

Draft Staff Report

**Proposed Amendments to the Water Quality
Control Plan for the Los Angeles Region (Basin
Plan) to Incorporate Changes to the Total
Maximum Daily Load (TMDL) for Bacteria in the
Malibu Creek Watershed**

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1. INTRODUCTION

On March 21, 2003, the United States Environmental Protection Agency (USEPA) established a Total Maximum Daily Load (TMDL) to reduce bacteria levels in Malibu Creek and Lagoon. The USEPA TMDL describes possible implementation measures, but does not include an implementation plan or schedule. On January 29, 2004, the Los Angeles Regional Water Quality Control Board (Regional Board) adopted an amendment to the Basin Plan to incorporate a TMDL for bacteria in the Malibu Creek watershed. If approved by the State Water Resources Control Board (State Board), the Office of Administrative Law, and USEPA, the Regional Board TMDL will supercede the USEPA TMDL. The Regional Board TMDL would allow 3 to 6 years for compliance with applicable bacteria water quality standards during dry-weather conditions, and 10 years for compliance during wet-weather conditions, or up to 18 years, if an integrated water resources approach is pursued.

In addition, the implementation plan provides minimum prescriptive criteria for identifying high-risk areas, where onsite-wastewater treatment systems (OWTS) are potentially contributing to bacteria exceedances in the Malibu Creek watershed. Local agencies (city and county health departments and/or building departments) would be required to focus their efforts to monitor and require upgrades to OWTS located in high-risk areas. In addition to the areas falling within the minimum prescriptive criteria, local agencies must also use their knowledge to identify other areas, outside of the minimum prescriptive high-risk areas, that are likely to impact surface water quality due to local conditions (e.g., fractured bedrock).

2. PURPOSE OF THIS DOCUMENT

The purpose of this document is to seek clarification from the Board on the minimum prescriptive criteria for identifying high-risk areas and to offer alternative criteria for the Board's consideration.

3. COMPLIANCE WITH CEQA

States must provide notice and opportunity for public hearing in accordance with the California Environmental Quality Act (Public Resource Code Section 21000). The Regional Board must comply with the requirements of the California Environmental Quality Act (CEQA) when adopting Basin Plan Amendments for water quality control. CEQA authorizes the Secretary of the Resources Agency to certify a regulatory program of a State agency as exempt from the requirements for preparing Environmental Impact Reports, Negative Declarations

and Initial Studies if certain conditions are met. The process that the Regional Board is using to adopt the proposed policy has received certification from the Resources Agency to be "functionally equivalent" to the CEQA process (Title 22, California Code of Regulations, Section 15251(g)). Therefore, the staff report for the Malibu Creek and Lagoon Bacteria TMDL, adopted on January 29, 2004, is a Functional Equivalent Document and fulfills the requirements of CEQA for preparation of an environmental document. The environmental impacts that could occur as a result of the proposed action are discussed in the Environmental Checklist.

An Environmental Checklist was prepared for the draft Malibu Creek Bacteria TMDL released on October 10, 2003. This Environmental Checklist was certified by the Regional Board's Executive Officer on October 10, 2003. Subsequently, the draft TMDL was revised and released on December 5, 2003. The Regional Board's Executive Officer certified this second Environmental Checklist on December 5, 2003, reflecting the revisions.

The changes proposed in this action are minor and relate only to how the local agencies prioritize their assessment and upgrades of OSWTs. The final requirements and time schedule remain unchanged, and the Environmental Checklist certified on December 5, 2003 reflects the potential impacts.

4. BACKGROUND

The initial draft of the Malibu Creek and Lagoon Bacteria TMDL was released for public comment on October 10, 2003. The Notice of Public Hearing was mailed to all interested persons on the Malibu Creek watershed mailing list, totaling 92 individuals and organizations. Copies of the proposed resolution, Basin Plan amendment, draft staff report with attachments, California Environmental Quality Act (CEQA) checklist, and Notice of Filing were posted on the Regional Board website. Furthermore, notice of the public hearing was published in the Los Angeles Times, a newspaper of general circulation, on October 10, 2003. Regional Board staff conducted a workshop and CEQA Scoping meeting to solicit comments on the October 10, 2003 draft TMDL. The meeting and workshop were held at the City of Malibu City Council Chambers on October 22, 2003. A second workshop was conducted at the regularly scheduled Regional Board meeting on November 6, 2003. All interested persons were given until November 26, 2003, to submit written comments to the Regional Board on the proposed TMDL.

The October 2003 draft TMDL and the CEQA checklist were revised in response to comments received and direction from the Board. The revised documents were released for public comment on December 5, 2003. The Notice of Public Hearing was mailed to all interested persons and organizations on the Malibu

Creek watershed mailing list. Copies of the proposed resolution, Basin Plan amendment, draft staff report with attachments, California Environmental Quality Act (CEQA) checklist, and Notice of Filing were posted on the Regional Board website. Furthermore, notice of the public hearing was published in the Los Angeles Times, a newspaper of general circulation, on December 6, 2003. All interested persons were given until January 20, 2004 to submit written comments to the Regional Board on the proposed TMDL.

In response to comments, staff proposed additional clarifying language in the TMDL implementation plan. These changes added language to the basin plan amendment Table 7-10.3 to provide guidance to responsible jurisdictions and agencies on the elements to be included in the implementation workplan to be submitted to the Regional Board. These changes were to:

- (1) provide the responsible agencies with the option of conducting a reference watershed water quality study,
- (2) encourage an integrated water resources approach by providing an option of up to 18 years for implementation of wet-weather compliance,
- (3) submittal by responsible agencies of a description of all steps taken to meet the 3-year summer dry-weather compliance schedule,
- (4) specific conditions which must be met by responsible agencies when requesting an extension to the summer dry-weather and/or a wet-weather compliance date,
- (5) submittal of a written report by responsible agencies to the Regional Board staff which details the rationale and criteria used to identify high risk areas where OWSTs have the potential to impact surface water, and
- (6) criteria designating OWTS located in areas where there is less than 10-ft separation between the bottom of the disposal field and historical groundwater as high risk.

On January 29, 2004, the Regional Board held a public hearing at the regularly scheduled Board meeting, conducted at the City of Simi Valley City Council Chambers, to receive comments on the draft TMDL, as revised. A strikeout copy of the TMDL, highlighting the most recent changes, a summary of comments received, and staff's responses to comments were made available to the public at the Board meeting, prior to the public hearing.

Following the public hearing, the Board made additional changes before adopting the TMDL. These changes were a logical outgrowth of the comments made and subsequent discussion by the Board members. The changes included adding additional minimum criteria for identifying high-risk areas or OWTS. The language was added to Attachment A of the Tentative Resolution, page 10, Table 7-10.3, paragraph 3. The additional criteria were:

“. . . areas where OWTS are located less-than-250 foot from a 303(d) listed waterbody, or located in areas of a documented nitrate or human bacteria problem in the surface or groundwater.”

5. PROPOSED ACTION

Staff is seeking clarification from the Board regarding one of the minimum criteria for identifying high-risk areas. Staff assumes that the “250-foot setback from a 303(d) listed waterbody” means a waterbody listed on the 303(d) list due to exceedances of bacteria. Waterbodies within the Malibu Creek watershed are listed on the 303(d) list for a variety of pollutants including bacteria, nutrients, algae, heavy metals, and pesticides. Since this TMDL only addresses bacteria impairments, staff assumes that the reference to a 303(d) listed waterbody is a reference to waterbodies listed due to exceedances of bacteria water quality standards. For informational purposes Figures 1 and 2 (see pages 7 and 8) depict the Malibu Creek water bodies listed on the 303(d) list for bacteria and for nutrient related impairments, respectively.

Staff recommends a minor change in the requirement for OWTS in high-risk areas. The current amendment (Table 7-10.3, row 2, paragraph 3) would appear to require OWTS in high-risk areas to install disinfection systems. However, staff recognizes that alternative systems (e.g., mound systems) may also be used to meet bacteria water quality objectives. Therefore staff recommends the following change:

"Local agencies regulating on-site wastewater treatment systems shall provide a written report to the Regional Board detailing the rationale and criteria used to identify high-risk areas where on-site systems have a potential to impact surface waters in the Malibu Creek watershed. At a minimum, on-site wastewater treatment systems located within 100 feet of Malibu Creek, Malibu Lagoon, or a tributary thereto, in areas where there is (1) less than 10 ft separation between the bottom of the disposal field and historical groundwater, or (2) located less than 250 foot setback from a 303(d) listed waterbody or (3) located in areas of a documented nitrate or human bacterial problem in the surface or groundwater are considered high risk. High risk OWTS are subject to upgrades necessary to meet applicable bacteria objectives at the point of discharge, and are subject to disinfection requirements unless further assessment demonstrates that the systems are not impacting surface waters in the Malibu Creek watershed. Such demonstrations may include regional or site-specific groundwater monitoring or weekly upstream/downstream surface water monitoring."

Additionally, staff is requesting the Board to re-consider the minimum prescriptive criteria for identifying high-risk areas or OWTS. Staff acknowledges that local agencies will need to assess which of the approximate 2,400 OWTS within the

watershed are most likely contributing to the bacteria impairment and address those systems quickly in order to meet the dry-weather compliance schedules within the TMDL. However, establishing prescriptive minimum criteria may divert local agency resources from other areas that may in fact be of greater risk due to local, site-specific conditions.

If minimum prescriptive criteria are preferred, staff offers other alternative criteria that are founded in existing codes and regulations. Staff notes that the 250-foot setback is being considered by State Board staff involved in developing management / risk levels to be incorporated into the statewide regulation of OWTS. However, these regulations are in the development stage, and final adoption is not expected for several months. Staff is providing alternative criteria for the Board's consideration. These alternatives are codified in other state and local regulations and are consistent with the Draft general WDRs prepared by Regional Board staff.

6. ALTERNATIVES ANALYSIS

Staff identified three options for establishing minimum, prescriptive criteria for identifying high-risk areas or OWTS for purposes of implementing the bacteria TMDL. These options and a brief discussion of the potential consequences of each are provided as follows:

- 1) No action –The amendment will be forwarded as is to the State Water Resources Control Board for approval. The public will have another opportunity to comment on the draft TMDL at a State Board workshop, prior to the State Board's action.
- 2) No minimum prescriptive criteria – This would allow the responsible agencies maximum flexibility in identifying the high-risk areas or specific high-risk OWTS, providing them the ability to focus their resources on areas they deem to be the greatest contributor to the bacteria impairment. However, without the minimum prescriptive criteria, local agencies may spend valuable resources in identifying high-risk areas rather than in pursuing upgrades to systems that are impacting water quality.
- 3) Replace the existing minimum prescriptive criteria with 100 feet from Malibu Creek, Malibu Lagoon, or any surface water tributary thereto. – This option would identify "high risk OWTS" as systems in the Malibu Creek watershed that do not meet the minimum siting criteria for seepage pits or cesspools. (horizontal distances from a streams) as contained in the California Plumbing Code and the local plumbing codes (see Table 1 on page 9). The criteria for seepage pits was selected as it provides the most stringent set-back criteria of all systems (e.g., setback criteria for septic tanks and leach fields is 50 feet

from a surface water as compared to 100 feet for seepage pits). This option adopts a number that represents widespread consensus among health department officials and incorporates a margin of safety, by applying the most stringent setback to all types of systems. Under this alternative, this setback would be applied to all surface water bodies that are tributary to Malibu Creek or Lagoon, and would not be limited to waterbodies specifically listed on the 303(d) list. Staff recommends that the setback be applied to all waterbodies because many waterbodies in the watershed have not been adequately monitored for bacteria. Local agencies are encouraged to monitor to confirm impairment before requiring system upgrades.

7. STAFF RECOMMENDATION

Option 3 is the recommended alternative for providing a minimum standard for identifying high-risk areas where OWTS have a potential to impact surface waters in the Malibu Creek watershed. This option provides a minimum criterion that is well founded in state and local codes. Local agencies will be required to also identify other high-risk areas based on local knowledge of system performance, local geology, etc.

Figure 1 - Bacteria Impaired Streams

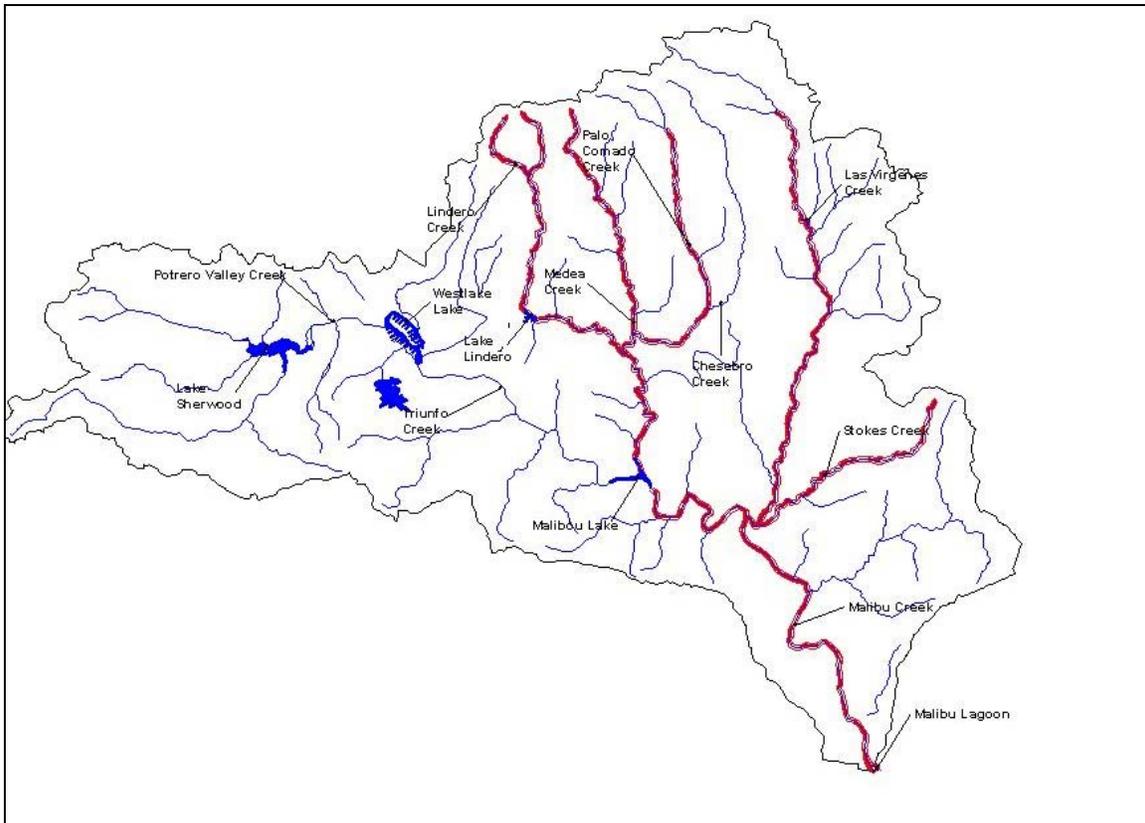


Figure 2 - Nutrient Impaired Waterbodies

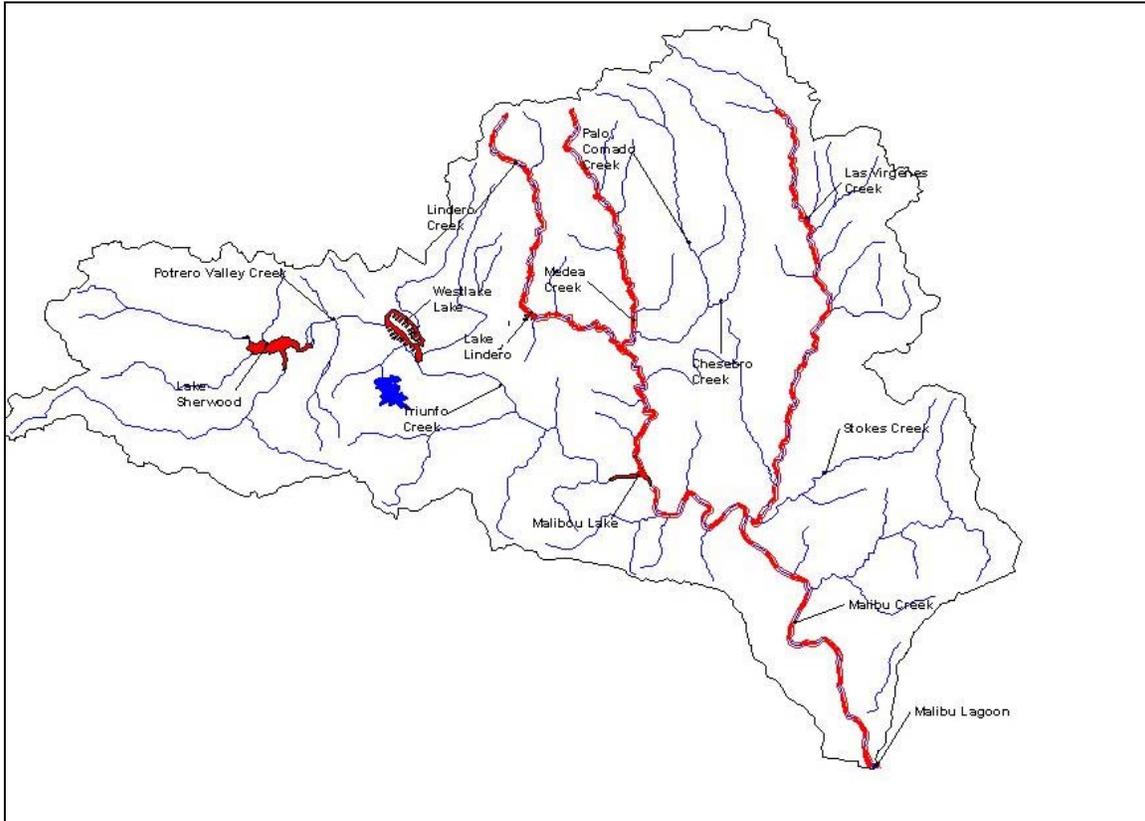


Table 1 - Location Distance Criteria for OWTS

Plumbing Code	Required Distance (feet) ¹		
	Streams	Water Supply wells	Groundwater
State of California ²	100	150	10
City of Los Angeles ³	100	150	10
County of Los Angeles ⁴	100	150	10

¹ The criteria used is for seepage pits or cesspools is used for the minimum distances in this table.

² California Plumbing Code, California Code of Regulations Title 24, Part 5

³ City of Los Angeles Municipal Code, Section 94.1600.1, Appendix K.1 Private Sewage Disposal

⁴ Los Angeles County Code, Title 28 Plumbing Code, Appendix K1 Private Sewage Disposal - General