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STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2005-0015

AMENDMENT TO WATER QUALITY CONTROL PLAN
FOR THE LOS ANGELES REGION
TO REMOVE THE POTENTIAL REC-1 BENEFICIAL USE
ASSOCIATED WITH THE SWIMMABLE GOAL -
AS EXPRESSED IN THE FEDERAL CLEAN WATER ACT SECTION 101(a)(2)
FOR BALLONA CREEK,” REPLACE THE POTENTIAL REC-1 BENEFICIAL USE
FOR “BALLONA CREEK TO ESTUARY” WITH AN EXISTING LIMITED REC-1 USE,
AND ADD BACTERIA OBJECTIVES TO PROTECT THE NEW LIMITED REC-1 USE

WHEREAS, the State Water Resources Control Board (State Board) finds that:

1. Clean Water Act section 101(a)(2) sets a national interim goal – wherever attainable – of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983.
2. Implementing federal regulations at 40 Code of Federal Regulations, section 131.10(a) direct states to specify appropriate water uses to be achieved and protected. The classification of state waters must take into consideration their use and value for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation.
3. States may remove a designated use which is not an existing use, as defined in 40 Code of Federal Regulations, section 131.3, or establish sub-categories of a use if the state can demonstrate that attaining the designated use is not feasible due to factors set out in 40 Code of Federal Regulations, section 131.10(g).
4. Under 40 Code of Federal Regulations, section 131.10 (j)(2), states are required to conduct a Use Attainability Analysis (UAA) whenever they wish to remove a designated use that is specified in Clean Water Act section 101(a)(2) or adopt subcategories of uses specified in section 101(a)(2) that require less stringent criteria.
5. Ballona Creek is located in Los Angeles County, California, and flows slightly over 10 miles from the City of Los Angeles, through Culver City, reaching the Pacific Ocean at Playa del Rey. Except for the estuarine section of the creek, which is composed of grouted rip-rap side slopes and an earthen bottom, Ballona Creek is entirely lined in concrete and extends into a complex underground network of storm drains, which reaches north to Beverly Hills and West Hollywood. Tributaries of the creek include Centinela Creek, Sepulveda Canyon Channel, Benedict Canyon Channel, and numerous other storm drains. All of these tributaries are concrete lined channels which lead to covered culverts.
6. The Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan) designates beneficial uses of the Region’s waterbodies, establishes

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water quality objectives for the protection of these beneficial uses, and outlines a plan of implementation for maintaining and enhancing water quality.

7. The Basin Plan defines three sections of the creek based on hydrologic units. The section referred to as “Ballona Creek” (Reach 1) is a 2-mile stretch from Cochran Avenue to National Boulevard. “Ballona Creek to Estuary” (Reach 2) flows approximately 4 miles from National Boulevard to Centinela Avenue, where the estuary begins. “Ballona Creek Estuary” continues to the Pacific Ocean for 3.5 miles and its lower portion runs parallel to the main channel of Marina del Rey.
8. The Basin Plan designates existing non-contact water recreation (REC-2) and potential water contact recreation (REC-1) for both Reaches 1 and 2 of Ballona Creek. Ballona Creek Estuary has an existing REC-1 use.
9. The State Water Resources Control Board (State Board) has determined that the potential REC-1 use as it pertains to swimming-related activities for both Reaches 1 and 2 should be removed. In addition, the potential REC-1 use of Reach 2 should be replaced with a limited REC-1 use based on the nature and frequency of use.
10. The limited REC-1 designation will provide a lower level of protection than the current REC-1 designation based on frequency of use. This approach is consistent with United States Environmental Agency (U.S. EPA) guidance, which suggests higher allowable levels for bacteria limits with decreasing frequency of use in a waterbody.
11. These modifications are consistent with the Antidegradation Policy as they will not lower the water quality of the creek, relative to existing conditions. In assigning water quality objectives to the limited uses that exist, the Basin Plan Amendment fulfils the requirement of protecting the level of water quality necessary to protect existing and anticipated beneficial uses.
12. The proposed amendment is based on the results of a UAA of the recreational uses of Reach 1 and 2, performed by Los Angeles Regional Water Quality Control Board (Regional Board) staff. This analysis was conducted between March and August of 2002 to determine actual and potential recreational uses of the creek. The UAA is necessary to conform with 40 Code of Federal Regulations, section 131.10(j) because the action involves the recreation use specified in Clean Water Act section 101(a)(2). The proposed amendment and the UAA only address the swimmable goal included in the REC-1 designation, and do not address the fishable goal (“protection and propagation of fish, shellfish, and wildlife”) contained in section 101(a)(2) of the Clean Water Act. The fishable goal of the Clean Water Act is also protected under other beneficial uses designated in the Basin Plan for the affected waterbodies (including WARM).
13. The State Board’s goal in making the above amendments is to assign bacterial water quality objectives that accurately reflect the existing and potential uses of Reaches 1 and 2 of Ballona Creek

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14. Interested persons and the public have had reasonable opportunity to participate in review of the amendment to the Basin Plan. Efforts to solicit public review and comment included by the Regional Board release of a draft staff report, tentative resolution, and Basin Plan Amendment on April 4, 2003 and a public workshop on May 6, 2003.
15. The Regional Board published and circulated a Notice of Hearing and Notice of Filing 45 days preceding a Regional Board hearing on June 5, 2003. Regional Board staff responded to oral and written comments received from the public. The Regional Board held a public hearing on June 5, 2003 to consider modification of the REC-1 beneficial use in Ballona Creek (Reach 1 and 2).
16. At the conclusion of the June 15, 2003 hearing, the Regional Board voted to reject the proposed amendment. The State Board decided to review the Regional Board's action on the State Board's own motion, at the request of Los Angeles County and the Los Angeles County Flood Control District.
17. Under Water Code section 13320, when the State Board finds that a Regional Board's failure to act was inappropriate or improper, the State Board may take the appropriate action itself.
18. On January 20, 2005, the State Board found that the Regional Board's failure to adopt the proposed basin plan amendment was inappropriate and improper. For the reasons explained in State Board Order WQO 2005-0004, the State Board, adopts the proposed amendments with one minor clarification.
19. The basin planning process has been certified as functionally equivalent to the California Environmental Quality Act requirements for preparing environmental documents (Public Resources Code, section 21000 et seq.) and as such, the required environmental documentation and CEQA environmental checklist have been prepared.
20. The proposed amendment results in no potential for adverse effect (de minimis finding), either individually or cumulatively, on wildlife.
21. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b).
22. The Basin Plan amendment to modify the recreational beneficial use for Ballona Creek (Reaches 1 and 2) must be submitted for review and approval by 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.

THEREFORE, BE IT RESOLVED THAT:

1. Pursuant to sections 13240 and 13241 of the California Water Code, the State Board, after considering the entire record hereby adopts the amendment to the Water Quality Control Plan for the Los Angeles Region as set forth in Attachment 1 to this Resolution.

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2. The State Board Executive Director is authorized to forward it to OAL and the U.S. EPA.
3. If, during its approval process OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Director may make such changes, and shall inform the State Board of any such changes.
4. The Executive Director is authorized to sign a Certificate of Fee Exemption.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 20, 2005.


Debbie Irvin
Clerk to the Board