

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

RESOLUTION NO. R4-2007-010

June 7, 2007

**Amendment to the *Water Quality Control Plan for the Los Angeles Region* to
Incorporate a Total Maximum Daily Load for Trash in
Legg Lake**

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, Los Angeles Region (Regional Board) to establish water quality standards for each water body within its region. Water quality standards include beneficial uses, water quality objectives that are established at levels sufficient to protect those beneficial uses, and an antidegradation policy to prevent degrading waters. Water bodies that do not meet water quality standards are considered impaired.
2. CWA section 303(d)(1) requires each state to identify the waters within its boundaries that do not meet water quality standards. Those waters are placed on the state's "303(d) List" or "Impaired Waters List". For each listed water, the state is required to establish the Total Maximum Daily Load (TMDL) of each pollutant impairing the water quality standards in that waterbody. Both the identification of impaired waters and TMDLs established for those waters must be submitted to U.S. EPA for approval pursuant to CWA section 303(d)(2). For all waters that are not identified as impaired, the states are nevertheless required to create TMDLs pursuant to CWA section 303(d)(3).
3. A consent decree between the United States Environmental Protection Agency, Heal the Bay, Inc. and BayKeeper, Inc. was approved on March 22, 1999, which resolved litigation between those parties relating to the pace of TMDL development. The court order directs the U.S. EPA to ensure that TMDLs for all 1998-listed impaired waters be established within 13 years of the decree. A schedule was established in the consent decree for the completion of Trash TMDLs, including completion of a TMDL to reduce trash in Legg Lake.
4. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d) of the CWA, as well as in U.S. EPA guidance documents (Report No. EPA/440/4-91/001). A TMDL is defined as the sum of the individual waste load allocations for point sources, load allocations for nonpoint sources and natural background (40 CFR 130.2). TMDLs must be set at levels necessary to attain and maintain the applicable narrative and numeric water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7(c)(1)). 40 CFR 130.7 also dictates that TMDLs shall take into account critical conditions for stream flow, loading and water quality parameters. TMDLs typically include one or more numeric "targets", i.e., numerical translations of the existing water quality standards, which represent attainment of those standards, contemplating the TMDL elements described above.

5. Neither TMDLs nor their targets or other components are water quality objectives, and thus their establishment does not implicate Water Code section 13241. Rather, under California Law, TMDLs are programs to implement existing standards (including objectives), and are thus established pursuant to Water Code section 13242. Moreover, they do not create new bases for direct enforcement against dischargers apart from the existing water quality standards they translate. The targets merely establish the bases through which load allocations (LAs) and waste load allocations (WLAs) are calculated. LAs and WLAs are only enforced for a discharger's own discharges, and then only in the context of the discharger's relevant National Pollutant Discharge Elimination System (NPDES) permit (or other permit, waiver, or prohibition). NPDES permits must contain effluent limits consistent with the assumptions and requirements of the WLAs (40 C.F.R. 122.44(d)(vii)(B)). The Regional Board will develop NPDES permit requirements through subsequent permit actions that will allow all interested persons, including but not limited to Municipal Separate Stormwater Sewer System permittees, to provide comments on how the WLAs should be translated into permit requirements. LAs will be implemented either through a conditional waiver included in the basin plan amendment or in a subsequent permitting or waiver action.
6. As envisioned by Water Code section 13242, the TMDL contains a "description of surveillance to be undertaken to determine compliance with objectives." The Monitoring elements of the TMDL recognize that monitoring will be necessary to assess the on-going condition of Legg Lake and to assess the on-going effectiveness of efforts by dischargers to reduce trash loading to Legg Lake.
7. Upon establishment of TMDLs by the State or U.S. EPA, the State is required to incorporate the TMDLs into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7). The Water Quality Control Plan for the Los Angeles Region (Basin Plan) and applicable statewide plans serve as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Regional Board. Attachment A to this resolution contains the Basin Planning language for this TMDL.
8. Legg Lake is located in the San Gabriel River Watershed in eastern Los Angeles County. The San Gabriel River originates in the San Gabriel Mountains and discharges to the Pacific Ocean near the City of Long Beach. Legg Lake, built in 1963, is located in the Whittier Narrows Flood Control Basin. Whittier Narrows Dam is to the south of the Lake. The Rio Hondo and the San Gabriel River flow by the lake's east and west boundaries, respectively. The 1998 Clean Water Act 303(d) list identified Legg Lake as impaired for trash. This listing was approved by the United States Environmental Protection Agency on May 12, 1999. The proposed TMDL addresses impairments of water quality caused by trash in Legg Lake, and establishes the loading capacity of trash and requires ongoing periodic monitoring to ensure that it continues to attain standards.

9. The Water Quality Control Plan for the Los Angeles Region prescribes narrative water quality objectives that are applicable to trash. These water quality objectives include floating material:

“Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.”

and solid, suspended, or settleable materials:

“Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.”

10. The Regional Board’s goal in establishing the TMDL for trash in Legg Lake is to protect the aquatic life habitat, wildlife habitat, water contact recreation and non-contact water recreation beneficial uses of Legg Lake and to achieve the narrative water quality objectives set to protect those uses.
11. Information regarding the technical document that was generated by Regional Board staff in meetings with stakeholders is contained in a staff report. The staff report, “Trash Total Maximum Daily Load for Legg Lake,” dated March 20, 2007, includes information regarding the environmental setting of Legg Lake, description of the trash impairments and/or current attainment status as appropriate, and descriptions of best management practices to comply with the trash TMDL.
12. The public has had a reasonable opportunity to participate in the review of the amendment to the Basin Plan. A draft of the TMDL was released for public comment on March 20, 2007; a Notice of Hearing and Notice of Filing were published and circulated on March 20, 2007; Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on June 7, 2007 to consider adoption of the TMDL.
13. In amending the Basin Plan to establish this TMDL, the Regional Board considered the requirements set forth in Sections 13240 and 13242, and section 13269 of the California Water Code.
14. Because the TMDL implements existing narrative water quality objectives (i.e., narrative objectives for floating materials and solid, suspended or settleable materials), the Regional Board (along with the State Water Resources Control Board) have determined that adopting a TMDL does not require the water boards to consider the factors of Water Code section 13241. The consideration of the Water Code section 13241 factors, by section 13241’s express terms, only applies “in establishing water quality objectives.” Here the Regional Board is not establishing water quality objectives, but as required by section 303(d)(1)(C) of the Clean Water Act is adopting a TMDL that will implement the previously established objectives that have not been achieved. In making this determination, the Regional Board has considered and relied upon a legal memorandum from the Office of Chief Counsel to the State Water Board’s basin planning staff detailing why TMDLs cannot be considered water quality objectives. (See Memorandum from the Staff Counsel Michael J. Levy, Office of Chief Counsel, to Ken Harris and Paul Lillebo, Division of Water Quality: *The Distinction Between A TMDL’s Numeric Targets and Water Quality Standards*, dated June 12, 2002.)

15. While the Regional Board is not required to consider the factors of Water Code section 13241, it, nonetheless, has developed and received significant information pertaining to the Water Code section 13241 factors and has considered that information in developing and adopting this TMDL. The past, present, and probable future beneficial uses of water have been considered in that Legg Lake are designated for a multitude of beneficial uses in the Basin Plan. The key beneficial uses for Legg Lake include aquatic life habitat uses and water contact and non-contact water recreation. Nonpoint source discharges of trash improperly deposited in the vicinity of Legg Lake are the predominant sources of trash loading to Legg Lake. The environmental characteristics of Legg Lake are spelled out at length in the Basin Plan and in the technical documents supporting this Basin Plan amendment and have been considered in developing this TMDL. Water quality conditions that reasonably could be achieved through the coordinated control of all factors which affect water quality in the area have been considered. This TMDL provides several compliance options, including implementation of full capture devices for stormdrain conveyances and a minimum frequency of trash assessment and collection. These options provide flexibility for responsible jurisdictions to select the most effective BMPs that reduce trash loading to Legg Lake. Establishing a plan that will ensure Legg Lake attains and continue to attain water quality standards is a reasonable water quality condition. However, to the extent that there would be any conflict between the consideration of the factor in Water Code section 13241 subdivision (c), if the consideration were required, and the Clean Water Act, the Clean Water Act would prevail. Economic considerations were considered throughout the development of the TMDL. Some of these economic considerations arise in the context of Public Resources Code section 21159 and are equally applicable here. The implementation program for this TMDL recognizes the economic limitations on achieving immediate compliance if structural BMPs are selected to abate point source discharges and allows a flexible implementation schedule of 8 years in that event. A program requiring a minimum frequency of trash assessment and collection is not foreseeably a cost-prohibitive BMP. The need for housing within the region has been considered, but this TMDL is unlikely to affect housing needs because new housing will need to comply with existing county ordinances regarding proper disposal of trash. Whatever housing impacts could materialize are ameliorated by the flexible nature of this TMDL and the implementation schedule.
16. The amendment is consistent with the State Antidegradation Policy (State 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. Likewise, the amendment is consistent with the federal Antidegradation Policy (40 CFR 131.12). This policy is further promoted by requiring that the amount of trash collected in between collection events cannot increase and is required to decrease by 50% over eight years.
17. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code, Section 21000 et seq.) requirements for preparing environmental documents. (14 Cal. Code Regs. § 15251(g); 23 Cal. Code Regs. § 3782.) The Regional Water Board staff has prepared "substitute environmental documents" for this project that contains the required environmental documentation under the State Water Board's CEQA regulations. (23 Cal. Code Regs. § 3777.) The substitute environmental documents

include the TMDL staff report entitled "Trash Total Maximum Daily Load for Legg Lake", the environmental checklist, the comments and responses to comments, the basin plan amendment language, and this resolution. The project itself is the establishment of a TMDL for trash in Legg Lake. While the Regional Board has no discretion to not establish a TMDL (the TMDL is required by federal law), the Board does exercise discretion in assigning waste load allocations and load allocations, determining the program of implementation, and setting various milestones in achieving the water quality standards. The CEQA checklist and other portions of the substitute environmental documents contain significant analysis and numerous findings related to impacts and mitigation measures.

18. A CEQA Scoping hearing was conducted on December 6, 2006 at the Regional Board offices in the City of Los Angeles. A notice of the CEQA Scoping hearing was sent to interested parties including cities and/or counties with jurisdiction in or near Legg Lake on November 3, 2006. This notice was also published in the Los Angeles Times on November 3, 2006.
19. In preparing the substitute environmental documents, the Regional Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and intends those documents to serve as a tier 1 environmental review. This analysis is not intended to be an exhaustive analysis of every conceivable impact, but an analysis of the reasonably foreseeable consequences of the adoption of this regulation, from a programmatic perspective. Compliance obligations will be undertaken directly by public agencies that may have their own obligations under CEQA. Project level impacts may need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2. To the extent applicable, this Tier 1 substitute environmental document may be used to satisfy subsequent CEQA obligations of those agencies.
20. Consistent with the Regional Board's substantive obligations under CEQA, the substitute environmental documents do not engage in speculation or conjecture, and only consider the reasonably foreseeable environmental impacts, including those relating to the methods of compliance, reasonably foreseeable feasible mitigation measures to reduce those impacts, and the reasonably foreseeable alternative means of compliance, which would avoid or reduce the identified impacts.
21. The proposed amendment could have a potentially significant adverse effect on the environment. However, there are feasible alternatives, feasible mitigation measures, or both, that if employed, would substantially lessen the potentially significant adverse impacts identified in the substitute environmental documents, however such alternatives or mitigation measures are within the responsibility and jurisdiction of other public agencies, and not the Regional Board. Water Code section 13360 precludes the Regional Board from dictating the manner in which responsible agencies comply with any of the Regional Board's regulations or orders. When the agencies responsible for implementing this TMDL determine how they will proceed, the agencies responsible for those parts of the project can and should incorporate such alternatives and mitigation into any subsequent projects or project approvals. These feasible alternatives and mitigation measures are described in more detail in the substitute environmental documents. (14 Cal. Code Regs. § 15091(a)(2).)

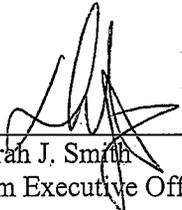
22. From a program-level perspective, incorporation of the alternatives and mitigation measures outlined in the substitute environmental documents will foreseeably reduce impacts to less than significant levels.
23. The substitute documents for this TMDL, and in particular the Environmental Checklist, identify broad mitigation approaches that should be considered at the project level.
24. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, Section 11353, Subdivision (b). As specified above, Federal law and regulations require that TMDLs be incorporated into the water quality management plan. The Regional Board's Basin Plan is the Regional Board's component of the water quality management plan, and the Basin Plan is how the Regional Board takes quasi-legislative, planning actions. Moreover, the TMDL is a program of implementation for existing water quality objectives, and is, therefore, appropriately a component of the Basin Plan under Water Code section 13242. The necessity of developing a TMDL is established in the TMDL staff report, the section 303(d) list, and the data contained in the administrative record documenting the conditions related to trash in Legg Lake.
25. The Basin Plan amendment incorporating a TMDL for trash for Legg Lake 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 U.S. EPA. The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. Notice of Decision will be filed with the Resources Agency.
26. If during the State Board's approval process Regional Board staff, the SWRCB or OAL determines that minor, non-substantive modifications to the language of the amendment are needed for clarity or consistency, the Executive Officer should make such changes consistent with the Regional Board's intent in adopting this TMDL, and should inform the Board of any such changes.

THEREFORE, be it resolved that pursuant to sections 13240 and 13242, and section 13269 of the Water Code, the Regional Board hereby amends the Basin Plan as follows:

1. Pursuant to Sections 13240 and 13242, and section 13269 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendments to Chapter 7 of the Water Quality Control Plan for the Los Angeles Region, as set forth in Attachment A hereto, to incorporate the elements of the Trash TMDL for Legg Lake.
2. Regional Board staff is directed to develop a monitoring plan to assess accumulation of settleable trash on the bottom of Legg Lake and, if necessary, make recommendations for remediation.
3. The Regional Board hereby approves and adopts the CEQA substitute environmental documentation, including all findings contained therein, which was prepared in accordance with Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and directs the Executive Officer to sign the environmental checklist.

4. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.
5. The Regional Board requests that the State Board 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 U.S. EPA.
6. If during the State Board's approval process, Regional Board staff, the State Board or OAL determines that minor, non-substantive modifications 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, Deborah J. Smith, Interim 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 7, 2007.



Deborah J. Smith
Interim Executive Officer

7-17-07

Date