

EXECUTIVE OFFICER SUMMARY REPORT
June 13, 2007

- ITEM: 11
- SUBJECT: **TOTAL MAXIMUM DAILY LOADS FOR COPPER, LEAD, AND ZINC IN CHOLLAS CREEK, TRIBUTARY TO SAN DIEGO BAY. (Tentative Resolution No. R9-2007-0043).** *(Benjamin Tobler)*
- PURPOSE: The San Diego Water Board will deliberate and consider adopting an amendment to the Basin Plan incorporating the Total Maximum Daily Loads (TMDLs) for copper, lead, and zinc in Chollas Creek.
- PUBLIC NOTICE: Public Notice of this item was provided in the Agenda Notice for the June 13, 2007 meeting of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board). Federal Clean Water Act (CWA) regulations [40 CFR 25.5] require the San Diego Water Board to provide notice of a proposed Basin Plan amendment to all interested parties at least 45 days in advance of the public hearing. The State Water Board's California Environmental Quality Act (CEQA) implementation regulations [23 CCR 3777] require the San Diego Water Board to provide to the public a Notice of Filing of a written report on any standard, rule, regulation, or plan proposed for board approval or adoption at least 45 days prior to board action. The Notice of Filing and the Notice of Public Hearing for this Basin Plan amendment (Supporting Document 1) were provided by newspaper publication in the San Diego Union Tribune on March 9, 2007, 47 days in advance of the public hearing held on April 25, 2007. The Notices were also distributed to interested parties by email and regular mail distribution. The draft Technical Report (including the draft Resolution and draft Basin Plan amendment) was available to the public on our website on March 9, 2007 (Supporting Documents 2, 3 and 4).
- DISCUSSION: Background
Chollas Creek is an urban coastal stream in southern San Diego County, tributary to San Diego Bay (Supporting Document 5). Chollas Creek was placed on the section 303(d) List of Water Quality Limited Segments in 1996 for the metals cadmium,¹ copper, lead and zinc. The San Diego Water Board has established TMDLs for copper, lead, and zinc in Chollas Creek as required by the Clean Water Act for water quality limited segments. The technical basis for the TMDLs, Implementation

¹ Cadmium was de-listed in 2006.

Plan, and Environmental Review of the most reasonably foreseeable methods of compliance with the TMDLs are discussed in the Technical Report.

The purpose of these TMDLs is to reduce copper, lead, and zinc concentrations in Chollas Creek to attain the water quality objectives for toxicity and to restore the “warm freshwater habitat” (WARM) and “wildlife habitat” (WILD) beneficial uses of Chollas Creek.

Project Status

Final revisions to the Chollas Creek Metals TMDLs Technical Report, Resolution, and Basin Plan amendment were made by the Water Quality Standards Unit, taking into consideration the written comments received on the July 2006 and March 2009 versions of the TMDL documents, testimony and comments received at the April 25, 2007 hearing, and written comments received by May 29, 2007 (Supporting Document 6). Written responses to these comments are contained in Appendix M of the Technical Report (Supporting Document 4, Appendix M).

There are no changes to the technical portions of the TMDL which include the TMDL calculations and wasteload allocations (WLAs) for copper, lead, and zinc, the source analysis, linkage analysis, seasonal variation and critical condition. Almost all of the comments received addressed the compliance schedule, and environmental review documents.

Additional interim milestones were added to the compliance schedule at the request of the U.S. Environmental Protection Agency (USEPA), to show when the San Diego Water Board would issue the various orders needed to implement the TMDLs, and when actions, such as filing progress reports, would be required of the dischargers. For example, the revised compliance schedule includes an interim milestone that water quality based effluent limitations consistent with the WLAs will be incorporated into the municipal NPDES waste discharge requirements within 5 years of the effective date of the TMDLs.

Environmental Organizations contend that the 20-year compliance schedule is too long. They recommend a 10-year schedule to avoid recontaminating the shipyard sediment site after cleanup, which they expect will be completed sooner than in 20 years. To avoid this effect, the Compliance Schedule requires achieving 80 percent compliance with the WLAs by year 10. This should help ensure that dissolved copper concentrations in San Diego Bay at the shipyard sediment cleanup site are low enough not to cause dissolved metals to flux from the water column into the sediment.

The City of San Diego contends that the environmental review documents are inadequate because they don't specify the design storm for sizing structural BMPs, how many structural BMPs are needed, where in the watershed to locate BMPs, or the acreage requirements for BMPs. The CEQA requires that TMDL environmental review documents contain sufficient information and analysis for the public to understand the potential adverse environmental impacts of the project, and to provide the San Diego Water Board with meaningful discussion and comment on these impacts. CEQA's provisions allow the San Diego Water Board to limit analysis in these documents to broad environmental issues which are ripe for decision at the TMDL adoption stage. The San Diego Water Board is not required to evaluate environmental issues associated with specific projects undertaken to comply with the TMDL at the Basin Plan amendment adoption stage. CEQA provisions allow for project level environmental considerations to be deferred so that more detailed examination of the effects of these projects in subsequent CEQA environmental documents can be made by the appropriate lead agency.

The Chollas Creek Metals TMDL environmental review documents comply with CEQA's provisions by describing a range of potential structural and non-structural controls the dischargers could construct or implement to meet the WLAs. The documents also discuss the potential adverse environmental impacts associated with those controls. The environmental review documents do not specify any BMP sizing criteria because CEQA does not require the San Diego Water Board to speculate on the location, size, or number of specific structural controls that the dischargers might choose to implement, we did not specify any sizing criteria. These issues should be addressed in the project level CEQA documents prepared by the dischargers when they begin planning and designing BMPs to comply with the TMDLs.

The City of San Diego claims that the only way to comply with the WLAs is to build large detention and treatment facilities in a limited number of locations that will require condemnation of private property to accommodate the BMPs. They contend that the environmental analysis is not adequate because the San Diego Water Board did not consider the environmental impacts of displacing existing development. The environmental documents did not directly evaluate this strategy because the expense and time in condemning property makes it undesirable when the size of BMPs can be minimized through the types of BMPs selected, or through engineering solutions.

KEY ISSUES:

1. **No Technical Changes.** There is no change to the technical portions of the TMDL.
2. **Compliance Schedule.** The TMDL compliance schedule was increased from 7 years to 20 years and additional interim milestones were added.

- 3. **Adequacy of Environmental Analysis.** The City of San Diego contends that the environmental review documents are inadequate because they don't specify a design storm to use to size structural BMPs, how many structural BMPs are needed, or where in the watershed to locate BMPs. These issues should be addressed in the project level CEQA documents prepared by the dischargers when they begin planning and designing BMPs to comply with the TMDLs.
- 4. **Displacement of Existing Development.** The City of San Diego claims that the environmental review documents are inadequate because the San Diego Water Board did not consider the environmental impacts of displacing existing development. The environmental review documents did not directly evaluate this strategy because the expense and time in condemning property makes it undesirable when the size of BMPs can be minimized through the types of BMPs selected, or through engineering solutions.

LEGAL CONCERNS: None.

- SUPPORTING DOCUMENTS:
- 1. Notice of Filing and Notice of Public Hearing, March 5, 2007.
 - 2. Tentative Resolution No. R9-2007-0043 and Attachment A, Draft Basin Plan Amendment.
 - 3. Technical Report.
 - 4. Appendices A through M to the Technical Report.
 - 5. Location Map of Chollas Creek.
 - 6. Comment Letter from the City of San Diego dated May 29, 2007.

RECOMMENDATION(S): Adopt the Chollas Creek metals TMDLs.