

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

Tentative Resolution No. R20-00X

Amendments to the *Water Quality Control Plan for the Los Angeles Region* to Update the Bacteria Objectives for Fresh, Estuarine and Marine Waters Designated for Water Contact Recreation, based on the Statewide Bacteria Provisions

February 13, 2020

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

1. The *Water Quality Control Plan for the Los Angeles Region* (Basin Plan) is the Los Angeles Water Board's master water quality control plan for the coastal watersheds of Los Angeles and Ventura Counties. The Basin Plan designates beneficial uses of waters of the State, establishes water quality objectives to protect those beneficial uses and prevent nuisance, and describes implementation programs to achieve water quality objectives. The Basin Plan addresses point source and nonpoint source discharges and specifies certain conditions or areas where the discharge of waste, or certain types of waste, are prohibited. The Basin Plan also includes non-regulatory descriptions of the region covered by the plan.
2. The Basin Plan may be amended in accordance with California Water Code section 13240 *et seq.*
3. The Basin Plan's Chapter 3 "Water Quality Objectives" contains water quality objectives to protect the beneficial uses of surface and ground waters in the region. The current bacteria water quality objectives for waters designated for water contact recreation (REC-1) were adopted in 2001 and include total coliform fecal coliform and enterococci for marine waters and *E. coli* for fresh waters. These objectives are based the California Code of Regulations, title 17, § 7958 "Bacteriological Standards" (Assembly Bill 411, Statutes of 1997) and U.S. EPA's recommended criteria pursuant to Federal Clean Water Act § 304(a), published in "Ambient Water Quality Criteria for Bacteria – 1986" (U.S. EPA, 1986).
4. In 2012, U.S. EPA established new recreational water quality criteria recommendations based on updated national epidemiological studies and a broader definition of illness designed to protect the public from exposure to harmful levels of pathogens while participating in water-contact recreational activities. The U.S. EPA 2012 Recreational Criteria recommends the use of either enterococci or *Escherichia coli* (*E. coli*) as indicators of fecal or pathogen contamination in fresh waters and recommends the use of only enterococci as an indicator in marine waters. Additionally, the recommendations include two estimated illness rates (36 illnesses per 1,000 recreators or 32 illnesses per 1,000 recreators), stating that either rate is protective of the primary contact recreation (REC-1) beneficial use. The U.S. EPA 2012 Recreational Criteria is intended as guidance to states and tribes in developing criteria to protect swimmers from exposure to water that contains organisms

indicating the presence of fecal contamination and includes beach action values that can be used by local health officials, regional water boards, and authorized tribes as a tool for beach management actions in freshwaters, estuarine waters, and ocean waters.

5. On August 7, 2018, the State Water Board adopted Resolution No. 2018-0038, adopting bacteria provisions and a water quality variance policy as (1) Part 3 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE); and (2) an amendment to the Water Quality Control Plan for Ocean Waters of California. The bacteria provisions established new statewide numeric water quality objectives for bacteria to protect water contact recreation, based on U.S. EPA's 2012 Recreational Criteria.
6. The statewide bacteria objectives use (i) *E. coli* as the indicator of pathogens in freshwaters, (ii) enterococci as the indicator of pathogens in estuarine waters, and (iii) both enterococci and fecal coliform as indicators of pathogens in ocean waters. The numeric limits for the statewide bacteria objectives correspond with the risk protection level of 32 illnesses per 1,000 recreators.
7. The Office of Administrative Law and U.S. EPA approved the Statewide Bacteria Provisions on February 4, 2019 and March 22, 2019, respectively.
8. The statewide bacteria water quality objectives supersede any numeric water quality objective for bacteria for the water contact recreation beneficial use contained in Regional Water Boards' water quality control plans before the effective date of the Statewide Bacteria Provisions (i.e. March 22, 2019). Narrative water quality objectives and numeric site-specific objectives for bacteria established before the effective date of the Statewide Bacteria Provisions remain in effect. Also, all TMDLs using the superseded the bacteria water quality objectives remain in effect.
9. These amendments revise the bacteria objectives for water contact recreation in Chapter 3 of the Basin Plan to reflect those contained in the State Water Board's Bacteria Provisions. These revisions are as laid out in the attachment to this amendment.
10. These Basin Plan amendments meet the "necessity" standard of the California Administrative Procedures Act Government Code section 11353(b), because the Statewide Bacteria Provisions supersede the current bacteria objectives for water contact recreation in the Los Angeles Region's Basin Plan, and Water Code section 13240 requires each regional water board's basin plan to conform with any State policy for water quality control.
11. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the water boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code § 21000 *et seq.*) requirements for preparing environmental documents (14 Cal. Code Regs. § 15251(g); 23 Cal. Code Regs. § 3775). The Los Angeles Water Board generally prepares "substitute environmental documents" for amendments to its Basin Plan that contain the required environmental documentation under the State Water Board's CEQA regulations (23 Cal. Code Regs. §§ 3775-3781).

12. The State Water Board prepared Substitute Environmental Documentation (SED) for the Statewide Bacteria Provisions in accordance with the water boards' certified regulatory program (23 Cal. Code Regs. §§ 3775-3781). The State Water Board approved the bacteria provisions and the accompanying SED on August 7, 2018. The proposed amendments incorporate revised bacteria objectives for water contact recreation and remove certain existing bacteria objectives that are no longer applicable as a result of the statewide provisions.
13. These Basin Plan amendments are wholly within the scope of the Statewide Bacteria Provisions as analyzed by the State Water Board in the SED. No substantive changes or modifications to the statewide provisions are proposed, no substantial changes with respect to the circumstances under which the provisions will apply have occurred, and no new information triggers the need for supplemental or subsequent CEQA analysis. As such, the recommended actions do not require further environmental review pursuant to the certified regulatory program or CEQA (Pub. Resources Code § 21166; Cal. Code Regs., title 14, §§ 15162 & 15163).
14. The State Water Board paid the Department of Fish and Wildlife (DFW) CEQA document filing fee, required by California Fish and Game Code section 711.4, for its review of the SED and related certified regulatory program documents when it adopted the Statewide Bacteria Provisions. Since the Los Angeles Water Board is relying on the comprehensive SED prepared by the State Water Board, the Los Angeles Water Board does not need to prepare any additional documents that would require DFW review. Therefore, these Basin Plan amendments are exempt from any additional CEQA document filing fees required under the California Fish and Game Code.
15. The State Water Board, in adopting the Statewide Bacteria Provisions, analyzed reasonably foreseeable methods of compliance with the Statewide Bacteria Provisions, in accordance with Cal. Code Regs., tit. 23, § 3777 and Publ. Res. Code § 21159. The Statewide Bacteria Provisions update the Bacteria Objectives for fresh, estuarine and marine waters, and assure statewide consistency in the indicator organisms used and the level of protection for the water contact recreation beneficial use. However, the updated objectives are not significantly more stringent than the existing ones and are not expected to lead to additional implementation efforts or new methods of compliance beyond what is currently practiced.
16. In accordance with the State Water Board's findings and the requirements of the Statewide Bacteria Provisions, these Basin Plan amendments are consistent with maximum benefit to the people of the State and are not expected to unreasonably affect present and anticipated beneficial uses; or result in water quality less than that prescribed in applicable State policies. The State Water Board found that insofar as the adoption of the Bacteria Provisions could result in any lowering of water quality, any such lowering is consistent with the maximum benefit to the people of the State, is reasonably protective of the REC-1 beneficial use of such waters, and would establish consistent REC-1 bacteria objectives for REC-1 waters throughout the nine regions of the State. Therefore, the adoption of these Basin Plan amendments is consistent with Resolution No. 68-16.

17. In establishing the Bacteria Water Quality Objectives contained in the Statewide Bacteria Provisions, the State Water Board considered the factors contained in Water Code section 13241.
18. The scientific portions of the statewide bacteria provisions underwent external scientific peer review as required by Health and Safety Code section 57004.
19. The Los Angeles Water Board has prepared a staff memo that describes the proposed amendments, as well as the specific necessity and rationale for updating the bacteria objectives for water contact recreation in the Basin Plan. The staff memo entitled "Updating the Bacteria Objectives for Fresh, Estuarine and Marine Waters Designated for Water Contact Recreation, based on the Statewide Bacteria Provisions" was reviewed and considered by the Los Angeles Water Board before adoption of this Resolution.
20. The public had a reasonable opportunity to participate in the review of the proposed amendments to the Basin Plan. A Notice of Hearing was published in the Los Angeles Times and Ventura County Star on December 11, 2019 and circulated 45 days preceding the Los Angeles Water Board's action. A draft of the staff memo tentative resolution, and proposed Basin Plan language, were released for public comment on December 11, 2019 to allow a 45-day public comment period in advance of the public hearing. The Los Angeles Water Board responded to written and oral comments received from the public on the proposed action. On February 13, 2020, prior to the Los Angeles Water Board's action on this resolution, a public hearing was held to consider updating the Los Angeles Region's bacteria objectives for the water contact recreation beneficial use based on the Statewide Bacteria Provisions. The public had an opportunity to provide oral comments and testimony during the hearing. The public also had the opportunity to comment on the Statewide Bacteria Provisions during the State Water Board adoption process.
21. These Basin Plan amendments must be submitted for review and approval by the State Water Board and the Office of Administrative Law (OAL). The Basin Plan amendments will become effective upon approval by OAL.

THEREFORE, BE IT RESOLVED THAT:

1. Pursuant to Water Code section 13240, the Los Angeles Water Board, after considering the entire record, including oral testimony at the hearing, hereby approves the staff memo and adopts the amendments to the Basin Plan to update the bacteria water quality objectives for water contact recreation, as set forth in Attachment A hereto.
2. The Los Angeles Water Board is taking this action pursuant to Finding # 17 of State Water Board Resolution No. 2018-0038, in which the State Water Board establishes that bacteria water quality objectives contained in the statewide bacteria provisions supersede any numeric water quality objective for bacteria for the REC-1 beneficial use contained in regional water quality control plans before the effective date of the Bacteria Provisions (i.e. March 22, 2019).

3. The Executive Officer is directed to forward copies of the Basin Plan amendments to the State Water Board in accordance with the requirements of California Water Code section 13245.
4. The Los Angeles Water Board requests that the State Water Board approve the Basin Plan amendments in accordance with the requirements of California Water Code sections 13245 and 13246 and forward it to OAL for approval.
5. The Executive Officer shall request that the State Water Board, on behalf of the Los Angeles Water Board, file a Notice of Decision with the California Natural Resources Agency and the Governor's Office of Planning and Research (State Clearinghouse) after approval by OAL.
6. If, during the approval process, Los Angeles Water Board staff, the State Water Board or State Water Board staff, or OAL determines that minor, non-substantive modifications to the language of the amendments are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Los Angeles Water Board of any such changes.

I, Renee Purdy, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of the resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on February 13, 2020.

Renee Purdy
Executive Officer