

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

RESOLUTION NO. XX-XX

**AUTHORIZING THE EXECUTIVE OFFICER
TO SIGN A MEMORANDUM OF UNDERSTANDING WITH
THE CITY OF MALIBU AND THE STATE WATER RESOURCES CONTROL BOARD
REGARDING THE MALIBU CIVIC CENTER AREA PROHIBITION**

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

1. On November 5, 2009 the Regional Board adopted Resolution R4-2009-007 approving an amendment to Chapter IV of the Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan), to prohibit on-site wastewater disposal systems (OWDSs) in the Malibu Civic Center Area, as defined in Resolution R4-2009-007, (Basin Plan Amendment).
2. On September 21, 2010 the State Water Resources Control Board (State Water Board) adopted Resolution No. 2010-0045 approving the Basin Plan Amendment.
3. On December 23, 2010, the Office of Administrative Law approved the regulatory provisions of the Basin Plan Amendment, the final step for the amendment to take effect.
4. The Basin Plan Amendment prohibits all new OWDSs in the Malibu Civic Center Area and prohibits the discharge from existing OWDSs based on a phased schedule to cease discharges from Phase One systems by November 5, 2015 and Phase Two systems by November 5, 2019. The Basin Plan Amendment does not prevent repairs, maintenance, and upgrades to existing OWDSs, provided that they do not expand the capacity of the systems or increase flows of wastewater.
5. The City of Malibu (City) objected to the adoption of the Basin Plan Amendment and expressed its intent to file a lawsuit challenging the Basin Plan Amendment. In October 2010, the City and the Regional Board and the State Water Board (the Water Boards) entered into a tolling agreement by which they agreed to extend the time within which the City must bring an action against the Water Boards challenging their actions to approve the Basin Plan Amendment, which agreement was extended and now due to expire in October 2011. The purpose of the tolling agreement was to afford the Parties an opportunity to reach agreement on a phased implementation, boundaries and other matters related to the substance of Basin Plan Amendment.
6. The Parties have developed a Memorandum of Understanding (MOU) to memorialize the Parties' agreement to coordinate in the implementation of a wastewater treatment plan for the

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Malibu Civic Center Area, as defined in the Basin Plan Amendment, that employs both a plan and schedule to construct one or more centralized wastewater treatment facilities (facility) in the Malibu Civic Center Area and a comprehensive regulatory program with respect to OWDSs.

7. The MOU provides, in summary, the following provisions:

7.1. In the MOU, the City agrees to construct one or more facilities according to a specified schedule that contains specific milestones to assure completion of Phase One by November 5, 2015 and Phase Two by November 5, 2019.

7.2. The City and the Water Boards agree that certain properties, in the area designated as Phase Three, may not be connected to a Facility based on monitoring data to be collected by the City under the oversight of the Regional Board. If it is determined that the Phase Three properties must be connected to a Facility, they must be connected by November 5, 2025.

7.3. If an assessment district is not approved by dischargers, the Los Angeles Water Board may enforce all State policies, plans, or regulations to gain compliance, including the requirement to upgrade each OWDS to advance treatment, or other appropriate means by November 5, 2019. Advanced treatment for OWDS is defined as disinfection treatment to a level that meets applicable water quality standards for Fecal Indicator Bacteria and/or denitrification not to exceed a total nitrogen concentration of 10 milligrams per liter (mg/l) for those properties impacting an impaired water body with a nutrient total maximum daily load (TMDL). All property owners that are required to upgrade their system will need to obtain City of Malibu building permits and obtain an operating permit in accordance with City ordinances. The City's operating permit program requires that advanced residential OWDS must be inspected every 3 years by a certified OWDS inspector. The Los Angeles Water Board will also require effluent monitoring for these systems that shall be submitted and reviewed by the Los Angeles Water Board on a quarterly basis for Total Suspended Solids, Total Nitrogen, Total Phosphorus, and Fecal Indicator Bacteria as appropriate.

7.4. The Regional Board agrees not to amend the Basin Plan Amendment as long as the MOU is in effect, not to enforce the Basin Plan Amendment against property owners who comply with the terms of the Basin Plan Amendment and waste discharge requirements or waivers issued by the Regional Board, and to coordinate with the City with respect to enforcement. The Parties acknowledge, however, that modification of the Basin Plan Amendment may be necessary if it is determined that Phase Three properties are determined not to be required to connect to a facility and the MOU does not preclude future amendments.

8. The Regional Board reserves its rights to terminate the MOU at any time and enforce the Basin Plan Amendment.

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9. The Regional Board has authority to enter into this MOU pursuant to California Water Code sections 13165 and 13225.
10. The Regional Board has determined that the proposed MOU is fair, reasonable and in the public interest, and further is consistent with the goals and purposes of the Porter-Cologne Water Quality Control Act (California Water Code § 13000 *et seq.*), in that it benefits the public by assuring the implementation of a plan to construct one or more publicly owned wastewater treatment facilities that will result in elimination of discharges of waste from OWDS, including bacteria and nitrates, to waters of the state, and protection of public health in the vicinity of the Malibu Civic Center Area. The MOU will compliment other activities of the City, including implementation of OWDS regulations to require more frequent inspections and upgrades to septic systems if necessary, and activities of the Los Angeles Water Board, including implementation of TMDLs and issuance of waste discharge requirements to certain properties in Malibu. Further, the City is working with the Regional Board to construct a centralized treatment plant as a solution to comply with the Basin Plan Amendment and protect the water quality.
11. The Regional Board provided notice of its intention to consider this matter at a public meeting and provided an opportunity for interested persons to comment on the proposed MOU. The City of Malibu also held a public meeting to consider the MOU after proper notice.
12. The Regional Board, at a public meeting, heard and considered all comments pertaining to this matter.

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THEREFORE, BE IT RESOLVED THAT the California Regional Water Quality Control Board, Los Angeles Region, authorizes the Executive Officer to sign the Memorandum of Understanding between the City of Malibu, the Regional Water Quality Control Board, Los Angeles Region, and the State Water Resources Control Board Regarding Implementation of the Basin Plan Amendment for the Malibu Civic Center Area Prohibition.

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 July 14, 2011.

Samuel Unger, P.E.
Executive Officer