

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

RESOLUTION NO. 06-013

June 8, 2006

To set aside action in adopting the Trash Total Maximum Daily Load for the Los Angeles River Watershed, dated September 19, 2001, and in adopting Resolution No. 01-013; and to direct staff to revise the California Environmental Quality Act documentation as required by the Court of Appeal and to submit for the Regional Board's reconsideration a total maximum daily load for trash in the Los Angeles River Watershed as early as practical

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

1. The Federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board (Regional Board) to develop water quality objectives which are sufficient to protect beneficial uses for each water body found within its region.
2. A consent decree between the U.S. Environmental Protection Agency (USEPA), Heal the Bay, Inc. and BayKeeper, Inc. was approved on March 22, 1999. This court order directs the USEPA to complete Total Maximum Daily Loads (TMDLs) for all impaired waters within 13 years. A schedule was established in the consent decree for the completion of the first 29 TMDLs within 7 years. The remaining TMDLs will be scheduled by Regional Board staff within the 13-year period.
3. Upon establishment of TMDLs by the State or USEPA, the State is required to incorporate the TMDLs along with appropriate implementation measures into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7, Wat. C. § 13242). This Water Quality Control Plan for the Los Angeles Region (Basin Plan), and applicable statewide plans, serves as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Regional Board.
4. On September 19, 2001, the Regional Board adopted a Basin Plan Amendment (Resolution 01-013) incorporating the Los Angeles River Trash TMDL into the Water Quality Control Plan (Basin Plan) for the Coastal Watersheds of Los Angeles and Ventura Counties. The TMDL was created to implement narrative water quality objectives that require:
 - “Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses;” and
 - “Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.”
5. The Los Angeles River is located in Los Angeles County, California. The Los Angeles River flows 51 miles from the western end of the San Fernando Valley to the Queensway Bay and Pacific Ocean at Long Beach. Also parts of the watershed include a number of lakes including Peck Lake, Echo Lake, and Lincoln Lake. Beneficial uses of the Los Angeles River and surrounds include wildlife and marine habitat, including habitat for endangered species, and recreational activities such as fishing, walking, hiking, jogging, bicycling, horseback riding, bird watching and photography.
6. The Regional Board determined that the primary source of trash is litter from the streets of the cities that surround the Los Angeles River. When a storm event occurs, the litter is washed through the storm drain sewers, into the Los Angeles River, and into the Estuary and onto the beaches at Long Beach.

7. Twenty-two cities¹ (“Cities”) sued the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) and State Water Resources Control Board (State Water Board) to set aside the TMDL, which would halt the thousands of tons of garbage that blankets the Los Angeles River and estuary. The Los Angeles Water Board and the State Water Board were also sued by the City of Los Angeles and by Los Angeles County and the Los Angeles County Flood Control District. These suits resulted in a settlement agreement, effective September 24, 2003, whereby the Los Angeles Water Board agreed to make certain changes to the Trash TMDLs for both the Los Angeles River and the Ballona Creek watersheds. While amendments were made to the Ballona Creek TMDL, similar changes agreed to by the Los Angeles Water Board have not yet been made to the Los Angeles River Trash TMDL, due to litigation.
8. The trial court entered an order deciding some claims in favor of the Los Angeles Water Board and State Water Board (collectively “California Water Boards”), and some in favor of the Cities. Both sides appealed, and on January 26, 2006, the Court of Appeal decided every one of the Cities’ claims in favor of the California Water Boards, except with respect to their CEQA compliance. (*City of Arcadia et al., Los Angeles Regional Water Quality Control Board et al.* (2006) 135 Cal.App.4th 1392.) The Cities filed a petition for review by the California Supreme Court, but on April 19, 2006, the Supreme Court declined to hear any of the Cities’ claims.
9. The Court of Appeal rejected the following claims litigated by the Cities:
 - a. The Court rejected the Cities’ claim that the target of zero trash is unattainable and inordinately expensive. (135 Cal.App.4th at 1413 and 1427-1430.)
 - b. The Court rejected the Cities’ claim that an assimilative capacity study was required before the Water Boards could determine how much trash, a pollutant that does not assimilate, would violate the narrative objectives. (135 Cal.App.4th at 1409-1413.)
 - c. The Court rejected the Cities’ claim that the California Water Boards were required, but failed, to conduct a cost/benefit analysis and consideration of economic factors. (135 Cal.App.4th at 1415-1418.)
 - d. The Court rejected the Cities’ claim that the California Water Boards were prohibited from establishing a TMDL for the Los Angeles River Estuary until it was formally listed on the 303(d) list. (135 Cal.App.4th at 1418-1420.)
 - e. The Court rejected the Cities’ claims that TMDLs for storm water may not require agencies to perform better than the “maximum extent practicable”, and must allow compliance through best management practices. (135 Cal.App.4th at 1427-1430.)
 - f. The Court rejected the Cities’ claim that the California Water Boards were required to implement load allocations for nonpoint sources of trash pollution. (135 Cal.App.4th at 1430-1432.)
 - g. The Court rejected the Cities’ claim that the California Water Boards failed to adhere to the data collection and analysis required by federal and state law (135 Cal.App.4th at 1433-34.)
 - h. The Court rejected the Cities’ claim that the California Water Boards relied on nonexistent, illegal, and irrational uses to be made of the Los Angeles River. (135 Cal.App.4th at 1432-33.)
 - i. The Court rejected the Cities’ claim that the California Water Boards violated the Administrative Procedures Act (APA). (135 Cal.App.4th at 1434-35.)

¹ The cities include Arcadia, Baldwin Park, Bellflower, Cerritos, Commerce, Diamond Bar, Downey, Irwindale, Lawndale, Monrovia, Montebello, Monterey Park, Pico Rivera, Rosemead, San Gabriel, Santa Fe Springs, Sierra Madre, Signal Hill, South Pasadena, Vernon, West Covina, and Whittier. They are members of a group that refers to itself as “The Coalition for Practical Regulation.”

10. The Court did find, however, that the California Water Boards did not adequately complete the environmental checklist, and that evidence of a "fair argument" of significant impacts existed such that the California Water Boards should have performed an EIR level of analysis through an EIR or its functional equivalent. (135 Cal.App.4th at 1420-26.) The Court therefore affirmed a writ of mandate issued by the trial court, which orders the California Water Boards to set aside and not implement the TMDL, until it has been brought into compliance with California Environmental Quality Act (CEQA). A Return to the writ must be filed by July 24, 2006.
11. Staff is diligently working on revising the CEQA analysis, and will present the TMDL for re-adoption as soon as possible..

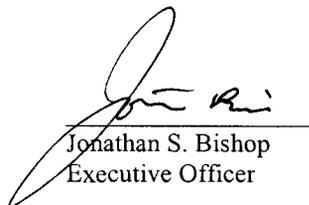
THEREFORE, be it resolved that pursuant to the writ of mandate and to sections 13240 and 13242 of the Water Code, the Regional Board hereby:

1. Sets aside the Los Angeles River Trash TMDL, and resolution # 01-013 which established it. However, setting aside the TMDL shall not be deemed a repudiation of the settlement agreement entered into between the Los Angeles Regional Water Quality Control Board and the City of Los Angeles and the County of Los Angeles, which was executed on September 24, 2003, and the Los Angeles Water Board hereby expresses its continued intent to be bound by that agreement;
2. Directs staff to revise the CEQA documentation as directed by the writ of mandate;
3. Directs staff to prepare and submit for the Regional Board's reconsideration, as soon as possible, a TMDL for Trash in the Los Angeles River Watershed, consistent with the requirements of the writ. Staff is directed to incorporate into its proposed revised TMDL the changes agreed upon in the settlement with the City of Los Angeles, Los Angeles County and the Los Angeles County Flood Control District;
4. Authorizes and instructs the Executive Officer to convey this resolution to the State Water Board, in accordance with the requirements of section 13245 of the California Water Code;
5. Requests that the State Water Board approve resolution in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to OAL and the USEPA.

BE IT FURTHER RESOLVED, that:

6. If during its approval process Regional Board staff, the State Board 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 directed to cause a Return to the writ to be prepared and timely filed with the Superior Court; and
8. The Executive Officer is directed to ensure that the Regional Board complies with all relevant terms of the writ, as modified by the Appellate Decision, including the applicable provisions of CEQA.

I, Jonathan Bishop, 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 June 8, 2006.


Jonathan S. Bishop
Executive Officer