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State Water Resources Control Board

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Arnold Schwarzenegger
Governor

NOTICE OF OPPORTUNITY FOR PUBLIC COMMENT

ON PROPOSED APPROVAL OF AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE LOS ANGELES REGION TO PROHIBIT ON-SITE WASTEWATER DISPOSAL SYSTEMS IN THE MALIBU CIVIC CENTER AREA

NOTICE IS HEREBY GIVEN THAT the State Water Resources Control Board (State Water Board) will accept comments on the proposed approval of an amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) to Prohibit On-Site Wastewater Disposal Systems in the Malibu Civic Center Area. The amendment, the State Water Board agenda language, and draft resolution are available on the State Water Board's Web site at http://www.swrcb.ca.gov/water_issues/programs/tmdl/index.shtml#rb4 or can be received by mail by contacting Nick Martorano at (916) 341-5980. The amendment was adopted by the Los Angeles Regional Water Quality Control Board on November 5, 2009 under Resolution No. R4-2009-007. The State Water Board will separately send notice of the meeting at which it will consider approval of the amendment.

Comment letters to the State Water Board **must be received by 12:00 noon on June 29, 2010.** After the deadline, State Water Board staff will not accept additional written comments unless the State Water Board determines that such comments should be accepted. Please send comments on the proposed State Water Board approval of the amendment to: Jeanine Townsend, Clerk to the Board, by email at (commentletters@waterboards.ca.gov) (if **less than 15 megabytes in size or less**) or (916) 341-5620 (fax), or addressed to State Water Resources Control Board, 1001 I Street, Sacramento, CA 95814. Please also indicate in the subject line, "**Comment Letter – Malibu Septic Prohibition.**"

Incorporation of Comments by Reference: Comments must specifically address the version of the amendment that is currently being considered for approval by the State Water Board. If similar or identical comments were submitted to the Los Angeles Water Board, the commenter must explain why and in what manner each of the responses provided by the Los Angeles Water Board to each comment was inadequate or incorrect. If the comment does not include such an explanation, the State Water Board will presume that the Los Angeles Water Board's response adequately addressed the commenter's concern.

Please direct questions about this notice to Nick Martorano, Division of Water Quality, at (916) 341-5980 (nmartorano@waterboards.ca.gov) or Steven Blum, Senior Staff Counsel at (916) 341-5177 (sblum@waterboards.ca.gov).

June 9, 2010
Date

Jeanine Townsend
Jeanine Townsend
Clerk to the Board

California Environmental Protection Agency

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STATE WATER RESOURCES CONTROL BOARD BOARD MEETING SESSION – DIVISION OF WATER QUALITY TBD, 2010

ITEM

SUBJECT

CONSIDERATION OF A RESOLUTION APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE LOS ANGELES REGION (BASIN PLAN) TO PROHIBIT ON-SITE WASTEWATER DISPOSAL SYSTEMS IN THE MALIBU CIVIC CENTER AREA

DISCUSSION

On November 5, 2009 the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) adopted an amendment ([Resolution R4-2009-007](#)) to their Basin Plan to Prohibit On-site Wastewater Disposal Systems (OWDS) in the Malibu Civic Center Area. The area that would be affected by the prohibition includes Malibu Valley, Winter Canyon, and the adjacent coastal strips of land and beaches. Existing residents, businesses, and public facilities that discharge wastes through an OWDS in the Malibu Civic Center area would be affected by the proposed prohibition, as well as future dischargers who may plan a new OWDS discharge in this area. The regulatory action would immediately prohibit all discharges from a new OWDS in the Malibu Civic Center area, and establish a schedule to cease discharges from existing systems by November 5, 2019. Types of OWDS that would be prohibited range from passive systems with conventional septic tanks, to active systems with equipment that more aggressively removes pollutant loads from sewage before subsurface disposal. The prohibition would cover all OWDS that serve an individual property (residential, commercial, industrial, and public properties), as well as systems that serve groups of properties.

The Malibu Civic Center area supports a population of approximately 2,000 residents and is the core of the City's business, cultural, and commercial activities. The area, which includes the renowned Surfrider Beach, attracts a high volume of visitors. Residents, businesses, and public facilities in the area discharge wastewaters totaling about 270,000 gallons per day (gpd) through OWDS to the subsurface and underlying groundwater. These high flows of wastewater, coupled with unfavorable hydrogeologic conditions, have raised concerns about reliance on this wastewater disposal strategy.

Surface waters in the Malibu Civic Center area include Malibu Creek, Malibu Lagoon, and the ocean beaches that are heavily used by the resident population and visitors. These water bodies also provide critical fresh/saltwater habitat for rare, threatened, and endangered species. Groundwater in the area is an existing and a potential source of drinking water. In the *Basin Plan*, the Regional Board has formally designated beneficial uses for these water bodies as follows:

Malibu Lagoon: Navigation; Water Contact Recreation; Non-contact Water Recreation; Estuarine Habitat; Marine Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species Habitat; Migration of Aquatic Organisms; Spawning, Reproduction, and/or Early Development; and Wetland Habitat.

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Malibu Creek: Water Contact Recreation; Non-contact Water Recreation; Warm Freshwater Habitat; Cold Freshwater Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species Habitat; Migration of Aquatic Organisms; Spawning, Reproduction, and/or Early Development; and Wetland Habitat.

Malibu Beach and Malibu Lagoon Beach (Surfrider Beach), Amarillo Beach, and Carbon Beach: Navigation; Water Contact Recreation; Non-contact Water Recreation; Commercial and Sport Fishing; Marine Habitat; Wildlife Habitat; Spawning, Reproduction, and/or Early Development; and Shellfish Harvesting.

Groundwater: Municipal and Domestic Supply (Potential), Industrial Process and Service Supply, and Agricultural Supply.

The 2006 Clean Water Act Section 303(d) List of Impaired Water Bodies, which was approved by the United States Environmental Protection Agency (U.S. EPA) on June 28, 2007, formally identified impairments to beneficial uses for the following water resources:

Malibu Lagoon: impaired by Coliform Bacteria, Eutrophication.

Malibu Creek: impaired by Coliform Bacteria, Nutrients (Algae).

Malibu Beach: impaired by Indicator Bacteria.

Malibu Lagoon Beach (Surfrider Beach): impaired by Coliform Bacteria.

Carbon Beach: impaired by Indicator Bacteria.

To restore water quality and impaired beneficial uses, the U.S. EPA and/or Regional Board have adopted the following Total Maximum Daily Loads (TMDLs): **Malibu Creek Watershed Nutrient TMDL, Malibu Creek and Lagoon Bacteria TMDL, and Santa Monica Bay Beaches Wet and Dry Bacteria TMDL.**

Los Angeles Water Board staff investigations focused on five areas. The results of the investigations are presented in five technical memoranda that comprise the technical staff report.. The report meets the requirements of the California Water Code, sections 13280 and 13281, for determination that discharges of OWDSs in the Malibu Civic Center area result in violation of water quality objectives, impairment of present or future beneficial uses of water, pollution, nuisance, or contamination, or unreasonable degradation of the quality of waters of the State. The reports conclude:

Technical Memorandum #1: Permitted Dischargers Have Poor Records of Compliance with Regional Board Orders.

Technical Memorandum #2: Pathogens and Nitrogen in Wastewaters Impair Underlying Groundwater as a Potential Source of Drinking Water.

Technical Memorandum #3: Pathogens in Wastewaters that are in Hydraulic Connection with Beaches Represent a Source of Impairment to Water Contact Recreation.

Technical Memorandum #4: Nitrogen Loads in Wastewaters flowing to Malibu Lagoon are a Significant Source of Impairment to Aquatic Life.

Technical Memorandum #5: Dischargers with Unsuitable Hydrogeologic Conditions for High Flows of Wastewaters Resort to Hauling Liquid Sewage and Sludge to Communities that have Sewer and Wastewater Treatment Facilities.

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POLICY ISSUE

Should the State Water Board approve the amendment to the Basin Plan to prohibit OWDS in the Malibu Civic Center area, as adopted by Los Angeles Water Board Resolution No. R4-2009-007.

FISCAL IMPACT

Los Angeles Water Board and State Water Board staff work associated with or resulting from this action will be addressed with existing and future budgeted resources.

REGIONAL WATER BOARD IMPACT

Yes, approval of this resolution will amend the Los Angeles Water Board's Basin Plan.

STAFF RECOMMENDATION

That the State Water Board:

1. Approves the amendment to the Basin Plan as adopted under Los Angeles Water Board Resolution No. R4-2009-007.
2. Directs the Executive Director or designee to submit the amendment adopted under Los Angeles Water Board Resolution No. R4-2009-007 to the Office of Administrative Law for approval of the regulatory provisions.

State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030. In particular, approval of this item will assist in fulfilling Action 1 to prepare, adopt, and take steps to carry out TMDLs, designed to meet water quality standards, for all impaired water bodies on the 2006 list.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2010-

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE LOS ANGELES REGION (BASIN PLAN) TO PROHIBIT ON-SITE WASTEWATER DISPOSAL SYSTEMS IN THE MALIBU CIVIC CENTER AREA

WHEREAS:

1. On November 5, 2009, the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) adopted an amendment to the Basin Plan, [Resolution No. R4-2009-007](#), to prohibit on-site wastewater disposal systems (OWDSs) in the Malibu Civic Center Area.
2. For the purposes of this Basin Plan amendment, the “Malibu Civic Center area” is defined as the area within the lower Winter Canyon watershed, Malibu Valley watershed, and adjacent coastal strips, which include Amarillo and Surfrider Beaches.
3. The Los Angeles Water Board found that the analysis contained in the California Environmental Quality Act (CEQA) Substitute Environmental Documentation for the proposed Basin Plan amendment, including the CEQA Checklist, the environmental and technical staff reports, and the responses to comments prepared by Los Angeles Water Board staff and Resolution R4-2009-007 adopted by the Los Angeles Water Board 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.
4. The State Water Board finds that in amending the Basin Plan, the Los Angeles Water Board complied with the requirements set forth in sections 13240 and 13241, of the California Water Code. The State Water Board also finds that the regulatory action meets the “Necessity” standard of the Administrative Procedures Act, Government Code section 11353, Subdivision (b).
5. The State Water Board finds that the Basin Plan amendment is in accordance with California Water Code sections 13280, 13281 and 13283. The Los Angeles Water Board staff presented technical evidence in a public hearing on November 5, 2009, demonstrating that discharges of wastewater from OWDSs in the Civic Center area fail to meet water quality objectives established in the *Basin Plan*, contribute to impairments of present or future beneficial uses of water resources, and cause pollution, nuisance or contamination.
6. The Los Angeles Water Board found that adoption of this 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](#)) and Federal Antidegradation Policy (40 CFR 131.12).
7. The State Water Board finds that peer reviews of the scientific portions of the technical staff report were conducted pursuant to California Health and Safety Code section 57004. The peer reviewers confirmed that the technical staff report was based upon sound scientific knowledge, methods and practices.

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8. The regulatory action would immediately prohibit all new OWDS in the Malibu Civic Center area, and establish a schedule to cease discharges from existing systems by November 5, 2019.
9. A Basin Plan amendment does not become effective until approved by the State Water Board and the regulatory provisions are approved by Office of Administrative Law (OAL).

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendment to the Basin Plan as adopted under Los Angeles Water Board [Resolution No. R4-2009-007](#).
2. Directs the Executive Director or designee to submit the amendment adopted under Los Angeles Water Board [Resolution No. R4-2009-007](#) to the Office of Administrative Law for approval of the regulatory provisions.

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 **TBD**.

Jeanine Townsend
Clerk to the Board