

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

RESOLUTION NO. 2003-010
July 10, 2003

**Amendment to the Water Quality Control Plan for the Los Angeles Region to Suspend the
Recreational Beneficial Uses in Engineered Channels during Unsafe Wet Weather
Conditions**

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

1. Section 101(a)(2) of the federal Clean Water Act (CWA) sets a national 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. 40 CFR §131.10(a) directs States to specify appropriate designated uses to be achieved and protected. The classification of the waters of the State must take into consideration the use and value of water 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. The Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan) designates beneficial uses of the Region's water bodies, and in addition establishes water quality objectives for the protection of these beneficial uses and outlines a plan of implementation for maintaining and enhancing water quality.
4. The national "fishable/swimmable" goal outlined in section 101(a)(2) of the CWA has formed the broad basis for the beneficial use designations of surface waters throughout California. In addition to this consideration, comprehensive reviews of existing data and solicited input from stakeholders were conducted in the early 1970s and again in the early 1990s to determine the existing and potential beneficial uses of surface waters in the Los Angeles Region. These were the bases for the beneficial use designations assigned to surface waters in the Basin Plan. As a result, all inland water bodies listed in Table 2-1 of the Basin Plan are assigned an existing, potential or intermittent Water Contact Recreation (REC-1) use that applies year round, while the majority of water bodies are also assigned the Non-contact Water Recreation (REC-2) use year round.
5. During the process of updating the Region's bacteriological water quality objectives set to protect the REC-1 use, the State Water Resources Control Board (State Board) directed the Regional Board to "review its REC-1 beneficial use designations, focusing on swimming during wet weather in fresh waters, specifically those to which public entry is prohibited for health and safety reasons through no trespassing postings and fencing" (State Board Resolution No. 2002-0142).

6. States may remove a designated use which is not an existing use, as defined in 40 CFR §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 CFR §131.10(g).
7. Under 40 CFR § 131.10 (j)(2) of the Water Quality Standards Regulation, States are required to conduct a Use Attainability Analysis (UAA) whenever a State wishes to remove a designated use that is specified in CWA section 101(a)(2) or adopt subcategories of uses specified in section 101(a)(2) that require less stringent criteria.
8. The Regional Board has in the attached amendment identified 39 water body segments listed in Table 2-1 of the Basin Plan that for their entire length meet the definition of an engineered flood control channel. Engineered channels are defined as inland, flowing surface water bodies with a box, V-shaped or trapezoidal configuration that have been lined on the sides and/or bottom with concrete. These engineered flood control channels are constructed to reduce the incidence of flooding in urbanized areas by conveying stormwater runoff to the ocean or other discharge point as efficiently as possible. These modifications create life-threatening "swiftwater" conditions during and immediately following significant storm events. As a result, the REC-1 and REC-2 uses are not fully attainable during and immediately following these storm events. The inherent danger of recreating in these channels is widely recognized and is already addressed by Los Angeles County through the Los Angeles County, California Multi-Agency Swift Water Rescue Committee and by Ventura County through a policy of keeping access gates to such channels locked at all times.
9. As indicated in Chapter 2 of the Basin Plan, 16 of these water bodies are assigned a "Potential" REC-1 use, 17 an "Intermittent" REC-1 use, and 6 an "Existing" REC-1 use. In addition, 25 are assigned an "Intermittent" REC-2 use and 14 are assigned an "Existing" REC-2 use. Though not a criterion for suspending the recreational uses in these channels, access to all of the candidate water bodies is restricted or prohibited by the County of Los Angeles Department of Public Works.
10. The proposed amendment is based on the results of a UAA of the recreational uses of engineered channels during defined wet weather conditions, performed by Regional Board staff. The UAA is necessary to conform with 40 CFR §131.10(j) because the action involves the recreation use specified in section 101(a)(2) of the Clean Water Act.
11. The UAA and resulting proposed amendment only apply to water contact recreational activities associated with the swimmable goal as expressed in the federal Clean Water Act section 101(a)(2) and regulated under the REC-1 use, non-contact water recreation involving incidental water contact regulated under the REC-2 use, and the associated bacteriological objectives set to protect those activities. Water quality objectives set to protect (1) other recreational uses associated with the fishable goal as expressed in the federal Clean Water Act section 101(a)(2) and regulated under the REC-1 use and (2) other REC-2 uses (e.g., uses involving the aesthetic aspects of water) shall still remain in effect at all times.
12. On December 12, 2002, the Regional Board adopted Resolution No. 2002-022 establishing wet weather total maximum daily loads (TMDLs) for bacteria at Santa Monica Bay beaches. As part of the wet weather bacteria TMDL, the Regional Board allowed for and encouraged dischargers to pursue an integrated water resources approach that would foster the beneficial reuse of storm water. Nothing in this resolution, or the accompanying Basin Plan amendment alters or interferes with the dischargers' responsibilities and commitments under the Santa Monica Bay Beaches bacteria TMDLs. The suspension of portions of the REC-1 and REC-2

- uses during swift-water conditions reflects the current conditions in certain engineered channels, and does not relieve or diminish obligations to reduce bacteria loading at the beaches.
13. The Regional Board's bases for action is limited to the specific rationale of suspending the water contact recreation (REC-1) and REC-2 use designations and the bacteriological objectives to protect those uses because of the unique safety issues attendant to high-flow, swift-water conditions in engineered channels. In all other respects, the REC-1 and REC-2 use designations as well as all other beneficial use designations remain in effect and shall be fully protected.
 14. The temporary suspension of portions of the recreational uses (REC-1 and REC-2) in certain engineered channels during swift-water conditions reflects the Regional Board's determination that the REC-1 and REC-2 uses are presently, and for the foreseeable future, not fully attainable during these conditions. However, the Regional Board remains committed to (1) re-evaluating the attainability of the REC-1 and REC-2 uses in the future; (2) supporting efforts to reclaim engineered channels as natural watercourses; and (3) supporting the beneficial re-use of storm water.
 15. The Regional Boards' objective in adopting the above amendment is to acknowledge the current conditions in engineered flood control channels during storm events and assign beneficial uses that accurately reflect the existing and potential uses of the region's engineered channels during these wet weather conditions.
 16. While the Regional Board recognizes the inherent danger of recreating in these channels during and immediately following significant storm events at the present time, the Regional Board's vision for the beaches and ocean is to protect water quality to the highest degree required using an integrated water resources approach that focuses on beneficially re-using storm water. The Regional Board recognizes that to do this, it will be necessary to protect, and restore where possible, inland water bodies that ultimately flow to the Region's beaches and ocean.
 17. The Regional Board expects that implementation of TMDLs using an integrated water resources approach to storm-water management will lead to changes in the flow regimes of engineered channels. Furthermore, the Regional Board is aware of nascent efforts to reclaim engineered channels as natural watercourses. As these efforts mature, full REC-1 and REC-2 uses may become feasible and potentially attainable for certain water bodies covered by this resolution and accompanying Basin Plan amendment. Therefore, the Regional Board shall reconsider at a Board meeting, within three years of the effective date of the amendment, the continued appropriateness of the suspension of recreational uses in engineered channels during and immediately following the defined storm events.
 18. The Regional Board understands that TMDL implementation plans for many of the water bodies covered by this amendment will not be developed within the three-year timeframe for reconsidering the suspension of recreational uses in engineered channels during and immediately following the defined storm events. As a result, for those engineered channels covered by this amendment, the Regional Board expects to reconsider the suspension once TMDL implementation plans for these water bodies are in effect.
 19. For purposes of clarity, as part of this amendment, the Regional Board is also reformatting Table 2-1 of the Basin Plan, which identifies beneficial uses of inland surface waters in the

Los Angeles Region. Table 2-1 is reformatted such that the recreational beneficial uses ("REC uses"), including REC-1 and REC-2, are moved to a newly created table, Table 2-1a, which only addresses the recreational beneficial use designations of inland surface waters. This change is made to clearly express the amendments herein as well as in anticipation of the increasing complexity of the recreational beneficial use designations of inland surface waters in the Los Angeles Region.

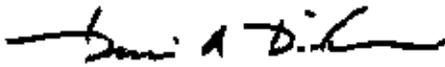
20. The Regional Board's action is legally justified for three reasons. First, during the defined wet weather conditions, recreation is not an existing use in the candidate water bodies because the rate of flow, velocity and depth of the water renders them unsafe for individuals to engage in recreational activities. Second, due to the design of the engineered flood control channels, recreational uses in these channels are not currently fully attainable, under the defined wet weather conditions during which the suspension would apply, regardless of effluent limitations under CWA section 301(b)(1)(A) and (B) and section 306 or cost effective and reasonable best management practices. Third, the engineered channels meet factors 2 and 4 listed in 40 CFR 131.10(g), demonstrating that attaining the use is infeasible. Regarding factor 2, Southern California streams are naturally flashy systems due to the predominantly dry climate and short, concentrated wet season. These natural flashy conditions result in intermittent dangerous flow volumes and velocities after rain events that prevent the attainment of the use during and for 24 hours following a ½-inch rain event. These natural flashy conditions are further exacerbated in engineered flood control channels, which are designed to contain and convey water rapidly to a discharge point. This results in the use being unattainable under factor 4 as well. These hydrologic modifications, made for the purpose of flood control, in combination with natural conditions physically preclude the full attainment of the use during and immediately following a ½-inch or greater storm event. Further, it is not feasible to restore the water body to its original condition or operate the modifications in such a way as to attain the use during the defined wet-weather events.
21. These modifications are consistent with the State's anti-degradation policy (State Board Resolution 68-16) and federal anti-degradation requirements as they will not lower the water quality of the candidate water bodies, relative to existing conditions.
22. 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 include a public workshop/CEQA scoping meeting held on May 6, 2003 and release of a draft staff report, tentative resolution, and basin plan amendment on May 15, 2003.
23. A Notice of Hearing and Notice of Filing were published and circulated 45 days preceding Board action. Regional Board staff responded to oral and written comments received from the public prior to the comment deadline; and the Regional Board held a public hearing on July 10, 2003 to consider suspension of the recreational beneficial uses in engineered channels during defined wet weather conditions.
24. 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.
25. The proposed amendment results in no potential for adverse effect (de minimis finding), either individually or cumulatively, on wildlife.

26. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).
27. The Basin Plan amendment to suspend the recreational beneficial uses of engineered channels during defined wet weather conditions must be submitted for review and approval by the State Water Resources Control Board (State Board), the State Office of Administrative Law (OAL), and the United States Environmental Protection Agency (USEPA). The Basin Plan amendment will become effective upon approval by OAL and USEPA. 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 Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to the Water Quality Control Plan for the Los Angeles Region as set forth in the attachment.
2. The Regional Board shall reconsider at a Board meeting, within three years of the effective date of the amendment, the continued appropriateness of the suspension of recreational uses in engineered channels during and immediately following the defined storm events.
3. The Executive Officer is directed to ensure that ongoing data collection and monitoring efforts to implement paragraph 2 and the Clean Water Act triennial review process address the feasibility of restoring engineered channels to their natural state.
4. The Executive Officer is directed to forward copies of the Basin Plan amendment to the SWRCB in accordance with the requirements of section 13245 of the California Water Code.
5. The Regional Board requests that the SWRCB approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to OAL and the USEPA.
6. If during its approval process the SWRCB or OAL determines 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 Board of any such changes.
7. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

I, Dennis A. Dickerson, 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 10, 2003.



Dennis A. Dickerson
Executive Officer