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

RESOLUTION NO. R12-009
June 7, 2012

Amendment to the Water Quality Control Plan for the Los Angeles Region to Revise the Total Maximum Daily Load for Bacteria in the Malibu Creek Watershed

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), finds that:

1. On January 29, 2004, the Regional Board adopted, by Resolution R04-019, an amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) incorporating a total maximum daily load (TMDL) for bacteria in the Malibu Creek Watershed (hereinafter "Malibu Bacteria TMDL" or "the TMDL"). The TMDL included an implementation plan requiring reduction of bacteria loading to the Malibu Creek watershed by January 24, 2012 for dry weather, and by January 24, 2016 for wet weather.

2. On December 13, 2004, the Regional Board adopted, by Resolution No. R04-019R, an amendment to the Basin Plan revising the Malibu Bacteria TMDL. The revised Malibu Bacteria TMDL was subsequently approved by the State Water Resources Control Board (State Water Board) on September 22, 2005, the Office of Administrative Law (OAL) on December 1, 2005, and the United States Environmental Protection Agency (U. S. EPA) on January 10, 2006. The effective date of the Malibu Bacteria TMDL established by Resolution No. R04-019R was January 24, 2006, when the Certificate of Fee Exemption was filed with the California Department of Fish and Game.

3. The Malibu Bacteria TMDL includes a scheduled reconsideration. Specifically, pursuant to Table 7-10.3 of the TMDL, the Regional Board shall reconsider the TMDL to: (1) consider a natural source exclusion for bacteria loadings from birds in the Malibu Lagoon if all anthropogenic sources to the Lagoon have been controlled; (2) reassess the allowable winter dry-weather and wet-weather exceedances days based on additional date on bacterial indicator densities, and evaluation of site-specific variability in exceedance levels to determine whether existing water quality is better than water quality at the reference watershed; (3) reassess the allowable winter dry-weather and wet-weather exceedance days based on a re-evaluation of the selected reference watershed and consideration of other reference watersheds that may better represent the reaches of the Malibu Creek and Lagoon; (4) consider whether the allowable winter-dry weather and wet-weather exceedance days should be adjusted annually dependent on the rainfall conditions and an evaluation of natural variability in exceedance levels in the reference system(s); (5) re-evaluate the reference year used in the calculation of allowable exceedance days; and (6) re-evaluate whether there is a need for further clarification or revision of the geometric mean implementation provision.

4. This reconsideration is not a general reconsideration of each and every element of the Malibu Bacteria TMDL, but a re-examination of certain technical issues which, as recognized at the time of TMDL adoption, might need revision upon further data collection and analysis, study, or experience as indicated in Table 7-10.3 of the TMDL. The Regional Board recognizes that the science of fecal indicator bacteria and human health risk continues to advance. Over the

course of the implementation of this TMDL, the TMDL may be re-considered to incorporate new information from technical or scientific studies, or to address revisions to water quality standards, such as adoption of revised water quality objectives based on recommendations from U.S. EPA.

5. 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.

6. The Regional Board's goal in establishing the Malibu Bacteria TMDL was 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.

7. Regional Board staff has prepared a detailed technical document that analyzes and describes the specific necessity and rationale for this revision of the Malibu Bacteria TMDL. The technical document entitled "Reconsideration of Certain Technical Matters of the Malibu Creek and Lagoon Bacteria TMDL" is an integral part of this Regional Board action and was reviewed, considered, and accepted by the Regional Board before acting.

8. Upon reconsideration of the Malibu Bacteria TMDL, this amendment revises the TMDL to adjust the reference system, allowable exceedance days, time periods for allowable exceedance days, and the corresponding waste load allocations (WLAs) and load allocations (LAs) based on three reference system studies coordinated by the Southern California Coastal Water Research Project (SCCWRP). The technical document provides the detailed analysis supporting these revisions as well as analysis of other technical matters to be reconsidered as specified in the Malibu Bacteria TMDL, such as exceedance days adjusted annually dependent on the rainfall conditions, the reference year (critical condition), revision of the geometric mean calculation, and natural source exclusions.

9. On June 7, 2012, prior to the Regional Board's action on this resolution, a public hearing was conducted on this revision to the Malibu Bacteria TMDL. Notice of the hearing for this revision of the Malibu Bacteria TMDL was published in accordance with the requirements of Water Code Section 13244. This notice was published in the Los Angeles Times and the Ventura County Star on March 23, 2012.

10. The public has had reasonable opportunity to participate in review of the amendment to the Basin Plan. A draft of the revision of the Malibu Bacteria TMDL was released for public comment on March 23, 2012; a Notice of Hearing was published and circulated at least 45 days preceding Regional 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 7, 2012 to consider adoption of the revised TMDL.

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

12. Neither TMDLs nor their targets or other components are water quality objectives, and thus their establishment or revision does not implicate California Water Code section 13241.

13. This amendment is consistent with the State Antidegradation Policy (State Water 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.

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.) The Regional Board previously prepared "substitute environmental documents" for the establishment of the Malibu Bacteria TMDL adopted by Resolution No. R04-019R, which was filed with the Resources Agency on January 24, 2011. Those documents contained the required environmental documentation under the State Water Board's CEQA regulations (23 Cal. Code Regs § 3777.) The project itself was the establishment of the Malibu Bacteria TMDL. In preparing the previous substitute environmental documents, the Regional Board considered the requirements of Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187, and intended those documents to serve as a tier 1 environmental review. The previous substitute environmental documents contained significant environmental analysis and numerous findings related to the reasonably foreseeable methods of compliance, the impacts of the methods of compliance, feasible mitigation measures, and alternative means of compliance.

15. This TMDL revision does not alter the environmental analysis that was previously prepared for the establishment of the Malibu Bacteria TMDL because the TMDL revisions will not result in different implementation actions than those previously analyzed for the Malibu Bacteria TMDL, or different effects upon the environment. Moreover, no additional reasonably foreseeable methods of compliance warrant environmental analysis pursuant to Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187. As such, this amendment is consistent with the prior CEQA documentation.

16. Further, consistent with California Code of Regulations, title 14, section 15162, the Regional Board has determined that no subsequent environmental documents shall be prepared because this TMDL revision does not involve new significant environmental effects, a substantial increase in the severity of previously identified significant effects, or mitigation measures or alternatives that are considerably different from those analyzed in the previous substitute environmental documentation.

17. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b). 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 revising the Malibu Bacteria TMDL is established in Table 7-10.3 of the Malibu Bacteria TMDL and the TMDL staff report.

18. This Basin Plan amendment revising the Malibu Bacteria TMDL must be submitted for review and approval by the State Water Board, the State OAL, and the U.S. EPA. The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA.

19. If during its approval process, Regional Board staff, the State Water Board or State Water Board staff, or OAL determine 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 Regional 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 amendment to Chapter 7 of the Water Quality Control Plan for the Los Angeles Region, as set forth in Attachment A hereto, to revise the Malibu Bacteria TMDL.

2. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Water Board in accordance with the requirements of section 13245 of the California Water Code.

3. The Regional Board requests that the State Water 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.

4. If during its approval process, Regional Board staff, the State Water Board or State Water Board staff, or OAL determine 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 Regional Board of any such changes.

I, Samuel Unger, 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 7, 2012.

Samuel Unger
Executive Officer