

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2008-0045**

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 (USEPA) 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 2¹). 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, 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.

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.

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 (CWA) 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. To the extent that pollutant loadings from indirect atmospheric deposition over land are being conveyed to stormwater discharges, these loadings are included in the stormwater waste load allocations. One study has shown that atmospheric deposition of particulates containing trace metals in the urban areas of the Los Angeles Region is an important source of metals contaminants on land surfaces. (Sabin et al., 2005)². The Los Angeles Water Board met with the South Coast Air Quality Management District (SCAQMD) and the California Air Resources Board (CARB) to discuss the findings of the study. It appears that larger particulates are responsible for the highest loadings of metals in atmospheric deposition, and therefore pose the greatest risk to water quality. The two agencies have identified the need to (1) expand monitoring of larger particulates in atmospheric deposition to better gauge the impact to water quality, and (2) investigate the sources of these metals in order to design a control strategy. The Los Angeles Water Board and the State Water Board will continue to meet with the SCAQMD and CARB to pursue further studies and to assist in developing appropriate controls.
11. The State Water Board encourages local municipalities within the urban watersheds in the Los Angeles Region and Los Angeles County also to work with the SCAQMD and CARB to further identify and control sources of trace metals in atmospheric deposition. If necessary, the State Water Board and Los Angeles Water Board shall enforce compliance with the adopted plans by the SCAQMD and CARB as appropriate under Water Code sections 13146 and 13247, and all other relevant statutes and regulations.
12. The Los Angeles Water Board will work with municipalities and Los Angeles County to encourage building designs and best management practices that will retain pollutants on site. This will help prevent the conveyance of pollutants from atmospheric deposition and other sources from being washed into stormwater and discharged to the Los Angeles River, Ballona Creek, and other urban watersheds.
13. Nothing in this resolution shall be interpreted as suggesting that the municipal dischargers are not responsible under the CWA for the pollutants discharged from their municipal separate storm sewer systems, which is a point source subject to regulation under CWA section 402(p).

² Sabin et al. "Contribution of trace metals from atmospheric deposition to stormwater runoff in small impervious urban catchment." *Water Research* 39 (2005) 3939-3937.

14. 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).
15. 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 USEPA.

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.
2. The Los Angeles Water Board shall consider the data generated from the TMDL special studies or any other appropriate data, and determine whether and to what extent measures by the CARB and SCAQMD are necessary or appropriate to attain Water Quality Standards and the TMDL. If such measures are appropriate, the Los Angeles Water Board shall adopt a Basin Plan amendment consistent with the atmospheric deposition findings in Whereas 10, 11, and 12 above, and take appropriate action to pursue compliance with such requirements.
3. 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 USEPA 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.

AYE: Vice Chair Gary Wolff, P.E., Ph.D.
Charles R. Hoppin
Frances Spivy-Weber

NAY: None

ABSENT: Chair Tam M. Doduc
Arthur G. Baggett, Jr.

ABSTAIN: None



Dorothy Rice, Executive Director for
Jeanine Townsend, Clerk to the Board