

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

**RESOLUTION NO. 2004-019R
~~January 29, 2004~~December 13, 2004**

Amendment to the Water Quality Control Plan for the Los Angeles Region to Incorporate a Total Maximum Daily Load for Bacteria in the Malibu Creek 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 develop water quality objectives, which are sufficient to protect beneficial uses for each water body found within its region.
2. A consent decree between the U.S. Environmental Protection Agency (USEPA), Heal the Bay, Inc. and BayKeeper, Inc. was approved on March 22, 1999. This court order directs the USEPA to complete Total Maximum Daily Loads (TMDLs) for all impaired waters within 13 years. A schedule was established in the consent decree for the completion of the first 29 TMDLs within 7 years, including completion of a TMDL to reduce bacteria at Malibu Creek and Lagoon by March 22, 2003. The remaining TMDLs will be scheduled by Regional Board staff within the 13-year period.
3. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d) of the CWA, as well as in USEPA 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 and load allocations for nonpoint sources and natural background (40 CFR 130.2). Regulations further stipulate that 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)). The regulations in 40 CFR 130.7 also state that TMDLs shall take into account critical conditions for stream flow, loading and water quality parameters.
4. The numeric targets in this TMDL are not water quality objectives and do not create new bases for enforcement against dischargers apart from the water quality objectives they translate. The targets merely establish the bases through which load allocations (LAs) and waste load allocations (WLAs) are calculated. WLAs are only enforced for a discharger's own discharges, and then only in the context of its National Pollutant Discharge Elimination System (NPDES) permit, which must be consistent with the assumptions and requirements of the WLA. The Regional Board will develop permit requirements through a subsequent permit action that will allow all interested persons, including but not limited to municipal storm water dischargers, to provide comments on how the WLA will be translated into permit requirements.
5. Upon establishment of TMDLs by the State or USEPA, the State is required to incorporate the TMDLs along with appropriate implementation measures into the State Water Quality

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Management Plan (40 CFR 130.6(c)(1), 130.7). This 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 Regional Board.

6. The Malibu Creek watershed is located about 35 miles west of Los Angeles. The 109-square mile watershed extends from the Santa Monica Mountains and adjacent Simi Hills to the Pacific Coast at Santa Monica Bay. Several creeks and lakes are located in the upper portions of the watershed, and these ultimately drain into Malibu Creek at the downstream end of the watershed. Historically, there is little flow in the summer months; much of the natural flow that does occur in the summer in the upper tributaries comes from springs and seepage areas. During rain storms the runoff from the watershed may increase flows in the creeks dramatically. Flows from watershed drain into Malibu Lagoon and ultimately into Santa Monica Bay when the lagoon is breached
7. The Regional Board's goal in establishing the Malibu Creek Watershed Bacteria TMDL is to reduce the risk of illness associated with swimming in waters contaminated with human sewage and other sources of bacteria. 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.
8. USEPA established a TMDL for bacteria on March 21, 2003. The USEPA TMDL was not required to include an implementation plan. Therefore, the Regional Board has developed a revised TMDL, which includes an implementation plan which requires reduction of bacteria loading to the Malibu Creek watershed from the largest anthropogenic sources, within 6 years for dry weather, and 10 years for wet weather.
9. 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 to Reduce Bacterial Indicator Densities in the Malibu Creek 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 numeric water quality objective, used to calculate the load allocations), source analysis, linkage analysis, waste load allocations (for point sources), load allocation (for nonpoint sources), margin of safety, and seasonal variations and critical conditions of this TMDL.
10. On January 29, 2004, prior to the Board's action on this resolution, public hearings were conducted on the TMDL for Bacteria in Malibu Creek and Lagoon. Notice of the hearing for the Malibu Creek Watershed Bacteria TMDL was published in accordance with the requirements of Water Code Section 13244. This notice was published in the Los Angeles Times on December 6, 2004 .
11. The public has had reasonable opportunity to participate in review of the amendment to the Basin Plan. A draft of the TMDL for bacteria at Malibu Creek Watershed was released for public comment on October 10, 2003. A public workshop was conducted at the City of Malibu on October 22, 2003, and at the regularly scheduled Regional Board meeting on November 6, 2003. Staff responded to comments and revised the draft TMDL in response to comments. A revised draft of the TMDL for bacteria at Malibu Creek Watershed was released for public comment on December 5, 2003; a Notice of Hearing and Notice of Filing

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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 January 29, 2004 to consider adoption of the TMDL.

12. On January 29, 2004, the Los Angeles Regional Water Quality Control Board adopted Resolution No. 2004-019, "Amendment to the Water Quality Control Plan for the Los Angeles Region to Incorporate a Total Maximum Daily Load (TMDL) for the Malibu Creek and Lagoon Bacteria TMDL."

13. Based on subsequent review and comments from the public a revised draft of the TMDL for bacteria at Malibu Creek Watershed was released for public comment on September 14, 2004; 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 November 4, 2004 to consider adoption of the revision to the TMDL.

~~12-14.~~ In amending the Basin Plan, the Regional Board considered the factors set forth in sections 13240 and 13242 of the California Water Code.

~~13-15.~~ The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), in that the changes to water quality objectives (i) consider maximum benefits to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies. Likewise, the amendment is consistent with the federal Antidegradation Policy (40 CFR 131.12).

~~14-16.~~ The basin planning process has been certified as functionally equivalent to the California Environmental Quality Act requirements for preparing environmental documents (Public Resources Code, Section 21000 et seq.) and as such, the required environmental documentation and CEQA environmental checklist have been prepared. A CEQA Scoping hearing was conducted on October 22, 2003 at the City of Malibu Council Chambers, 23815 Stuart Ranch Road. A notice of the CEQA Scoping hearing was sent to interested parties including cities and/or counties with jurisdiction in or bordering the Malibu Creek Watershed.

~~15-17.~~ The proposed amendment results in no potential for adverse effect (de minimis finding), either individually or cumulatively, on wildlife.

~~16-18.~~ The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, Section 11353, Subdivision (b).

~~17-19.~~ This TMDL is adopted pursuant to Water Code sections 13240 and 13242, and consistent with Section 303(d) of the Clean Water Act to implement existing water quality standards. These sections do not require the weighing of cost versus benefits. With respect to this TMDL, economics were considered when the water quality objectives were originally adopted, and the TMDL implements these existing water quality objectives.

~~Certain reports and monitoring programs are contemplated in the TMDL, but those programs/reports will require the issuance of subsequent orders by the Executive Officer. To the extent those programs/reports are required by Water Code section 13267, the Executive Officer will comply the requirements of Water Code section 13267.~~

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Nonetheless, as a matter of sound public policy, the Regional Board developed estimates of costs associated with potential implementation strategies, and those cost are identified in the TMDL document.

20. In order to reduce the risk of illness associated with contact recreation in waterbodies located in the Malibu Creek watershed, the Regional Board finds it necessary to require local agencies to investigate and report on bacterial water quality within their jurisdictions pursuant to Water Code section 13225. Local agencies are encouraged to coordinate regional monitoring programs to avoid fragmented analyses and to ensure cost efficiencies for private property owners.

Certain reports and monitoring programs are contemplated in the TMDL, but those programs/reports will require the issuance of subsequent directives by the Executive Officer. To the extent those programs/reports are required by Water Code sections 13267 and 13225, the Executive Officer will comply with the requirements of Water Code sections 13267 and 13225.

~~18.21.~~ The Basin Plan amendment incorporating a TMDL for bacteria for the Malibu Creek Watershed must be submitted for review and approval by the State Water Resources Control Board (State Board), the State Office of Administrative Law (OAL), and the USEPA. The Basin Plan amendment will become effective upon approval by OAL and USEPA. A Notice of Decision will be filed.

~~19.22.~~ If during its approval process the SWRCB or OAL determines 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.

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

1. 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 of the Malibu Creek Watershed Bacteria TMDL.
2. 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.
3. 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 OAL and the USEPA.
4. If during its approval process the State Board or OAL determines 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.
5. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

I, ~~Dennis A. Dickerson~~ Jonathan S. Bishop, 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 ~~January 29, 2004~~ (Insert Date).

Jonathan S. Bishop
Executive Officer

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