

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

RESOLUTION NO. R15-XXX

June ~~10~~11, 2015

**Amendment to the Water Quality Control Plan for the Los Angeles Region to
Incorporate a Total Maximum Daily Load for Indicator Bacteria
in the San Gabriel River, Estuary and Tributaries**

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

1. The Federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water 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 and preventing attainment of 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. During the 1996 Water Quality Assessment, the Los Angeles Water Board evaluated total and fecal coliform monitoring data for beaches and fecal coliform data for inland surface waterbodies. During this assessment, Coyote Creek, San Gabriel River Reach 1, San Gabriel River Reach 2, and San Jose Creek Reach 1 were identified as impaired due to exceedances of the Basin Plan objective for fecal coliform bacteria. As a result of the 1998 Water Quality Assessment, San Jose Creek Reach 2 was also added to the 303(d) list for "high coliform count". San Gabriel Reach 3, Coyote Creek (North Fork), Artesia Norwalk Drain, and Walnut Creek Wash were added to the 303(d) list in 2008 for "indicator bacteria". Currently, ten (10) waterbodies in the San Gabriel River watershed are identified on the 2010 303(d) list of impaired waters for "coliform bacteria" or "indicator bacteria".
4. Based on an evaluation of recent bacteria monitoring data during development of this TMDL, the Los Angeles Water Board has determined that the San Gabriel River Estuary and Big Dalton Wash are also impaired due to indicator bacteria. Therefore, this TMDL also

**T
E
N
T
A
T
I
V
E**

addresses indicator bacteria impairments in the San Gabriel River Estuary and Big Dalton Wash.

5. The elements of a TMDL are described in 40 Code of Federal Regulations (CFR) sections 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 (WLAs) for point sources, load allocations (LAs) for nonpoint 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 CFR 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 California 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 LAs and 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 Water Board) on June 16, 2005 (Resolution No. 2005-0050). Federal regulations also require that National Pollutant Discharge Elimination System (NPDES) permits contain requirements necessary to achieve water quality standards and that permit effluent limitations are consistent with the assumptions and requirements of available WLAs (40 CFR §122.44(d)(1)).
7. 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 San Gabriel River (SGR) including its estuary and tributaries. The TMDL establishes the types of information that will be necessary to secure. The Los Angeles Water 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.
8. Upon establishment of TMDLs by the State or U.S. EPA, the State is required to incorporate, or reference, 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 Water

T
E
N
T
A
T
I
V
E

Board. Attachment A to this resolution contains the language to be incorporated into the Basin Plan for this TMDL.

9. The San Gabriel River receives drainage from a 689-square mile area of eastern Los Angeles County and has a main channel length of approximately 58 miles. Its headwaters originate in the San Gabriel Mountains with the East, West, and North Forks. The river flows through a heavily developed residential, commercial, and industrial area before emptying into the Pacific Ocean at the boundary between Los Angeles and Orange Counties in Long Beach. The main tributaries of the river are Big and Little Dalton Wash, San Dimas Wash, Walnut Creek Wash, San Jose Creek, and Coyote Creek. Part of the Coyote Creek subwatershed is in Orange County and San Bernardino County, and is under the authority of the Santa Ana Water Board.
10. The predominant land uses in the SGR watershed include vacant, residential, commercial, and industrial uses. Responsible jurisdictions and districts within the watershed under the jurisdiction of the Los Angeles Water Board include the County of Los Angeles, Los Angeles County Flood Control, Arcadia, Artesia, Azusa, Baldwin Park, Bellflower, Bradbury, Cerritos, Claremont, Covina, Diamond Bar, Downey, Duarte, El Monte, Glendora, Hawaiian Gardens, Industry, Irwindale, La Habra Heights, La Mirada, La Puente, La Verne, Lakewood, Long Beach, Monrovia, Norwalk, Paramount, Pico Rivera, Pomona, San Dimas, Santa Fe Springs, South El Monte, Walnut, West Covina, and Whittier; and under the jurisdiction of the Santa Ana Water Board include the County of Orange, Orange County Flood Control District, Anaheim, Brea, Buena Park, Cypress, Fullerton, Garden Grove, La Habra, La Palma, Los Alamitos, Placentia, Seal Beach, and Yorba Linda; the County of San Bernardino, San Bernardino County Flood Control District, and Chino Hills..
11. The Los Angeles Water Board's goal in establishing the TMDL for Indicator Bacteria in the San Gabriel River, Estuary, and Tributaries is to protect the water contact recreation (REC-1) and non-contact water recreation (REC-2) beneficial uses in the San Gabriel River watershed. Local and national epidemiological studies compel the conclusion that there is a causal relationship between adverse health effects, such as gastroenteritis, and recreational water quality, as measured by bacteria indicator densities.
12. The Los Angeles Water Board has 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 Load for Indicator Bacteria in the San Gabriel River, Estuary and Tributaries" is an integral part of this Los Angeles Water Board action and was reviewed, considered, and accepted by the Los Angeles Water 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 nonpoint sources), margin of safety, and seasonal variations and critical conditions of this TMDL.
13. On June ~~4~~10, 2015, 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 California Water Code Section 13244. This notice was published in the Los Angeles Times on April 3, 2015.

T
E
N
T
A
T
I
V
E

14. The public has had a reasonable opportunity to participate in the review of the amendment to the Basin Plan. On February 17, 2015, Los Angeles Water Board staff attended a meeting with staff of the Los Angeles County Department of Public Works to discuss the hydrology of the San Gabriel River watershed and representative rain gage stations across the watershed. On February 24, 2015, Los Angeles Water Board staff held a stakeholder meeting to receive comments on the development of the TMDL. In conjunction with the February 24, 2015 stakeholder meeting, the Los Angeles Water Board held a California Environmental Quality Act (CEQA) scoping meeting to solicit input from the interested public and stakeholders on the appropriate scope, content and implementation options of the proposed TMDL for indicator bacteria in the San Gabriel River, Estuary, and Tributaries. At the scoping meeting, the CEQA checklist of significant environmental issues and mitigation measures was discussed. A draft of the TMDL was released for public comment on April 3, 2015; a Notice of Hearing and Notice of Filing were published and circulated 45 days preceding Board action; Los Angeles Water Board staff responded to oral and written comments received from the public; and the Los Angeles Water Board held a public hearing on June 11, 2015 to consider adoption of the TMDL.
15. In amending the Basin Plan to establish this TMDL, the Los Angeles Water 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 Los Angeles Water Board (along with the State Water Board) has determined that adopting a TMDL does not require the Los Angeles Water Board to consider the factors of California Water Code section 13241. The consideration of the Water Code section 13241 factors, by the express terms of section 13241, only applies "in establishing water quality objectives." Here the Los Angeles Water 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 Los Angeles Water Board has considered and relied upon a legal memorandum from the Office of Chief Counsel to the State Water 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 Los Angeles Water 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 past, present and probable future beneficial uses of water have been considered in that the SGR is designated for a number of beneficial uses including REC-1 and REC-2 in the Basin Plan. The environmental characteristics of the SGR 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 anticipates myriad implementation options, including structural methods such as various swale and infiltration systems, as well as non-structural alternatives such as outreach, education and enforcement of local ordinances. These options provide flexibility for responsible entities to reduce loading of indicator bacteria to the SGR through implementation of many different actions, which can be tailored according to the

T
E
N
T
A
T
I
V
E

characteristics of the responsible entity's jurisdictional area. The implementation of the compliance options will ensure that the SGR attains and continues to maintain bacteriological water quality standards. Attainment of the water quality standards through the range of implementation options presented is a reasonably achievable water quality condition for the SGR. 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 10 years for dry weather and 20 years for wet weather. 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 20-year implementation schedule.

18. The amendment is consistent with the State Antidegradation Policy (State Water 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 to fully protect beneficial uses.
19. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Los Angeles Water 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 Los Angeles Water Board staff has prepared "substitute environmental documents" for this project that contain the required environmental documentation under the State Water 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 San Gabriel River, Estuary and Tributaries", 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 San Gabriel River, Estuary and Tributaries. While the Los Angeles Water 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.
20. A CEQA Scoping meeting was conducted on February 24, 2015 at the Los Angeles Water Board's offices (320 West 4th street, Suite 200, Los Angeles, CA 90013) 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 persons on February 10, 2015.
21. In preparing the substitute environmental documents, the Los Angeles Water 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

T
E
N
T
A
T
I
V
E

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.

22. The foreseeable methods of compliance for this TMDL entail sub-regional structural best management practices (BMPs) such as vegetated treatment systems and vegetated bioswales, local infiltration systems, local capture systems, and media filtration, as well as regional structural BMPs such as diversion to wastewater treatment plants and stormwater treatment facilities, regional infiltration systems, regional detention facilities. Foreseeable methods of compliance also include non-structural BMPs, such as administrative controls, including enforcement of local ordinances, outreach and education, street cleaning, and storm drain cleaning.
23. Consistent with the Los Angeles Water 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.
24. 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 Los Angeles Water Board. California Water Code section 13360 precludes the Regional Water Board from dictating the manner in which responsible parties comply with any of the Regional Water Board’s regulations or orders. When the entities responsible for implementing this TMDL determine how they will proceed, the entities 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).)
25. 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.
26. To the extent significant adverse environmental effects could occur, the Los Angeles Water 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.)
27. Health and Safety Code section 57004 requires external scientific peer review for certain water quality control policies. Scientific portions of this TMDL are drawn from the previously adopted bacteria TMDLs in the region, including the Santa Monica Bay Beaches

T
E
N
T
A
T
I
V
E

Bacteria TMDL. 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 Los Angeles Water Board has fulfilled the requirements of Health and Safety Code section 57004, and the proposed amendment does not require further peer review.

28. 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 Los Angeles Water Board’s Basin Plan is the Los Angeles Water Board’s component of the water quality management plan, and the Basin Plan is how the Los Angeles Water 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 in the San Gabriel River, its estuary and tributaries.
29. The Basin Plan amendment incorporating a TMDL for indicator bacteria in the San Gabriel River, Estuary, and Tributaries must be submitted for review and approval by the State Water 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.
30. If during the approval process Los Angeles Water Board staff, the State Water Board or State Water 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 Los Angeles Water Board’s intent in adopting this TMDL, and should inform the Board of any such changes.
31. 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 California Water Code, the Los Angeles Water Board hereby amends the Basin Plan as follows:

1. The Los Angeles Water 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 Los Angeles Water Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment 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 San Gabriel River, Estuary and Tributaries.

T
E
N
T
A
T
I
V
E

3. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Water Board in accordance with the requirements of section 13245 of the California Water Code.
4. The Los Angeles Water Board requests that the State Water 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 OAL and the U.S. EPA.
5. If during the approval process, the Los Angeles Water Board staff, State Water Board or State Water Board staff, or OAL determine that minor, non-substantive corrections 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 Wildlife, or transmit payment of the applicable fee as may be required to the Department of Fish and Wildlife.

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 June ~~11~~10, 2015.

Samuel Unger
Executive Officer

Date

**T
E
N
T
A
T
I
V
E**