

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

**RESOLUTION NO. R13-XXX
June 6, 2013**

Amendment to the Water Quality Control Plan for the Los Angeles Region to Incorporate Implementation Plans for the Total Maximum Daily Loads for Metals in the Los Cerritos Channel and for Metals and Selenium in the San Gabriel River and Impaired Tributaries

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

1. The Federal Clean Water Act (CWA) requires the 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. Section 303(d)(1) of the CWA 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 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). Alternatively, U.S. EPA may establish the TMDLs determined necessary to implement the water quality standards applicable to the impaired waters. Upon such establishment by U.S. EPA, the state shall incorporate the TMDLs into its plans for the water body.
3. A consent decree between U.S. EPA, Heal the Bay, and Santa Monica BayKeeper 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 consent decree 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. Analytical unit 39 was designed to address metals in the San Gabriel River and its tributaries. Under the consent decree, TMDLs were required to be established for metals in this analytical unit by March 2007. Analytical Unit 84 was for metals listings in Los Cerritos Channel. Under the consent decree, U.S. EPA was required to establish those TMDLs by March 2012.
4. On March 26, 2007, U.S. EPA established TMDLs for Metals and Selenium in the San Gabriel River and Impaired Tributaries.
5. On March 17, 2010, U.S. EPA established TMDLs for Metals in the Los Cerritos Channel.
6. The U.S. EPA-established TMDLs include the problem statement, numeric targets, source analysis, loading capacity, load allocations, waste load allocations, and margin of safety. An implementation plan is not a required element of a TMDL established by U.S. EPA; therefore, these TMDLs do not include implementation plans or schedules for

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implementation. This amendment incorporates implementation plans for the TMDLs for metals in the Los Cerritos Channel and for metals and selenium in the San Gabriel River and impaired tributaries.

7. Upon establishment of TMDLs by the State or U.S. EPA, the State is required to incorporate, or reference, the TMDLs into the State Water Quality Management Plan. (40 CFR §§ 130.6(c)(1), 130.7.) The 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 Los Angeles Regional Board. Attachments A and B to this resolution contain the language to be incorporated into the Basin Plan for these TMDLs.
8. Los Cerritos Channel is an open channel; the cities of Long Beach, Lakewood, Bellflower, Paramount, Downey, Signal Hill and Cerritos, as well as a small portion of Los Angeles County are located within the area that drains to Los Cerritos Channel. The Channel is freshwater until approximately Anaheim Road, where the Channel's tidal prism begins. From there it connects with Alamitos Bay through the Marine Stadium. Wetlands connect to the Channel a short distance from its lower end. The portion of Los Cerritos Channel addressed by the U.S. EPA-established TMDL is the freshwater portion above the tidal prism. The Los Cerritos Channel above the tidal prism drains a relatively small (17,725 acre) densely urbanized area. The U.S. EPA-established TMDL assigns dry-weather allocations for copper and wet-weather allocations for copper, lead, and zinc to point and nonpoint sources in the watershed. The primary point sources in the watershed include: (a) municipal separate storm sewer system (MS4) discharges regulated by the Los Angeles County MS4 permit, the Long Beach MS4 permit, and the California Department of Transportation (Caltrans) Statewide MS4 permit, (b) storm water discharges associated with industrial activities regulated by the statewide Industrial General Permit, and (c) storm water discharges associated with construction and land disturbance activities regulated by the statewide Construction General Permit.
9. The San Gabriel River receives drainage from a 682 square mile area of eastern Los Angeles County and has a main channel length of approximately 58 miles. Its headwaters originate in the San Gabriel Mountains with the East, West, and North Forks. The river flows through a heavily developed commercial and industrial area before emptying into the Pacific Ocean in Long Beach. The main tributaries of the river are Walnut Creek, San Jose Creek, and Coyote Creek. The U.S. EPA-established TMDLs for the San Gabriel River and impaired tributaries include allocations to address dry-weather impairments for copper in the Estuary and selenium in San Jose Creek Reach 1, as well as allocations to address wet-weather impairments for lead in San Gabriel River Reach 2 and for copper, lead, and zinc in Coyote Creek. The primary point sources in the watershed include: (a) MS4 discharges regulated by the Los Angeles County MS4 permit, the Long Beach MS4 permit, the Orange County MS4 permit, and the Caltrans Statewide MS4 permit, (b) storm water discharges associated with industrial activities regulated by the statewide Industrial General Permit; (c) storm water discharges associated with construction and land disturbance activities regulated by the statewide Construction General Permit, (d) major NPDES permits (including five wastewater treatment plants and two power plants), (e) minor NPDES permits, and (f) other general NPDES permits.
11. Regional Board staff has prepared a detailed technical document that analyzes and describes the specific necessity and rationale for the incorporation of implementation plans for the Los Cerritos Channel metals TMDL and the San Gabriel River and impaired tributaries metals and selenium TMDLs. The technical document entitled "Incorporation of Implementation

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Plans for the TMDLs for Metals in the Los Cerritos Channel and for Metals and Selenium in the San Gabriel River and Impaired Tributaries" is an integral part of this Regional Board action and was reviewed, considered, and accepted by the Regional Board before acting.

12. On June 6, 2013, prior to the Regional Board's action on this resolution, a public hearing was conducted on the incorporation of implementation plans for these TMDLs into the Basin Plan. Notice of the hearing for the incorporation of implementation plans for these TMDLs was published in accordance with the requirements of California Water Code section 13244. This notice was published in the San Gabriel Valley Tribune and the Long Beach Press Telegram on March 29, 2013.
13. The public has had reasonable opportunity to participate in review of this amendment to the Basin Plan. Drafts of the implementation plans for the San Gabriel River and impaired tributaries metals and selenium TMDLs and the Los Cerritos Channel metals TMDLs were released for public comment on April 2, 2013; a Notice of Hearing was published and circulated 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 6, 2013 to consider adoption of the implementation plans.
14. Neither TMDLs nor their implementation plans are water quality objectives, and thus their establishment does not implicate California Water Code section 13241. Rather, under California law, TMDLs and implementation plans are programs to implement existing water quality standards and are thus established pursuant to California Water Code sections 13240 and 13242.
15. In amending the Basin Plan, the Regional Board considered the factors set forth in sections 13240 and 13242 of the California Water Code. These implementation plans identify implementation measures that could be used to attain the TMDLs, the regulatory mechanisms that will be used to implement the TMDLs, how compliance with the TMDLs will be determined, and schedules for implementing the TMDLs. As envisioned by California Water Code section 13242, these implementation plans also include a description of monitoring to be undertaken to determine compliance with the TMDLs. The monitoring element of these implementation plans recognizes that monitoring will be necessary to assess the progress in reducing pollutant loads, improvements in receiving water quality, and compliance with the TMDLs' waste load allocations and load allocations.
16. This amendment is consistent with the State Antidegradation Policy (State Water Resources Control Board (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.
17. It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Cal. Wat. Code § 106.3). Where there is a designated municipal water supply beneficial use, these Basin Plan amendments promote that policy by requiring, within a reasonable timeframe, restoration of water quality and attainment of water quality standards adequate to protect human health and ensure that water is safe for domestic use.
18. 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.

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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 Water Board’s CEQA regulations. (23 Cal. Code Regs. § 3775-3781.) The project itself is the establishment of implementation plans for TMDLs that have already been established by U.S. EPA. The Regional Board has discretion in determining the program of implementation and setting various milestones in achieving the previously established TMDLs. The CEQA checklist and other portions of the substitute environmental documents contain significant analysis and numerous findings related to impacts and mitigation measures.

19. A CEQA Scoping meeting for the San Gabriel River and Impaired Tributaries Metals TMDLs was conducted on December 12, 2005 at the Regional Board office located at 320 West 4th Street, Los Angeles, CA 90013. An additional CEQA Scoping meeting for the San Gabriel River and Impaired Tributaries Metals TMDLs and the Los Cerritos Channel Metals TMDLs was conducted on March 28, 2013 at the Regional Board office. The purpose of the meetings was to solicit input from the public and interested stakeholders in determining the appropriate scope, content, and implementation options for the TMDLs. At the meeting, staff presented the regulatory background, description of the project, location of the project, project purpose, and potential implementation alternatives. These meetings fulfilled the requirements under CEQA. (Public Resources Code § 21083.9; 23 Cal. Code Regs. § 3775.5).
20. The lengthy compliance schedules allowed by the TMDL implementation plans will allow many compliance approaches to be pursued including, but not limited to, pollution prevention as envisioned in California Water Code section 13263.3. In preparing the substitute environmental documents, the Regional Board has considered the requirements of Public Resources Code section 21159 and section 15187 of Title 14 of the California Code of Regulations, 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.
21. The reasonably foreseeable methods of compliance for these TMDL implementation plans include construction and operation of stormwater management practices such as filter systems and grass swales, as well as non-structural alternatives such as pollution prevention through true source control (e.g., product reformulation, input change), operational improvement through good housekeeping practices, and increased street sweeping. Wastewater treatment plants may implement source reduction strategies to reduce copper in the influent or advanced treatment technologies. Potential compliance measures for the power plants include relocating discharge outfalls to the ocean, replacing copper condensers, switching to cooling towers, or implementing other source control measures.
22. Consistent with the Regional Board's substantive obligations under CEQA, the substitute environmental documents do not engage in speculation or conjecture. The substitute environmental documents only consider the reasonably foreseeable environmental impacts, including those relating to the reasonably foreseeable 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.

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23. This Basin Plan 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. Such alternatives or mitigation measures are within the responsibility and jurisdiction of other public agencies, and not the Regional Board. California Water Code section 13360 precludes the Regional Board from specifying the design, location, type of construction, or particular manner in which responsible parties comply with Regional Board orders. When the parties responsible for implementing the TMDLs 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).)
24. The substitute environmental documents for these TMDL implementation plans, and in particular the Environmental Checklist and staff's responses to comments, identify broad mitigation approaches that should be considered at the project level.
25. 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 implementation plans against the unavoidable environmental risks and finds that specific economic, legal, social, technological, and other benefits of the TMDL implementation plans 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.)
26. This 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 implementation plans are programs of implementation for existing water quality objectives, and are therefore appropriately a component of the Basin Plan under California Water Code section 13242. The necessity of incorporating implementation plans for the San Gabriel River and impaired tributaries metals and selenium TMDLs and the Los Cerritos Channel metals TMDLs is established in the staff report.
27. The Regional Board encourages local municipalities to work with South Coast Air Quality Management District (SQAQMD) and California Air Resources Board (CARB) to further identify and control sources of trace metals in atmospheric deposition. If necessary, the State Water Board and Los Angeles Water Board shall enforce compliance with the adopted plans by the SCAQMD and CARB as appropriate under Water Code sections 13146 and 13247, and all other relevant statutes and regulations.
- 26-28. Municipalities can implement various provisions of the MS4 permits in order to maximize retention of stormwater and associated pollutants on site. This will help prevent the conveyance of pollutants from atmospheric deposition and other sources from being washed into stormwater and discharged to the San Gabriel River and Los Cerritos Channel.
29. The Basin Plan amendment incorporating implementation plans for the San Gabriel River and impaired tributaries metals and selenium TMDLs and the Los Cerritos Channel metals TMDLs must be submitted for review and approval by the State Water Board and the State

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Office of Administrative Law (OAL). ~~The Basin Plan amendment incorporating implementation plans, including schedules of implementation, may be submitted for review and approval pursuant to Clean Water Act section 303(e), as appropriate, by U.S. EPA.~~ The Basin Plan amendment will become effective upon approval by OAL ~~and U.S. EPA, as appropriate.~~ A Notice of Decision will be filed with the Resources Agency.

~~27.30. This Basin Plan amendment will be submitted to U.S. EPA for compliance schedule authorization pursuant to Clean Water Act section 303(c) in order to provide power plants (for copper waste load allocations applicable during dry weather only) and existing general industrial and construction storm water dischargers (for waste load allocations applicable during wet weather only) time, if necessary and appropriate, to comply with waste load allocations that are based on criteria in title 40, Code of Federal Regulations, section 131.38 (the "California Toxics Rule") consistent with the associated implementation schedules in Tables 7-20.2 and 7-32.2 of Attachments A and B, respectively.~~

~~28.31. 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 Basin Plan 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 California 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 Attachments A and B hereto, incorporating implementation plans for the San Gabriel River and impaired tributaries metals and selenium TMDLs and the Los Cerritos Channel metals TMDLs.
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 for review and approval to OAL ~~and finally, for review and approval pursuant to CWA section 303(e), as appropriate, to U.S. EPA.~~
- ~~3.4. The Regional Board requests that U.S. EPA provide compliance schedule authorization pursuant to Clean Water Act (CWA) section 303(c)(2) in order to provide power plants time, if necessary and appropriate, to comply with the copper waste load allocations applicable during dry weather consistent with the associated implementation schedules in Tables 7-20.2 and 7-32.2 of Attachments A and B, respectively. The Regional Board also requests that U.S. EPA provide compliance schedule authorization pursuant to CWA section 303(c)(2) in order to provide existing general industrial and construction storm water dischargers time, if necessary and appropriate, to comply with the waste load allocations applicable during wet weather consistent with the associated implementation schedules in Tables 7-20.2 and 7-32.2 of Attachments A and B, respectively.~~

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- | ~~4.5.~~ 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.
- | ~~5.6.~~ The Executive Officer is authorized to request a “No Effect Determination” from the California Department of Fish and Wildlife, or transmit payment of the applicable fee as may be required to the California Department of Fish and Wildlife.

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 6, 2013.

Samuel Unger
Executive Officer

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