

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

RESOLUTION NO. R13-010
December 5, 2013

Amendment to the Water Quality Control Plan for the Los Angeles Region to Revise the Total Maximum Daily Loads for Metals in Ballona Creek and the Total Maximum Daily Loads for Toxic Pollutants in the Ballona Creek Estuary

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

1. On July 7, 2005, the Regional Board adopted, by Resolution R05-008, an amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) incorporating a TMDL for toxic pollutants in Ballona Creek Estuary (hereinafter “Ballona Creek Estuary Toxics TMDL”). The TMDL included an implementation plan requiring reduction of toxic pollutants in sediments to Ballona Creek Estuary by January 11, 2021.
2. The Ballona Creek Estuary Toxics TMDL was subsequently approved by the State Water Resources Control Board (State Water Board) on October 20, 2005, the Office of Administrative Law (OAL) on December 15, 2005, and the United States Environmental Protection Agency (USEPA) on December 22, 2005. The effective date of the Ballona Creek Estuary Toxics TMDL was January 11, 2005, when the Certificate of Fee Exemption was filed with the California Department of Fish and Game.
3. On July 7, 2005, the Regional Board also established, by Resolution No. R05-007, an amendment to the Basin Plan incorporating a TMDL for metals in Ballona Creek (hereinafter “Ballona Creek Metals TMDL”). The TMDL included an implementation plan requiring reduction of metals to Ballona Creek by January 11, 2021.
4. The Ballona Creek Metals TMDL was subsequently approved by the State Water Resources Control Board on October 20, 2005 and by the Office of Administrative Law on December 9, 2005. The USEPA approved the Ballona Creek Metals TMDL on December 22, 2005.
5. On February 16, 2006, the Cities of Bellflower, Carson, Cerritos, Downey, Paramount, Santa Fe Springs, Signal Hill, and Whittier filed a petition for a writ of mandate challenging many aspects of the Los Angeles River Metals TMDLs and the Ballona Creek Metals TMDLs.
6. On May 24, 2007, the Los Angeles County Superior Court adopted the third of three rulings with respect to the writ petition. Collectively, all challenges to the TMDLs were rejected, except for one CEQA claim. Specifically, the Court ruled that the State and Regional Boards (collectively, Water Boards) should have adopted and circulated an alternatives analysis that 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.
7. The Court issued its writ of mandate, directing the Water Boards to adopt an alternatives analysis that analyzed feasible alternatives to the TMDLs and reconsider the TMDLs accordingly. Accordingly, an alternatives analysis was prepared to comply with the writ of

mandate, and to explain the Regional Board's conclusion that no feasible alternatives exist that would result in less significant impacts and also achieve the project's purposes.

8. On September 6, 2007, the Regional Board adopted, by Resolution R07-015, an amendment to the Basin Plan again incorporating the TMDL for metals in Ballona Creek.
9. The Ballona Creek Metals TMDL was subsequently approved by the State Water Resources Control Board (State Water Board) on June 17, 2008, the Office of Administrative Law (OAL) on October 6, 2008, and the United States Environmental Protection Agency (US EPA) on October 29, 2008. The effective date of the Ballona Creek Metals TMDL established by Resolution No. R07-015, was October 29, 2008, upon approval by USEPA.
10. The Ballona Creek Estuary Toxics TMDL includes a scheduled reconsideration. Specifically, pursuant to Table 7-14.2 of the TMDL, the Regional Board will re-assess the numeric targets and waste load allocations for consistency with the State Board adopted sediment quality objectives. In addition, the Regional Board will reconsider the TMDL to re-evaluate the waste load allocations and the implementation schedule.
11. The Ballona Creek Metals TMDL also includes a scheduled reconsideration. Specifically, pursuant to Table 7-12.3 of the TMDL, the Regional Board will reconsider the TMDL to re-evaluate the waste load allocations and the implementation schedule.
12. This reconsideration is not a general reconsideration of each and every element of these TMDLs, but a re-examination of certain technical issues which might need revision upon further data collection and analysis, or new policy as indicated in Tables 7-12.3 and 7-14.2.
13. Ballona Creek flows as an open channel for just under 10 miles from Los Angeles (South of Hancock Park) through Culver City, reaching the Pacific Ocean at Playa del Rey. Ballona Creek and its tributaries drain a watershed with an area of approximately 128 square miles. The Ballona Creek watershed is comprised of the Cities of Beverly Hills and West Hollywood, and parts of the Cities of Culver City, Inglewood, Los Angeles, Santa Monica, and unincorporated areas of Los Angeles County.
14. The Regional Board's goal in establishing the Ballona Creek Estuary Toxic TMDL and the Ballona Creek Metals TMDL is to protect the aquatic life, wildlife, recreational and fishing beneficial uses of Ballona Creek, Sepulveda Channel, Centinela Creek, and Ballona Creek Estuary, and to achieve water quality and sediment quality to protect these beneficial uses.
15. Regional Board staff has prepared a detailed technical document that analyzes and describes the specific necessity and rationale for this revision of these TMDLs. The technical document entitled "Reconsideration of Certain Technical Matters of the Ballona Creek Estuary Toxics TMDL and Ballona Creek Metals TMDL" is an integral part of this Regional Board action and was reviewed, considered, and accepted by the Regional Board before acting.
16. Upon reconsideration of the Ballona Creek Estuary Toxics TMDL and Ballona Creek Metals TMDL, these amendments revise the TMDLs to adjust the targets, loading capacity, and allocations. The technical document provides the detailed analysis supporting these revisions as well as analysis of other technical matters to be reconsidered as specified in the TMDLs, such providing additional flexibility in compliance determination.

17. On December 5, 2013, prior to the Regional Board's action on this resolution, a public hearing was conducted on the revisions to these TMDLs. Notice of the hearing for this revision of these TMDLs was published in accordance with the requirements of Water Code Section 13244. This notice was published in the Los Angeles Times on September 30, 2013.
18. The public has had reasonable opportunity to participate in review of the amendment to the Basin Plan. A draft of the revisions to the Ballona Creek Estuary Toxics TMDL and Ballona Creek Metals TMDL was released for public comment on September 30, 2013; a Notice of Hearing was published and circulated 45 days preceding Regional Board action; Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on December 5, 2013 to consider adoption of the revised TMDLs.
19. In amending the Basin Plan, the Regional Board considered the factors set forth in sections 13240 and 13242 of the California Water Code.
20. Neither TMDLs nor their targets or other components are water quality objectives, and thus their establishment or revision does not implicate California Water Code section 13241.
21. This amendment is consistent with the State Antidegradation Policy (State Water Board Resolution No. 68-16), and the federal Antidegradation Policy (40 CFR § 131.12), in that it does not allow degradation of water quality, but requires restoration of water quality and attainment of water quality standards.
22. 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.)
23. The Regional Board previously prepared "substitute environmental documents" for the establishment of the Ballona Creek Estuary Toxics TMDL (Resolution No. R05-008), which were filed with the Resources Agency on January, 26 2006. Those documents contained the required environmental documentation under the State Water Board's CEQA regulations (23 Cal. Code Regs § 3777.) The project itself was the establishment of the TMDLs. In preparing the previous substitute environmental documents, the Regional Board considered the requirements of Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187, and intended those documents to serve as a tier 1 environmental review.
24. The Regional Board also previously prepared "substitute environmental documents" for the establishment of the Ballona Creek Metals TMDL (Resolution No. R07-015), which were filed with the Resources Agency on October 22, 2008. Those documents contained the required environmental documentation under the State Water Board's CEQA regulations (23 Cal. Code Regs § 3777.) The project itself was the establishment of the TMDLs. In preparing the previous substitute environmental documents, the Regional Board considered the requirements of Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187, and intended those documents to serve as a tier 1 environmental review.

25. These TMDL revisions do not alter the environmental analyses that were previously prepared for the establishment of these TMDLs because the TMDL revisions will not result in different implementation actions than those previously analyzed, or different effects upon the environment. Moreover, no additional reasonably foreseeable methods of compliance warrant environmental analysis pursuant to Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187. As such, this amendment is consistent with the prior CEQA documentation.
26. Further, consistent with California Code of Regulations, title 14, section 15162, the Regional Board has determined that no subsequent environmental documents shall be prepared because these TMDL revisions do not involve new significant environmental effects, a substantial increase in the severity of previously identified significant effects, or mitigation measures or alternatives that are considerably different from those analyzed in the previous substitute environmental documentation.
27. The regulatory action meets the “Necessity” standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b). Federal 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 revising the Ballona Creek Estuary Toxics TMDL and Ballona Creek Metals TMDL is established in Tables 7-12.3 and 7-14.2 and the TMDL staff reports.
28. The Basin Plan amendments revising the Ballona Creek Estuary Toxics TMDL and Ballona Creek Metals TMDL must be submitted for review and approval by the State Water Board, the State OAL, and the USEPA. The Basin Plan amendments will become effective upon approval by OAL and USEPA. Once effective, a Notice of Decision will be filed with the Resources Agency.
29. If during its approval process, Regional Water Board staff, the State Water Board or State Water Board staff, or OAL determine that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Regional Water Board of any such changes.

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

1. Pursuant to Sections 13240 and 13242 of the California Water Code, the Regional Water Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 7 of the Basin Plan, as set forth in Attachment A hereto, to revise the Ballona Creek Metals TMDL.
2. Pursuant to Sections 13240 and 13242 of the California Water Code, the Regional Water Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 7 of the Basin Plan, as set forth in Attachment B hereto, to revise the Ballona Creek Estuary Toxics TMDL.

3. The Executive Officer is directed to forward copies of the Basin Plan amendments to the State Water Board in accordance with the requirements of section 13245 of the California Water Code.
4. The Regional Board requests that the State Water Board approve the Basin Plan amendments in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward the approved amendments and record to OAL and the USEPA.
5. If during its approval process, Regional Water Board staff, the State Water Board or State Water Board staff, or OAL determine that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Regional Water Board of any such changes.
6. The Executive Officer is authorized to request a "No Effect Determination" from the Department of Fish and Game, and/or transmit payment of the applicable fee as may be required to the Department of Fish and Game.

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 5, 2013.


Samuel Unger
Executive Officer