

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

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

**Amendment to the *Water Quality Control Plan for the Los Angeles Region*
to Incorporate a Total Maximum Daily Load for PCBs, Organochlorine
Pesticides and Sediment Toxicity for McGrath Lake**

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 the United States 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 to 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 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. In accordance with the consent decree, the McGrath Lake PCBs, Organochlorine Pesticides and Sediment Toxicity TMDL addresses the listings for sediment DDT, DDE, DDD, dieldrin, chlordane and toxicity in analytical unit 25. Based on the consent decree schedule, TMDLs 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

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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 progress of pollutant load reductions and improvements in water quality in McGrath Lake. The TMDL establishes the types of information that will be necessary to secure. 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 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.

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8. McGrath Lake is a small, back dune lake located in coastal Ventura County. Situated at the southern end of McGrath State Beach Park, the lake is south of the McGrath State Beach Campground and west of Harbor Blvd. Much of the adjacent area to the east is utilized for agricultural operations, such as strawberries, celery and cut flowers. The dominant land use in the McGrath watershed is agriculture, accounting for approximately 78% of the total land use. McGrath Lake is located within the McGrath Lake sub-watershed, which is approximately 1,700 acres and part of the larger Santa Clara River watershed. Prior to agricultural development within the region, the lake and surrounding area was part of the extensive wetland and floodplain complex of the Santa Clara River Delta. Tile drains installed in the region allowed for extensive agricultural operations and have greatly reduced the flooded soils and resulting wetlands. In 1958, Harbor Boulevard was built east of the park and lake, further disrupting the hydrological inputs to McGrath Lake. The lake is a receiving water for tile drain discharge, irrigation runoff, and stormwater from agricultural operations in the sub-watershed. An artificial discharge of lake water to McGrath State Beach occurs through the use of pumps to keep flooding of the fields east of Harbor Blvd to a minimum.
9. Numeric targets for the TMDL are based on narrative and numeric water quality objectives (WQOs) provided in the Basin Plan and 40 CFR 131.38 (California Toxics Rule or CTR).
10. The Regional Board's goal in establishing the TMDL for PCBs, Organochlorine Pesticides and Sediment Toxicity in McGrath Lake is to protect the recreation (REC 1 and REC 2), aquatic life (EST, WILD, RARE, WET) and commercial and sportfishing (COMM) beneficial uses of McGrath Lake by achieving the numeric and narrative water quality objectives set to protect those uses.
11. 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 "McGrath Lake PCBs, Organochlorine Pesticides and Sediment Toxicity TMDL" 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 narrative and numeric water quality objectives, used to calculate the waste load and load allocations), source analysis, linkage analysis, waste load allocations (for point sources), load allocations (for non-point sources), margin of safety, and seasonal variations and critical conditions of this TMDL.
12. At the time of TMDL adoption, there are no point source discharges to McGrath Lake. Therefore, no WLAs have been assigned in this TMDL. If future development results in stormwater discharges in the McGrath Lake subwatershed, the absence of a WLA would require that stormwater discharges cannot be directed into McGrath Lake. If it was contemplated that point source discharges would be directed to McGrath Lake, then the McGrath Lake TMDL would need to be amended.

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13. On October 1, 2009, prior to the Board's action on this resolution, a public hearing was conducted on the McGrath Lake PCBs, Organochlorine Pesticides and Sediment Toxicity TMDL. Notice of the hearing was published in accordance with the requirements of Cal. Water Code Section 13244. This notice was published in the Ventura County Star on July 20, 2009.
14. The public has had a reasonable opportunity to participate in the review of the amendment to the Basin Plan. A public stakeholder meeting was held on January 28, 2009. A draft of the TMDL was released for public comment on July 20, 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.
15. 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.
16. Because the TMDL implements existing narrative and numeric water quality objectives (i.e., water quality objectives in the Basin Plan), the Regional Board (along with the State Board) has determined that adopting a TMDL does not require the Regional Board 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 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.)
17. 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 (BUs). The designated BUs for McGrath Lake include aquatic life habitat uses, water contact and non-water contact recreation and commercial and sportfishing. The past, present and probable future beneficial uses of water have been considered in that McGrath Lake is designated for a number of beneficial uses in the basin plan. The environmental characteristics of McGrath Lake 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. Water quality conditions that reasonably could be achieved through the coordinated control of all factors which affect water quality in the area have been considered. This TMDL provides several compliance options, including lake management strategies/lake treatment

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- options that could be implemented directly in the lake and watershed strategies for agricultural and wet-weather runoff throughout the watershed to treat and reduce PCBs and pesticide loading to the lake. These options provide flexibility for responsible parties to reduce external loading and remediate contaminated sediments in McGrath Lake. The coordinated implementation of the in-lake and watershed compliance options should ensure that McGrath Lake attains and continues to maintain water quality standards. Attainment of the water quality standards through the in-lake and watershed compliance options is a reasonably achievable water quality condition for McGrath Lake. 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 and allows a flexible implementation schedule of 14 years. The need for housing within the region has been considered, but this TMDL is unlikely to affect housing needs. Whatever housing impacts could materialize are ameliorated by the flexible nature of this TMDL and the 14 year implementation schedule.
18. 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 degradation of water quality, but requires restoration of water quality and attainment of water quality standards.
 19. 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, § 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 contain 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 "McGrath Lake PCBs, Organochlorine Pesticides and Sediment Toxicity TMDL", the environmental checklist, the comments and responses to comments, the basin plan amendment language, and this resolution. The project itself is the establishment of a TMDL for PCBs, organochlorine pesticides and toxicity in sediments of McGrath Lake. 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.
 20. A CEQA Scoping meeting was conducted on March 18, 2009 at the California State Parks Channel Coast District Office, 911 San Pedro Street, Ventura, California 93001-3744. A notice of the CEQA Scoping meeting was sent to interested parties including landowners within the subwatershed.

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21. 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. 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.
22. The foreseeable methods of compliance for this TMDL entail construction and operation of stormwater and irrigation management practices such as filter systems, grass swales, field borders and sedimentation basins. Foreseeable methods of compliance also include lake management practices, such as hydraulic dredging, in-situ capping, and monitored natural attenuation.
23. 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.
24. 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 parties comply with any of the Regional Board’s regulations or orders. When the parties responsible for implementing this TMDL determine how they will proceed, the parties 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).)
25. From a program-level perspective, incorporation of the alternatives and mitigation measures specified may not foreseeably reduce impacts to less than significant levels.
26. 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.

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27. 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.)
28. Health and Safety Code section 57004 requires external scientific peer review for certain water quality control policies. Prior to public notice of the draft TMDL, the Regional Board submitted the scientific basis and scientific portions of the McGrath Lake TMDL for external scientific peer review. The peer review found that the proposed TMDL data, and pollutant allocations were presented in a scientifically credible manner. Minor modifications were made to the scientific portions of the TMDL to address comments identified during the peer review process.
29. The regulatory action meets the “Necessity” standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b). As specified above, Federal law 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 sediment PCB, organochlorine pesticides and toxicity impairments of McGrath Lake.
30. The Basin Plan amendment incorporating a TMDL for PCBs, organochlorine pesticides and sediment toxicity in McGrath Lake 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.
31. If during the State Board’s approval process Regional Board staff, the State Board or State 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 Regional Board’s intent in adopting this TMDL, and should inform the Board of any such changes.
32. Considering the record as a whole, this Basin Plan amendment is expected to result in an effect, either individually or cumulatively, on wildlife resources.

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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. The Regional 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 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 and implementation schedule of the McGrath Lake PCBs, Organochlorine Pesticides and Sediment Toxicity TMDL.
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.
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.
5. If during the State Board's approval process, Regional Board staff, the State Board or State 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 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 Department of Fish and Game, or transmit payment of the applicable fee as may be required to the Department of Fish and Game.
7. The Regional Board recognizes that cooperative parties will need to secure funding from outside sources for in-lake sediment remediation and monitoring in order to successfully implement the TMDL. The Regional Board supports the use of State Board Cleanup and Abatement Account Funds to implement the TMDL and hereby directs staff to begin working with cooperative parties to apply for Cleanup and Abatement Account Funding.

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 October 1, 2009.

Tracy J. Egoscue
Executive Officer

Date

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