

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

RESOLUTION NO. R14-012

**AUTHORIZING THE EXECUTIVE OFFICER
TO SIGN A REVISED MEMORANDUM OF UNDERSTANDING WITH
THE CITY OF MALIBU AND THE STATE WATER RESOURCES CONTROL BOARD
REGARDING THE MALIBU CIVIC CENTER AREA PROHIBITION**

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

1. On November 5, 2009 the Regional Board adopted Resolution R4-2009-007 approving an amendment to Chapter IV of the Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan), to prohibit on-site wastewater disposal systems (OWDSs) in the Malibu Civic Center Area, as defined in Resolution R4-2009-007, (Basin Plan Amendment).
2. On September 21, 2010 the State Water Resources Control Board (State Water Board) adopted Resolution No. 2010-0045 approving the Basin Plan Amendment.
3. On December 23, 2010, the Office of Administrative Law approved the regulatory provisions of the Basin Plan Amendment, the final step for the amendment to take effect.
4. The Basin Plan Amendment prohibits all new OWDSs in the Malibu Civic Center Area and prohibits the discharge from existing OWDSs based on a phased schedule to cease discharges from Phase One systems by November 5, 2015 and Phase Two systems by November 5, 2019. The Basin Plan Amendment does not prevent repairs, maintenance, and upgrades to existing OWDSs, provided that they do not expand the capacity of the systems or increase flows of wastewater.
5. The City of Malibu (City) objected to the adoption of the Basin Plan Amendment expressed its intent to file a lawsuit challenging the Basin Plan Amendment. In October 2010, the City and the Regional Board and the State Water Board (the Water Boards) entered into a tolling agreement by which they agreed to extend the time within which the City must bring an action against the Water Boards challenging their actions to approve the Basin Plan Amendment, which agreement was extended and now due to expire in October 2011. The purpose of the tolling agreement was to afford the Parties an opportunity to reach agreement on a phased implementation, boundaries and other matters related to the substance of Basin Plan Amendment.

6. The Parties entered into a Memorandum of Understanding (MOU) effective August 11, 2011 (2011 MOU) to memorialize the Parties' agreement to coordinate in the implementation of a wastewater treatment plan for the Malibu Civic Center Area, as defined in the Basin Plan Amendment, that employs both a plan and schedule to construct one or more centralized wastewater treatment facilities (facility) in the Malibu Civic Center Area and a comprehensive regulatory program with respect to OWDSs. The 2011 MOU extends the tolling agreement while the MOU is in effect.

7. As agreed in the 2011 MOU, the City has completed the following investigations and studies, and has submitted progress reports:
 - 7.1. Submitted and circulated for public review and comment reports titled "Recycled Water Use and Storage Study," dated September 30, 2011, and "Conceptual Groundwater Injection Plan," dated June 29, 2012.

 - 7.2. Submitted a report titled "Exploratory Test Well Drilling for Malibu Injection Project," dated February 7, 2012 summarizes field investigation for assessment of the distribution, thickness and hydraulic properties of subsurface lithology and aquifers in the Civic Center Area.

 - 7.3. Developed a groundwater model evaluating the injection capacity and assimilating the flow paths of injected wastewater. Enrolled into General WDRs for Aquifer Storage and Recovery, Order No. 2012-0010-DWQ prior to completion of the injection test. Submitted to the Regional Board on October 14, 2013, the "Malibu Groundwater Injection Feasibility Project – Phase 3: Summary of Test Well Redevelopment Operations."

 - 7.4. Released on June 2014, a draft Environmental Impact Report (EIR) for Malibu Civic Center Wastewater Treatment Facility Project for public comment and review. The comment deadline was July 28, 2014. The final EIR is under consideration by the City.

 - 7.5. Other studies and reports prepared by the City and submitted to Regional Board include:
 - a. Ocean Dilution Analysis, March 18, 2014
 - b. Pilot Injection Testing Summary of Result, March 24, 2014

- c. Geochemical Model Assessment, March 24, 2014
 - d. Sea Water Rise Analysis, March 24, 2014
 - e. Groundwater Modeling Analysis of Proposed Wastewater Dispersal, April 3, 2014
 - f. Salt and Nutrient Management Plan – Groundwater Management Program Goals and Objectives, May 10, 2014
 - g. Assimilative Capacity and Anti-Degradation Technical Memorandum, May 15, 2014
 - h. Review of Nitrogen Limit Implications for Wastewater Treatment Facility, May 27, 2014
 - i. Surface Water Monitoring Plan, May 30, 2014
 - j. Groundwater Monitoring Plan, May 30, 2014
 - k. Simulation of Anticipated Injection in Groundwater Flow Model, August 25, 2014
8. On August 20, 2014, the City submitted an Engineer’s Report for the Production, Distribution, and Use of Recycled Water to the Regional Board and the State Water Resources Control Board, Division of Drinking Water. The report provides a detailed design of the treatment process and layout of the wastewater collection and recycled water distribution system.
9. In the 2011 MOU, the parties contemplated that each task specified in the 2011 MOU requires substantial efforts due to the complexity of the project. The City’s efforts have been substantial but additional time is needed to complete the special studies and take other actions to complete the project. The deadlines established in the 2011 MOU are not sufficient to allow for completion of the project.
10. The Parties have developed a revised MOU that provided, in summary, the following provisions:
- 10.1 The City agrees to construct one or more facilities according to a specified schedule that contains specific milestones to assure completion of Phase One by June 30, 2017 and Phase Two by November 5, 2022.
 - 10.2 The City and the Water Boards agree that certain properties, in the area designated as Phase Three, may not be connected to a Facility based on monitoring data to be collected by the City under the oversight of the Regional Board. If it is determined that the Phase Three properties must be connected to a Facility, they must be connected by November 5, 2025.
 - 10.3 If an assessment district is not approved by dischargers, the Los Angeles Water Board may enforce all State policies, plans, or regulations to gain compliance, including the requirement to upgrade each OWDS to advance treatment, or other appropriate means by November 5, 2019. Advanced treatment for OWDS is defined as disinfection

treatment to a level that meets applicable water quality standards for Fecal Indicator Bacteria and/or denitrification not to exceed a total nitrogen concentration of 10 milligrams per liter (mg/l) for those properties impacting an impaired water body with a nutrient total maximum daily load (TMDL). All property owners that are required to upgrade their system will need to obtain City of Malibu building permits and obtain an operating permit in accordance with City ordinances. The City's operating permit program requires that advanced residential OWDS must be inspected every 3 years by a certified OWDS inspector. The Los Angeles Water Board will also require effluent monitoring for these systems that shall be submitted and reviewed by the Los Angeles Water Board on a quarterly basis for Total Suspended Solids, Total Nitrogen, Total Phosphorus, and Fecal Indicator Bacteria as appropriate.


- 10.4** The Regional Board agrees not to amend the Basin Plan Amendment as long as the MOU is in effect, not to enforce the Basin Plan Amendment against property owners who comply with the terms of the Basin Plan Amendment and waste discharge requirements or waivers issued by the Regional Board, and to coordinate with the City with respect to enforcement. The Parties acknowledge, however, that modification of the Basin Plan Amendment may be necessary if it is determined that Phase Three properties are determined not to be required to connect to a facility and the MOU does not preclude future amendments.
- 11.** The Regional Board reserves its rights to terminate the MOU at any time and enforce the Basin Plan Amendment.
- 12.** The Regional Board has authority to enter into this MOU pursuant to California Water Code section 13225, subsections (a), (b), and (j).
- 13.** The Regional Board has determined that the proposed revised MOU is fair, reasonable and in the public interest, and further is consistent with the goals and purposes of the Porter-Cologne Water Quality Control Act (California Water Code § 13000 *et seq.*), in that it benefits the public by assuring the implementation of a plan to construct one or more publicly owned wastewater treatment facilities that will result in elimination of discharges of waste from OWDS, including bacteria and nitrates, to waters of the state, and protection of public health in the vicinity of the Malibu Civic Center Area. The MOU will compliment other activities of the City, including implementation of OWDS regulations to require more frequent inspections and upgrades to septic systems if necessary, and activities of the Los Angeles Water Board, including implementation of TMDLs and issuance of waste discharge requirements to certain properties in Malibu. Further, the City is working with the Regional Board to construct a centralized treatment plant as a solution to comply with the Basin Plan Amendment and protect the water quality.

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14. The Regional Board provided notice of its intention to consider this matter at a public meeting and provided an opportunity for interested persons to comment on the proposed revised MOU. The City of Malibu also held a public meeting to consider the MOU after proper notice.
15. The Regional Board, at a public meeting, heard and considered all comments pertaining to this matter.

THEREFORE, BE IT RESOLVED THAT the California Regional Water Quality Control Board, Los Angeles Region, authorizes the Executive Officer to sign the revised Memorandum of Understanding between the City of Malibu, the Regional Water Quality Control Board, Los Angeles Region, and the State Water Resources Control Board Regarding Implementation of the Basin Plan Amendment for the Malibu Civic Center Area Prohibition.

I, Samuel Unger, 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 December 4, 2014.


Samuel Unger, P.E.
Executive Officer