

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

**RESOLUTION NO. R16-XXX
November 10, 2016**

**Amendment to the Water Quality Control Plan for the Los Angeles Region
to Incorporate an Implementation Plan for the Total Maximum Daily Loads for Nutrients in
the Malibu Creek Watershed and Sedimentation and Nutrients to Address Benthic
Community Impairments in Malibu Creek and Lagoon**

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 (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 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). Alternatively, U.S. EPA may establish the TMDLs determined necessary to implement the water quality standards applicable to the impaired waters. Upon such establishment by U.S. EPA, the state shall incorporate the TMDLs into its plans for the water body.
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. Analytical unit 50 was designed to address nutrient related listings within streams and lakes within Malibu Creek Watershed. Under the consent decree, TMDLs were required to be established for nutrient related pollutants in this analytical unit by March 2003.
4. A Stipulation to Modify the Amended Consent Decree was approved on September 2, 2010. The Stipulation added listings for Malibu Creek (benthic-macroinvertebrate bioassessments), Malibu Creek (sedimentation/siltation), and Malibu Lagoon (benthic community effects) to the list of impairments for which TMDLs were required to be completed.

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5. On March 21, 2003, U.S. EPA established TMDLs for Nutrients in Malibu Creek Watershed.
6. On July 2, 2013, U.S. EPA established TMDLs for Nutrients and Sedimentation to address benthic community impairments in Malibu Creek and Lagoon.
7. The U.S. EPA-established TMDLs include the problem statement, numeric targets, source analysis, loading capacity, load allocations, waste load allocations, and margin of safety as required by 40 CFR 130.2 and 130.7 and section 303(d)(1)(C) and (D) of the CWA. An implementation plan is not a required element of a TMDL established by U.S. EPA; therefore, these TMDLs do not include implementation plans or schedules for implementation. This amendment incorporates implementation plans for the TMDL for nutrients in Malibu Creek Watershed and the TMDL for nutrients and sedimentation in Malibu Creek and Malibu Creek tributaries.
8. Upon establishment of TMDLs by the State or U.S. EPA, the State is required to incorporate the TMDLs into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7). The Water Quality Control Plan for the Los Angeles Region (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 Board. Attachment A to this resolution contains the language to be incorporated into the Basin Plan for these TMDLs.
9. The Malibu Creek Watershed (MCW) is located in western Los Angeles County and southeastern Ventura County. At 109 square miles, it extends from the Santa Monica Mountains and Simi Hills to the Santa Monica Bay at Malibu State Beach (also known as Surfrider Beach). The MCW contains the cities of Agoura Hills, Westlake Village, Calabasas, Thousand Oaks, Hidden Hills, Malibu, and Simi Valley; and the counties of Los Angeles and Ventura. The MCW is comprised of numerous tributaries and lakes. The tributaries include streams draining to Lake Sherwood, which then discharges to Potrero Creek. Potrero Creek then reaches Westlake Lake and flows down to Triunfo Creek to its confluence with Medea Creek to form Malibou Lake. Lindero Lake is located along Lindero Creek, which, along with Palo Comado Creek, is a tributary of Medea Creek. Malibou Lake drains into Malibu Creek. Farther downstream Las Virgenes Creek enters Malibu Creek at Malibu Creek State Park. Stokes Creek and Cold Creek are also major tributaries of Malibu Creek. Eventually, Malibu Creek empties into Malibu Lagoon and then the Pacific Ocean.
10. Los Angeles Water Board staff has prepared a detailed technical document that analyzes and describes the specific necessity and rationale for the incorporation of the Implementation Plan for the Malibu Creek Nutrients TMDL and the Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to address Benthic Community Impairments. The technical document entitled "Implementation Plan for the Malibu Creek Watershed Nutrients TMDL (2003) and the Malibu Creek and Lagoon Sedimentation and Nutrients TMDL to Address Benthic Community Impairments (2013) Staff Report" 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.
11. On November 10, 2016, prior to the Los Angeles Water Board's action on this resolution, a public hearing was conducted on this Implementation Plan. Notice of the hearing was published in accordance with the requirements of Water Code section

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13244. This notice was published in the Los Angeles Times and the Ventura County Star on August 29, 2016.

12. The public has had a reasonable opportunity to participate in the review of this Implementation Plan. A draft of the Implementation Plan was released for public comment on August 29, 2016 and a Notice of Hearing was published and circulated 45 days preceding Los Angeles Water Board action. A draft of the Implementation Plan was made available on the Los Angeles Water Board's website. 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 November 10, 2016 to consider adoption of the Implementation Plan.
13. In amending the Basin Plan to incorporate the Implementation Plan for these TMDLs, the Los Angeles Water Board considered the requirements set forth in Water Code sections 13240 and 13242. The Implementation Plans identifies implementation measures that could be used to attain the TMDLs, the regulatory mechanisms that will be used to implement the TMDLs, how compliance with the TMDLs will be determined, and schedules for implementing the TMDLs. As envisioned by California Water Code section 13242, the Implementation Plan also includes a description of monitoring to be undertaken to determine compliance with the TMDLs. The monitoring element of this Implementation Plan recognizes that monitoring will be necessary to assess the progress in reducing pollutant loads, improvements in receiving water quality, and compliance with the TMDLs' waste load allocations and load allocations.
14. The amendment is consistent with the State Antidegradation Policy (State Water Resources Control 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.
15. 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. (Cal. Code Regs., tit. 14, § 15251, subd. (g); Cal. Code Regs., tit. 23, § 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 Resources Control Board's (State Water Board) CEQA regulations. (Cal. Code Regs., tit. 23, §§ 3775-3781.) The project itself is the establishment of an Implementation Plan for TMDLs that have already been established by U.S. EPA. The Regional Board has discretion in determining the program of implementation and setting various milestones in achieving the previously established TMDLs. The CEQA checklist and other portions of the substitute environmental documents contain significant analysis and numerous findings related to impacts and mitigation measures.
16. A CEQA Scoping meeting was conducted on March 17, 2016 at the Los Angeles Regional Water Quality Control Board office located at 320 W. 4th Street, Suite 200, Los Angeles, California, to receive input from 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

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meeting fulfilled the requirements under CEQA. (Pub. Resources Code § 21083.9; Cal. Code Regs., tit. 23, § 3775.5). A notice of the CEQA Scoping hearing was sent to interested parties on March 1, 2016.

17. In preparing the substitute environmental documents, the Los Angeles Water 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.
18. The reasonably foreseeable methods of compliance for this TMDL include Tapia WRF’s seasonal storage and water repurpose at the Las Virgenes Reservoir during the winter and possible use of dilution water or a side stream treatment facility in the summer; agriculture’s irrigation and nutrient management practices, filter strips, and mulching; horse and livestock facilities’ use of grazing and manure management practices; stormwater permittees’ use of structural BMPs and treatment systems such biofiltration, bioretention, infiltration, and constructed wetlands, as well as street sweeping, stormdrain and catch basin cleaning, and public outreach; onsite wastewater treatment system (OWTS) inspections and upgrades; lake aeration systems, floating islands, and hydrologic dredging; and watershed-wide restoration such as riparian buffers and stream bank stabilization.
19. Consistent with the Los Angeles Water 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.
20. 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 Los Angeles Water Board. Water Code section 13360 generally precludes the Los Angeles Water Board from specifying the design, location, type of construction, or particular manner in which responsible parties comply with Los Angeles Water Board 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. (Cal. Code Regs., tit. 14, § 15091, subd. (a)(2).)
21. The substitute environmental documents for this TMDL, and in particular the

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Environmental Checklist and staff's responses to comments, identify a range of mitigation approaches that should be considered at the project level.

22. 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. (Cal. Code Regs., tit. 14, § 15093.)
23. Health and Safety Code section 57004 requires external scientific peer review for certain water quality control policies. The implementation plan for the TMDLs is not scientifically based, and therefore, not subject to the peer review requirements of Health and Safety Code 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.
24. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act. (Gov. Code, § 11353, subd. (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 Implementation Plan 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 incorporating the Implementation Plan for the Malibu Creek Nutrients TMDL and the Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to address Benthic Community Impairments is established in the staff report.
25. The Basin Plan amendment incorporating an Implementation Plan for the Malibu Creek Nutrients TMDL and the Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to address Benthic Community Impairments must be submitted for review and approval by the State Water Board and the State Office of Administrative Law (OAL). The Basin Plan amendment will become effective upon approval by OAL. Once effective, a Notice of Decision will be filed with the Resources Agency.
26. If during the State Water Board's 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 implementation plan, and should inform the Los Angeles Water Board of any such changes.
27. Considering the record as a whole, this Basin Plan amendment is expected to result in an effect, either individually or cumulatively, on wildlife resources. The implementation of this TMDL may cause temporary impacts to fish and wildlife, but will result in improved water quality in the Malibu Creek watershed and will have significant beneficial impacts to the environment over the long term.

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THEREFORE, be it resolved that pursuant to sections 13240 and 13242 of the 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 Water Code sections 13240 and 13242, the Los Angeles Water 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, incorporating an Implementation Plan for the Malibu Creek Nutrients TMDL and the Malibu Creek and Lagoon TMDL for Sedimentation and Nutrients to address Benthic Community Impairments.
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 Water Code section 13245.
4. The Los Angeles Water Board requests that the State Water Board approve the Basin Plan amendment in accordance with the requirements of Water Code sections 13245 and 13246 and forward it to OAL for review and approval.
5. If during the State Water Board's approval process, Los Angeles Water Board staff, the State Water Board or OAL determines 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 California Department of Fish and Wildlife, or transmit payment of the applicable fee as may be required to the California 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 November 10, 2016.

Samuel Unger, P.E.
Executive Officer

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