permit expresses the TMDL’s waste load allocations (WLAs) as best management practices or numeric effluent

limitations. The means of expression will be determined when NPDES MS4 permits are revised to incorporate provisions consistent with the assumptions and requirements of the WLAs to effectively implement the TMDL. Federal regulations require that NPDES permits must contain requirements necessary to achieve water quality standards (40 CFR § 122.44(d)(1)) and that water quality based effluent limitations are set consistent with the assumptions and requirements of any available WLA for the discharge (40 CFR § 122.44(d)(1)(vii)(B)).

While federal regulations allow the permitting authority to specify – as conditions of a NPDES permit – the use of BMPs to control or abate the discharge of pollutants in stormwater pursuant to Clean Water Act section 402(p) (40 CFR § 122.44(k)(2)), this is only supportable as an expression of a TMDL’s WLA where the permit’s administrative record substantiates that the BMPs are expected to be sufficient to fully implement the WLA in the TMDL, consistent with the implementation schedule established in the TMDL (US EPA 2002). Iterative approaches without such a record to substantiate them shall not qualify for consideration as an expression of a TMDL’s WLA. Furthermore, this does not substitute for the permitting authority’s obligation to include other requirements such as numeric effluent limitations that may be necessary to achieve water quality standards.

The State Board recently addressed the issue of translating TMDL waste load allocations into effluent limitations in NPDES MS4 permits and concluded that, “whether a future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided based on the regional water quality control board’s findings supporting either the numeric or non-numeric effluent limitations contained in the permit” (Order WQ 2009-008).

8. As envisioned by Cal. 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 Los Angeles River Watershed. The TMDL establishes the types of information that will be necessary to secure. 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 programs and reports, taking into account any legal requirements, including this TMDL, and if necessary issue appropriate orders to appropriate entities.
9. 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.
10. The Los Angeles River flows for 55 miles from the Santa Monica Mountains at the western end of the San Fernando Valley to the Long Beach Harbor and into the Pacific Ocean. The entire watershed includes a total stream length of 837.62 miles and 4.6 square miles of lake area. The predominant land uses in the Los Angeles River watershed include open space, residential, industrial, and commercial, and agricultural land uses.
 11. The Regional Board's goal in establishing the TMDL for Indicator Bacteria in Los Angeles River Watershed is to protect the water contact recreation (REC-1) and non-contact water recreation (REC-2) beneficial uses.
 12. To address large natural storm flows coming from the headwaters of the Los Angeles River, the Regional Board has included several opportunities to reconsider the TMDL to expand the application of the High Flow Suspension provisions of Chapter 2, which may include an expansion of the spatial extent of the suspension to tributaries affected by these large storm flows from the headwaters.
 13. 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 "Total Maximum Daily Loads for Indicator Bacteria in Los Angeles River Watershed" 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.
 14. On July xx, 2010, prior to the 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 Cal. Water Code Section 13244. This notice was published in the xxx on xxxx xx, 2010.
 15. The Los Angeles River Watershed Indicator Bacteria TMDL is based on the original work conducted by the "Cleaner Rivers through Effective Stakeholder-led TMDLs" (CREST) stakeholder group, a stakeholder effort initiated by the City of Los Angeles for the purpose of developing TMDLs to restore and protect water quality in the Los Angeles River. CREST conducted a groundbreaking study of the stormdrain system inputs to the Los Angeles River referred to as the "Bacteria Source Identification" study (BSI study). This study sampled every

- storm drain in selected reaches of the Los Angeles River and comprehensively documented the bacterial inputs and variability from urban areas. With stakeholders, the City of Los Angeles' CREST team developed a detailed dry-weather implementation plan complete with schedule and costs.
16. The public has had a reasonable opportunity to participate in the review of the amendment to the Basin Plan. The CREST stakeholder group conducted quarterly CREST Technical Working Group meetings and steering committee meetings, and a CREST implementation workshop for this TMDL. Regional Board staff has actively participated the CREST public meetings and monthly meetings with CREST development team. A draft of the TMDL was released for public comment on xxxx xx, 2010; a Notice of Hearing and Notice of Filing were published and circulated 45 days preceding Board action; Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on July xx, 2010 to consider adoption of the TMDL.
 17. 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.
 18. 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 Cal. Water Code section 13241. The consideration of the 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 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.)
 19. While the Regional Board is not required to consider the factors of Cal. Water Code section 13241, it nonetheless has developed and received significant information pertaining to the Cal. 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 past, present and probable future beneficial uses of water have been considered in that the Los Angeles River Watershed is designated for a number of beneficial uses including REC-1 and REC-2 in the

- Basin Plan. 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 which affect water quality in the area have been considered. This TMDL provides several compliance options, including structural methods such as low-flow diversions and various swale and infiltration systems, as well as non-structural alternatives such as outreach and education. These options provide flexibility for responsible parties to reduce loading of indicator bacteria to the river and its tributaries. The implementation of the compliance options should ensure that the Los Angeles River and tributaries attain and continue to maintain water quality standards for indicator bacteria. 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 Water Code section 13241, subdivision (c), if the consideration were required, and the Clean Water Act, the Clean Water Act would prevail. 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 achieving immediate compliance and allows a flexible implementation schedule of 25 years. 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 25-year 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. § 3777.) The substitute environmental documents include the TMDL staff report entitled "Total Maximum Daily Loads for Indicator Bacteria in the Los Angeles River Watershed", the environmental checklist, the comments and responses to comments, the basin plan amendment language, and this resolution. The project itself is the establishment of a TMDL for Indicator Bacteria in the Los Angeles 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 March 10, 2010 at the Junipero Serra Building Meeting Room, 7th Floor, to solicit input from the public and interested stakeholders in determining the appropriate scope, content and implementation options of the proposed TMDL. This meeting fulfilled the requirements under CEQA (Public Resources Code, Section 21083.9). A notice of the CEQA Scoping meeting was sent to interested parties on February 11, 2010.
 23. In preparing the substitute environmental documents, the Regional Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, 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 foreseeable methods of compliance for this TMDL entail sub-regional structural best management practices (BMPs) such as low flow diversions, vegetated treatment systems and vegetated bioswales, local infiltration systems, local capture system, equestrian related BMPs, and media filtration, as well as regional structural BMPs such as diversion to stormwater treatment plants, regional infiltration systems, regional detention facility, regional natural treatment systems, and riparian enhancement treatment. Foreseeable methods of compliance also include non-structural BMPs, such as administrative controls, 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, and only consider the reasonably foreseeable environmental impacts, including those relating to the 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 amendment could have a potentially significant adverse effect on the environment. However, there are feasible alternatives, feasible mitigation

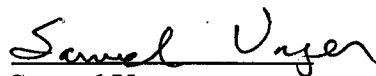
- measures, or both, that if employed, would substantially lessen the potentially significant adverse impacts identified in the substitute environmental documents; however such alternatives or mitigation measures are within the responsibility and jurisdiction of other public agencies, and not the Regional Board. Cal. Water Code section 13360 precludes the Regional Board from dictating the manner in which responsible parties comply with any of the Regional Board's regulations or 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 elsewhere in the substitute environmental documents. (14 Cal. Code Regs. § 15091(a)(2).)
27. From a program-level perspective, incorporation of the alternatives and mitigation measures specified will foreseeably reduce impacts to less than significant levels.
 28. The substitute 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.
 29. 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.)
 30. Health and Safety Code section 57004 requires external scientific peer review for certain water quality control policies. Scientific portions of this TMDL are drawn exclusively from the Santa Monica Bay Beaches Bacteria TMDLs. As a result, the scientific portions of this TMDL have already undergone external, scientific peer review. Remaining portions of the TMDL, such as the implementation strategy, are not scientifically based, and therefore, not subject to the peer review requirements of section 57004. As a result, the Regional Board has fulfilled the requirements of Health and Safety Code section 57004, and the proposed amendment does not require further peer review.
 31. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (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 indicator bacteria impairments for the Los Angeles River Watershed.
32. The Basin Plan amendment incorporating a TMDL for bacteria in Los Angeles River Watershed must be submitted for review and approval by the State Board, the State Office of Administrative Law (OAL), and the U.S. EPA. The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. A Notice of Decision will be filed with the Resources Agency.
 33. 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 Board of any such changes.
 34. Considering the record as a whole, this Basin Plan amendment is expected to result in an effect, either individually or cumulatively, on wildlife resources.

THEREFORE, be it resolved that pursuant to sections 13240 and 13242 of the Cal. 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 California Code of Regulations, title 14, section 15187, 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 TMDL for indicator bacteria in the Los Angeles River Watershed.
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 and the U.S. EPA.
5. If during the State Board's approval process, Regional Board staff, the State Board or State Board staff, or the OAL determine that minor, non-substantive modifications to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
6. The Executive Officer is authorized to request a "No Effect Determination" from the Department of Fish and Game, or transmit payment of the applicable fee as may be required to the Department of Fish and Game.

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 July 09, 2010.



Samuel Unger
Interim Executive Officer

8-30-10

Date