

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

**RESOLUTION NO. 2006-XXX
June 8, 2006**

**Amendment to the Water Quality Control Plan for the Los Angeles Region
to Incorporate a Total Maximum Daily Load for Bacteria in Ballona Creek, Ballona
Estuary and Sepulveda Channel.**

**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 (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. 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

T
E
N
T
A
T
I
V
E

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 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. As envisioned by Water Code section 13242, the TMDL contains a “description of surveillance to be undertaken to determine compliance with objectives.” The Compliance Monitoring and Special Studies elements of the TMDL recognize that monitoring will be necessary to assess the on-going condition of the Ballona Creek, Estuary, and their tributaries and to assess the on-going effectiveness of efforts by dischargers to reduce bacteria loading to these waterbodies. Special studies may also be appropriate to provide further information about new data, new or alternative sources, and revised scientific assumptions. The TMDL does not establish the requirements for these monitoring programs or reports, although it does recognize the type of information that will be necessary to secure. The Regional Board’s Executive Officer will issue orders to appropriate entities to develop and to submit monitoring programs and technical reports. The Executive Officer will determine the scope of these programs and reports, taking into account any legal requirements, and issue the orders to the appropriate entities.
7. Ballona Creek flows as an open channel for just under 10 miles from Los Angeles (South of Hancock Park) through Culver City, reaching the Pacific Ocean at Playa del Rey. It is entirely lined in concrete and is fed by a complex underground network of storm drains, which reaches north to Beverly Hills and West Hollywood. Tributaries of the creek include Centinela Creek, Sepulveda Canyon Channel, Benedict Canyon Channel, and numerous other storm drains. The creek meets Ballona Estuary, at Centinela Avenue, where concrete is replaced by grouted riprap side slopes and an earthen bottom. Ballona estuary flows into the Santa Monica Bay, and its water quality affects the adjacent shoreline of Dockweiler Beach.
8. The Regional Board’s goal in establishing the Ballona Creek, Ballona Estuary, and Sepulveda Channel TMDL is to reduce the risk of illness associated with recreating 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.
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 for Bacterial Indicator Densities in Ballona Creek, Ballona Estuary, and Sepulveda Channel" 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.

T
E
N
T
A
T
I
V
E

10. On June 8, 2006, prior to the Board's action on this resolution, public hearings were conducted on the "Total Maximum Daily Loads for Bacterial Indicator Densities in Ballona Creek, Ballona Estuary, and Sepulveda Channel". Notice of the hearing for the "Total Maximum Daily Loads for Bacteria Densities in Ballona Creek, Ballona Estuary, and Sepulveda Channel" was published in accordance with the requirements of Water Code section 13244. This notice was published in the Los Angeles Times on April 3, 2006.
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 densities in Ballona Creek, Ballona Estuary, and Sepulveda Channel was released for public comment on April 4, 2006; 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 June 8, 2006 to consider adoption of the TMDL. In addition, input from participants in the stakeholder group "Cleaner Rivers through Effective Stakeholder TMDLs" (CREST) was solicited in developing potential implementation options to achieve compliance with the waste load allocations, and in estimating associated costs of selected strategies. CREST is a stakeholder effort initiated by the City of Los Angeles geared towards collaborative TMDL development in the Los Angeles River and Ballona Creek watersheds.
12. In amending the Basin Plan, the Regional Board considered the factors set forth in sections 13240 and 13242 of the Water Code.
13. 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. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code, Section 21000 et seq) requirements for preparing environmental documents. (14 Cal. Code Regs. § 15251(g); 23 Cal. Code Regs. § 3782.) As such, the Regional Water Board's basin planning documents together with an Environmental Checklist, are the "substitute documents" that contain the required environmental documentation under CEQA. (23 Cal Code Regs. § 3777.) The detailed technical report entitled "Total Maximum Daily Load for Bacteria Densities in Ballona Creek, Ballona Estuary, and Sepulveda Channel," responses prepared by staff to address comments raised during the development of the TMDL, this resolution, and the Environmental Checklist serve as the substitute documents for this project. The project itself is the establishment of a TMDL for bacteria in Ballona Creek, Ballona Estuary, and Sepulveda Channel. While the Regional Board has no discretion to not establish a TMDL (the TMDL is required by federal law) or for determining the water quality standard to be applied (the Basin Plan establishes the numeric water quality objectives that must be implemented), 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 numeric water quality standards established in the Basin Plan.

T
E
N
T
A
T
I
V
E

15. A CEQA Scoping hearing was conducted on June 12, 2003 at the Los Angeles Regional Water Quality Control Board, 320 W. 4th Street, Los Angeles, CA 90013. A notice of the CEQA Scoping hearing was sent to interested parties including cities and/or counties with jurisdiction in or bordering the Ballona Creek watershed.
16. The lengthy implementation period allowed by the TMDL, will allow many compliance approaches to be pursued. In preparing the accompanying CEQA substitute 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 the substitute documents to serve as a tier 1 environmental review. Nearly all of the compliance obligations will be undertaken by public agencies that will have their own obligations under CEQA. 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. If not properly mitigated at the project level, there could be adverse environmental impacts. 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. Consistent with CEQA, the substitute documents do not engage in speculation or conjecture and only consider the reasonably foreseeable environmental impacts of the methods of compliance, the reasonably foreseeable feasible mitigation measures, and the reasonably foreseeable alternative means of compliance, which would avoid or eliminate the identified impacts.
17. The proposed amendment could have a significant adverse effect on the environment. However, there are feasible alternatives, feasible mitigation measures, or both that would substantially lessen any significant adverse impact. The public agencies responsible for those parts of the project can and should incorporate such alternatives and mitigation into any subsequent projects or project approvals. Possible alternatives and mitigation are described in the CEQA substitute documents, specifically the TMDL technical report and the Environmental Checklist. To the extent the alternatives, mitigation measures, or both are not deemed feasible by those agencies, the necessity of implementing the federally required bacteria TMDL and reducing the elevated bacteria densities from Ballona Creek, Ballona Estuary, and Sepulveda Channel (an action required to achieve the express, national policy of the Clean Water Act) outweigh the unavoidable adverse environmental effects.
18. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, Section 11353, Subdivision (b). As specified above, federal regulations require that TMDLs be incorporated into the 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 bacteria impairments of the Ballona Creek, Ballona Estuary, and Sepulveda Channel.
19. The Basin Plan amendment incorporating a TMDL for Bacteria Densities in Ballona Creek, Ballona Estuary, and Sepulveda Channel 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.

T
E
T
A
T
I
V
E

20. If during its approval process Regional Board staff, 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.

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 Chapters 3 and 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 bacteria TMDL for Ballona Creek, Ballona Estuary, and Sepulveda Channel.
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, 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 June 8, 2006.

Jonathan S. Bishop
Executive Officer

T
E
N
T
A
T
I
V
E