

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

**RESOLUTION NO. 2009-XXX
October 1, 2009**

**Proposed Amendment to the *Water Quality Control Plan for the Los Angeles Region*
to**

**Incorporate a Total Maximum Daily Load for Organochlorine (OC) Pesticides,
Polychlorinated Biphenyls (PCBs), Sediment Toxicity, Polycyclic Aromatic
Hydrocarbons (PAHs), and Metals for Colorado 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 (Regional 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 United State Environmental Protection Agency (U.S. EPA) for approval pursuant to CWA section 303(d)(2). For all waters that are not identified as impaired, the states are nevertheless required to create TMDLs pursuant to CWA section 303(d)(3).
3. A consent decree between U.S. EPA, Heal the Bay, Inc. and Santa Monica BayKeeper, Inc. was approved on March 22, 1999, which resolved litigation between those parties relating the pace of TMDL development in the Los Angeles Region. The court order directs the U.S. EPA to ensure that TMDLs for all 1998-listed impaired waters be established within 13 years of the consent decree. The consent decree combined water body pollutant combinations in the Los Angeles Region into 92 TMDL analytical units. Analytical Unit 82 addresses the impairments in Colorado Lagoon associated with DDT, PCBs, Chlordane, Dieldrin and Sediment Toxicity and Analytical Unit 83 addresses the impairments associated with PAHs and metals including Lead and Zinc. In accordance with the consent decree, the Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL addresses listings in analytical units 82 and 83. According to the consent decree, the TMDL for OC Pesticides, PCBs,

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Sediment Toxicity, PAHs, and Metals in Colorado Lagoon must be approved or established by U.S. EPA by March 2012.

4. The elements of a TMDL are described in 40 CFR 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 for point sources, load allocations for non-point 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)). 40 CFR 130.7 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.
5. 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 Cal. 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 load allocations (LAs) and waste load allocations (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 Board) on June 16, 2005 (Resolution 2005-0050). Federal regulations also require that National Pollutant Discharge Elimination System (NPDES) permits be consistent with the assumptions and requirements of available WLAs (40 C.F.R. 122.44(d)(vii)(B)).
6. As envisioned by Cal. 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 on-going condition of the Colorado Lagoon watershed and to assess the on-going effectiveness of efforts by dischargers to reduce OC pesticides, PCBs, sediment toxicity, PAHs, and metals loading to the lagoon. The Regional 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

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- 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.
7. 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 Basin Plan and applicable statewide plans serve as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Los Angeles Regional Board. Attachment A to this resolution contains the language to be incorporated into the Basin Plan for this TMDL.
 8. Colorado Lagoon is located within the City of Long Beach, California. The Lagoon is a 15-acre, V-shaped tidal lagoon connected to Alamitos Bay and Pacific Ocean via a box culvert to Marine Stadium. Colorado Lagoon hosts sensitive estuarine habitats and provides public recreation. The beneficial uses identified in the Basin Plan include water contact recreation (REC-1), non-contact water recreation (REC 2), commercial and sport fishing (COMM), warm freshwater habitat (WARM), wildlife habitat (WILD), and shellfish harvesting (SHELL). Colorado Lagoon watershed is approximately 1,172 acres and divided into five sub-basins that discharge storm water and urban dry weather runoff to the Colorado Lagoon. Each of the sub-basins is served by a major storm sewer trunkline and supporting appurtenances that collect and transport storm water and urban dry weather runoff to the Colorado Lagoon. The land uses in the Colorado Lagoon watershed are primarily residential, open space, commercial, and institutional. Residential is the dominant land use accounting for approximately 66 % of the land use. Open space, commercial, and institutional land uses account for 19%, 10%, and 5%, respectively. Colorado Lagoon is identified on the 1998, 2002, and 2006 Clean Water Act 303(d) list of impaired water bodies as impaired due to elevated levels of OC pesticides, PCBs, sediment toxicity, PAHs, and metals in the sediment and fish tissue. The proposed TMDL addresses impairments of water quality caused by these constituents and the Implementation Plan is developed to achieve fish tissue and sediment quality objectives of Colorado Lagoon.
 9. The Regional Board's goal in establishing the Colorado Lagoon OC Pesticides, PCBs, sediment toxicity, PAHs, and metals TMDL is to determine and set forth measures needed to remove the impairment of fish tissue and sediment quality due to high levels of OC pesticides, PCBs, sediment toxicity, PAHs, and metals in Colorado Lagoon.
 10. The 1998, 2002, and 2006 303(d) lists for the Colorado Lagoon contain listings for sediment toxicity, chlordane, PAHs, lead, and zinc in sediment; and chlordane, DDT, dieldrin, and PCBs in fish tissue. In order to address these listings, water column, fish tissue and sediment targets are selected. Inclusion of the water, fish tissue, and sediment targets mentioned above adequately protects benthic and aquatic organisms, wildlife, and human health from potentially harmful effects

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- associated with OC pesticides, PCBs, sediment toxicity, and metals.
11. Regional Board staff has worked with the City of Long Beach, County of Los Angeles, Friends of Colorado Lagoon, and U.S. EPA during the development of a detailed technical document that analyzes and describes the specific necessity and rationale for the development of this TMDL. The technical document entitled "Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL" is an integral part of this Regional Board action and has been reviewed by the Regional Board before acting. The technical document provides the detailed factual basis and analysis supporting the problem statement, numeric targets, 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.
 12. On October 1, 2009, prior to the Board's action on this resolution, public hearings were conducted on the TMDL for OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals for Colorado Lagoon. Notice of the hearing for Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL was published in accordance with the requirements of Cal. Water Code Section 13244. This notice was published in the Long Beach Press-Telegram on July 23, 2009.
 13. The public has had a reasonable opportunity to participate in the review of the amendment to the Basin Plan. A draft of the TMDL was released for public comment on July 23, 2009; 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 October 1, 2009 to consider adoption of the TMDL.
 14. In amending the Basin Plan to establish this TMDL, the Regional Board considered the requirements set forth in Sections 13240 and 13242 of the California Water Code.
 15. Because the TMDL implements existing narrative and numeric quality objectives for fish tissue, sediment, and water quality objectives, the Regional Board along with the State Water Resources Control Board (State Board) has determined that adopting a TMDL does not require the water boards to consider the factors of Cal. Water Code section 13241. The consideration of the Water Code section 13241 factors, by section 13241's express terms, only applies "in establishing water quality objectives." Here the Regional 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 Regional Board has considered and relied upon a legal memorandum from the Office of Chief Counsel to the State Board's basin planning staff detailing why TMDLs cannot be considered water quality objectives. (See Memorandum from Staff Counsel

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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.)

16. While the Regional Board is not required to consider the factors of Cal. Water Code section 13241, it, nonetheless, has developed and received significant information pertaining to the Cal. 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 designated beneficial uses for Colorado Lagoon include water contact recreation, non-contact water recreation, commercial and sport fishing, warm freshwater habitat, wildlife habitat, and shellfish harvesting. The past, present, and probable future beneficial uses of water have been considered in that Colorado Lagoon is designated for a number of beneficial uses in the Basin Plan. Various living organisms (including vegetation, fish, invertebrates, and wildlife) are present in, transient through, and will be present in the lagoon. The environmental characteristics of Colorado Lagoon 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. Sediment, fish tissue, and water quality conditions that could be reasonably achieved through the coordinated control of implementation actions including integrating watershed-scale infrastructure projects and non-structural best management practices (BMPs) to control the loading of polluted storm water and contaminated sediments to Colorado Lagoon have been considered. TMDL implementation will be carried out by responsible parties including, but not limited to, the City of Long Beach, the Los Angeles County Flood Control District, and the California Department of Transportation (Caltrans). These projects focus on removal of contaminated sediment, reduction of storm water loadings by redirecting flows from major storm drains that currently discharge into the Lagoon to Marine Stadium, and diversion of low flows during the dry season to the sanitary sewer. Responsible agencies also have several options for implementing structural and nonstructural BMPs to attain fish tissue, sediment, and water quality objectives. Attainment of the water quality standards through removal of contaminated sediment, redirection of flows, and BMPs is a reasonably achievable water quality condition for Colorado Lagoon. 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. The TMDL also authorizes the use of BMPs, to the extent authorized by law, for various storm water dischargers. Economic considerations were considered and are reflected in an implementation program that is flexible and allows 7 years for dischargers to comply with the final allocations. The need for housing within the region has been considered, but this TMDL is unlikely to affect

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- housing needs. Whatever housing impacts could materialize is ameliorated by the flexible nature of this TMDL and the implementation schedule.
17. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), and the federal Antidegradation Policy (40 CFR 131.12), in that it does not allow the degradation of water quality, but requires restoration of water quality and attainment of water quality standards. **T**
18. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional 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). The Regional Board staff has prepared "substitute environmental documents" for this project that contains the required environmental documentation under the State Board's CEQA regulations. (23 Cal. Code Regs. § 3777). The substitute environmental documents include the TMDL staff report entitled "Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL", the environmental checklist, the comments and responses to comments, the basin plan amendment language, and this resolution. While the Regional 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. **E**
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19. A CEQA Scoping meeting was conducted on January 21, 2009 at the auditorium of the Lowell Elementary School, 5201 East Broadway, Long Beach, California. A notice of the CEQA Scoping meeting was sent to interested parties including cities and/or counties with jurisdiction in or bordering the watershed. The notice of CEQA Scoping meeting was also published in the Long Beach Press-Telegram on December 22, 2008. **T**
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20. In preparing the substitute environmental 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 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. Many compliance obligations will be undertaken directly by public agencies that will have their own obligations under CEQA. In addition, public agencies including, but not limited to, the City of Long Beach, the County of Los Angeles, and Caltrans are foreseeably expected to facilitate compliance obligations. The "Lead" agencies for tier 2 projects will assure **V**
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- compliance with project-level CEQA analysis requirements. Project level impacts will need to be considered in any subsequent environmental analysis performed by responsible agencies, pursuant to Public Resources Code section 21159.2.
21. The foreseeable methods of compliance of this TMDL entail construction and operation of storm water management practices such as relocation of major storm drains to Marine Stadium, low flow diversion of dry-weather run-off to sewer lines, installation of vegetated bioswales and trash separation devices, construction of a new (open or underground) channel from Colorado Lagoon to Marine Stadium, cleaning the existing culvert, repairing tidal gates and removal of sill/structural impedances, and removal of contaminated sediment. The above projects have already been subject to extensive environmental review. Both the Los Angeles County Board of Supervisors and the City of Long Beach have certified program level Environmental Impact Reports (EIRs) for the Termino Avenue Drain Project and the Colorado Lagoon Restoration Project that examine the foreseeable environmental impacts from constructing and operating a system to comply with the Colorado OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL.
22. Consistent with the Regional 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.
23. 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 Regional Board. Cal. Water Code section 13360 precludes the Regional Board from dictating the manner in which responsible agencies comply with any of the Regional Board's regulations or orders. When the agencies responsible for implementing this TMDL determine how they will proceed, the agencies 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)).
24. From a program-level perspective, incorporation of the alternatives and mitigation measures specified may not foreseeably reduce impacts to less than significant levels.

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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 Regional 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. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, Section 11353, Subdivision (b). As specified above, Federal laws and regulations require that TMDLs be incorporated into the state's 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 OC pesticides, PCBs, sediment toxicity, PAHs, and metals impairments of Colorado Lagoon.
28. The Basin Plan amendment incorporating a TMDL for OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals for Colorado Lagoon must be submitted for review and approval by the State 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.
29. 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 Cal. 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 Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDL.
2. The Regional Board hereby approves and adopts the CEQA substitute

- environmental documentation and the referenced Environmental Impact Reports entitled "Termino Avenue Drain Project Environmental Impact Report" and "Environmental Impact Report – Colorado Lagoon Restoration Project, City of Long Beach, California" , including all findings contained therein, 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. **T**
3. 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. **E**
4. 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 U.S. EPA. **N**
5. If during the State Board's approval process, Regional Board staff, the State Board or State Board staff, 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. **T**
6. The Executive Officer is authorized to request a "No Effect Determination" from the Department of Fish and Game, or transmit payment of the applicable fee as may be required to the Department of Fish and Game. **A**
- I, Tracy J. Egoscue, 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 [Insert date]. **T**

Tracy J. Egoscue
Executive Officer

Date

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