

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION--DIVISION OF WATER QUALITY
JUNE 17, 2008**

ITEM 7

SUBJECT

CONSIDERATION OF A RESOLUTION APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE LOS ANGELES REGION (BASIN PLAN) TO ESTABLISH A TOTAL MAXIMUM DAILY LOAD FOR METALS IN BALLONA CREEK

DISCUSSION

On July 7, 2005, the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) adopted [Resolution No. R05-007](#) amending the Basin Plan to establish a Total Maximum Daily Load (TMDL) for metals in Ballona Creek and Sepulveda Canyon Channel. Ballona Creek is listed on the federal Clean Water Act section 303(d) list because it does not meet water quality standards for copper, lead, selenium, and zinc. Sepulveda Canyon Channel is listed only for lead. The TMDL was approved by the State Water Resources Control Board (State Water Board) in Resolution No. 2005-0078 on October 20, 2005 and by the Office of Administrative Law (OAL) on December 9, 2005. The U.S. Environmental Protection Agency (U.S. EPA) approved the Ballona Creek Metals TMDL on December 22, 2005. The TMDL became effective on January 11, 2006.

On February 16, 2006, the Cities of Bellflower, Carson, Cerritos, Downey, Paramount, Santa Fe Springs, Signal Hill, and Whittier (Cities) filed a petition for a writ of mandate challenging many aspects of the Los Angeles River Metals TMDLs and the Ballona Creek Metals TMDL.

On May 24, 2007, the Los Angeles County Superior Court (Court) adopted the third of three rulings with respect to the writ petition. All of the challenges to the TMDLs were rejected, except for one claim under the California Environmental Quality Act. Specifically, the Court ruled that the Los Angeles Water Board should have included an analysis of the alternatives to the project (pursuant to Public Resources Code section 21080.5 and section 3777 of Title 23 of the California Code of Regulations). Those sections, which are applicable to the Water Boards' certified regulatory program, require the Water Boards to include an analysis of whether there are feasible alternatives or feasible mitigation measures available to the project that would substantially lessen a significant adverse effect that the activity may have on the environment. The Court issued its writ of mandate, directing the Water Boards to adopt an alternatives analysis that analyzed feasible alternatives to the TMDL and to reconsider the TMDL accordingly. The writ was limited to that issue, and the TMDLs were affirmed in all other respects.

On June 22, 2007, the Los Angeles Water Board circulated an alternatives analysis ([Attachment 1](#)) for public comment, in order to comply with the writ of mandate. The alternatives analysis examined the alternatives suggested by the Cities, as well as analogous alternatives suggested to the Los Angeles Water Board during other TMDL proceedings by these and other stakeholders. The analysis concluded that none of the alternatives are feasible alternatives that would both result in less significant impacts and achieve the project's purposes.

On September 6, 2007, the Los Angeles Water Board reviewed that analysis and, in consideration of the entire administrative record, adopted Resolution No. R2007-015 ([Attachment 2](#)¹). The Los Angeles Water Board found that no feasible alternatives exist that would achieve the project's purpose and also result in substantially less significant impacts to the environment than the TMDL as previously adopted. The Los Angeles Water Board re-adopted the TMDL.

TMDL

The numeric targets for the TMDL have been calculated based on the numeric criteria in the California Toxics Rule (CTR). These CTR objectives are expressed in terms of dissolved metals. Conversion factors are then used to convert dissolved metals into the equivalent of total recoverable metals. The numeric targets are expressed in terms of total recoverable metals and separated into wet and dry weather conditions. There are separate numeric targets for dry and wet weather because hardness values and flow conditions in the Ballona Creek and Sepulveda Canyon Channel vary between dry weather and wet weather.

Dry weather TMDLs (loading capacities) for each impaired reach are calculated as the product of the critical (mean) dry weather flow and the numeric target. Wasteload allocations for dry weather are developed by subtracting load allocations from the total loading capacity. Storm water wasteload allocations are apportioned primarily between the municipal separate storm sewer system (MS4) and California Department of Transportation (Caltrans) permittees. Concentration-based dry weather wasteload allocations are also assigned to minor National Pollutant Discharge Elimination System (NPDES) and general non-storm water NPDES permittees that discharge to Ballona Creek. A zero wasteload allocation is assigned to all general industrial and general construction storm water permits during dry weather.

Wet weather TMDLs are calculated as the product of the daily storm volume and the numeric target. Wet weather load allocations for direct air deposition to the water are presented as equations but are not considered a significant source. The dominant source of wet weather loading are storm water point sources. Wet weather wasteload allocations are apportioned among the MS4, Caltrans, general construction, and general industrial permittees. Minor, concentration-based wasteload allocations are also developed for other permittees that discharge to Ballona Creek.

The implementation schedule for the MS4 and Caltrans permittees consists of a phased approach, with compliance to be achieved in prescribed percentages of the watershed until the entire watershed meets the wasteload allocations within 15 years.

The revised amendment replaces the previous implementation deadlines that were tied to the "effective date of the TMDL" with the specific dates that were set when the TMDL originally became effective on January 11, 2006.

After adoption of the Basin Plan amendment, Los Angeles Water Board staff found that it was necessary to make several minor, non-substantive corrections to the resolution language. Resolution No. R2007-015 includes a provision which allows the Executive Officer to make minor, non-substantive corrections to the amendment and resolution language as needed. The Executive Officer made the corrections in a memorandum dated September 21, 2007. The

¹ Attachment 2: Resolution No. R2007-015 itself has 2 attachments: Attachment A is the basin plan amendment Language; and Attachment B is Resolution No. R05-007, which this action amends.

corrections involved only the citation to R05-007, which had mistakenly been cited as R2005-007. The memorandum includes the underline/strikeout version of the resolution language adopting the Basin Plan amendment which shows these non-substantive corrections ([Attachment 3](#)).

POLICY ISSUE

Should the State Water Board approve the amendment to the Basin Plan to establish a TMDL for metals in Ballona Creek?

FISCAL IMPACT

Los Angeles Water Board and State Water Board staff work associated with or resulting from this action will be addressed with existing and future budgeted resources.

REGIONAL WATER BOARD IMPACT

Yes, approval of this resolution will amend the Los Angeles Water Board's Basin Plan.

STAFF RECOMMENDATION

That the State Water Board:

1. Approves the amendment to the Basin Plan adopted under Los Angeles Water Board Resolution No. R2007-015.
2. Authorizes the Executive Director or designee to submit the amendment adopted under Los Angeles Water Board Resolution No. R2007-015 to OAL for approval of the regulatory provisions and to U.S. EPA for approval of the TMDL.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2008-

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE LOS ANGELES REGION (BASIN PLAN) TO ESTABLISH A TOTAL MAXIMUM DAILY LOAD FOR METALS IN BALLONA CREEK

WHEREAS:

1. On July 7, 2005, the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) adopted, by Resolution No. R05-007, an amendment to the Basin Plan establishing a metals Total Maximum Daily Load (TMDL) in Ballona Creek and Sepulveda Canyon Channel. The TMDL was approved by the State Water Resources Control Board (State Water Board) by [Resolution No. 2005-0078](#) on October 20, 2005 and by the Office of Administrative Law (OAL) on December 9, 2005. The U.S. Environmental Protection Agency (U.S. EPA) approved the TMDL on December 22, 2005. The effective date of the TMDL was January 11, 2006.
2. On February 16, 2006, the Cities of Bellflower, Carson, Cerritos, Downey, Paramount, Santa Fe Springs, Signal Hill, and Whittier (Cities) filed a petition for a writ of mandate with the Los Angeles County Superior Court (Court) challenging many aspects of the Los Angeles River Metals TMDL and the Ballona Creek Metals TMDL.
3. On May 24, 2007, the Court issued a writ of mandate. The Court rejected all of the challenges to the TMDLs except for one claim under the California Environmental Quality Act (CEQA). Specifically, the Court ruled that the Los Angeles Water Board should have analyzed alternatives to the project, pursuant to Public Resources Code section 21080.5 and section 3777 of Title 23 of the California Code of Regulations. Those sections, which are applicable to the Water Boards' certified regulatory program, require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen a significant adverse effect that the activity may have on the environment (Public Resources Code section 21080.5(d)(2)(A)). Parties have filed notices of appeal from the determination of the trial Court; the Los Angeles Water Board has filed a limited appeal on the issue of the Court's direction to rescind the TMDL until it completes the required alternatives analysis. The Los Angeles Water Board nonetheless performed the required analysis, and re-adopted the TMDL.
4. On June 22, 2007, the Los Angeles Water Board circulated an alternatives analysis ([Attachment 1](#)) for public comment, in order to comply with the writ of mandate. The alternatives analysis examines the alternatives suggested by the Cities in the litigation, as well as analogous alternatives suggested to the Los Angeles Water Board during other TMDL proceedings by these and other stakeholders. The analysis concludes that none of the alternatives are feasible alternatives that would both result in less significant impacts and achieve the project's purposes.
5. On September 6, 2007, the Los Angeles Water Board reviewed that analysis and, in consideration of the entire administrative record, adopted Resolution No. R2007-015 ([Attachment 2](#)¹). Considering the alternatives analysis, the Los Angeles Water Board found that the TMDL as originally proposed and adopted is appropriate. The Los Angeles Water Board further found that nothing in the alternatives analysis, nor any of the evidence generated,

¹ Attachment 2: Resolution No. R2007-015 itself has 2 attachments: Attachment A is the basin plan amendment Language; and Attachment B is Resolution No. R05-007, which this action amends.

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presents a basis for the Los Angeles Water Board to conclude that it would have acted differently when it adopted the TMDL had the alternatives analysis been prepared and circulated at that time.

6. The Los Angeles Water Board found that re-adopting the TMDL, while maintaining the compliance schedule as originally adopted, is warranted. The Court's order does not justify providing additional time to dischargers for compliance with the TMDL.
7. The Los Angeles Water Board found that the alternatives analysis generated for the writ of mandate, along with the CEQA checklist dated March 25, 2005; the staff report dated June 2, 2005; response to comments on the June 12, 2004, March 2005, and June 22, 2007 draft TMDLs, complies with the requirements of the State Water Board's certified regulatory CEQA process, as set forth in the California Code of Regulations, Title 23, section 3775 et seq.
8. The State Water Board reaffirms the finding made on October 20, 2005 that, in amending the Basin Plan to establish this TMDL, the Los Angeles Water Board complied with the requirements set forth in sections 13240, 13242, and 13269 of the California Water Code. The State Water Board also reaffirms that the TMDL is consistent with the requirements of federal Clean Water Act section 303(d).
9. The Los Angeles Water Board reaffirmed its findings made in adopting Resolution No. R05-007 that the amendment is consistent with the Statement of Policy with Respect to Maintaining High Quality of Waters in California ([State Water Board Resolution No. 68-16](#)), in that the changes to water quality objectives (i) consider maximum benefits to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies.
10. Los Angeles Water Board staff determined that minor, non-substantive changes to the resolution language adopting the Basin Plan amendment were necessary to correct minor clerical errors, to improve clarity, and to ensure that the amendment is consistent with the Basin Plan update adopted under Resolution No. R2007-015. The Los Angeles Water Board's Executive Officer made these minor changes in a memorandum dated September 21, 2007 ([Attachment 3](#)).
11. A Basin Plan amendment does not become effective until approved by the State Water Board and until the regulatory provisions are approved by OAL. The TMDL must also be approved by U.S. EPA.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendment to the Basin Plan adopted under Los Angeles Water Board Resolution No. R2007-015.

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2. Authorizes the Executive Director or designee to submit the amendment adopted under Los Angeles Water Board Resolution No. R2007-015 to OAL for approval of the regulatory provisions and to U.S. EPA for approval of the TMDL.

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 June 17, 2008

Jeanine Townsend
Clerk to the Board