



Heal the Bay

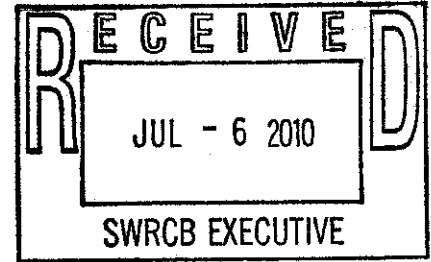
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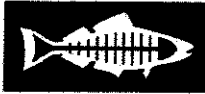
Mr. Charlie Hoppin, Chair
State Water Resources Control Board
Via email: (commentletters@waterboards.ca.gov)



Re: 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 (Resolution No. R4-2009-007)

Dear Chair Hoppin and Board Members:

Heal the Bay has a long history of working on water quality issues in the Malibu Creek watershed, Malibu Lagoon and Surfrider Beach. Over the last 20 years, the organization has graded water quality at Malibu beaches as part of its Beach Report Card. Staff members have served on numerous Malibu water quality committees including the Malibu Environmental Review Board for a decade and the Malibu Creek Watershed Committee. Also, Heal the Bay staff currently serves on the Legacy Park and Civic Center Wastewater Treatment Advisory Committee. Also, our Stream Team monitoring program has collected water quality, habitat and biological data throughout the watershed for a decade. Three staff members (two are former) completed research at Surfrider Beach and in Malibu Creek that was integral to receiving their doctorates in environmental science and engineering from UCLA. In addition, two staff members were co-authors of the Santa Monica Bay epidemiology study in 1995 which included Surfrider Beach, and a staff member will be an author of the most recent Surfrider Beach epidemiology study. In the late nineties, Heal the Bay and others successfully advocated to the Regional Water Board for the cessation of dry weather wastewater discharges to Malibu Creek from April to October in order to improve water quality in the watershed and to decrease the frequency of Malibu Lagoon breaching at Surfrider Beach. Also, Heal the Bay helped author the California Clean Beach Initiative, AB411 and AB538, and sits on the Clean Beach Task Force that reviews all beach water quality bond grant applications. A substantial amount of funding for Malibu civic center's dry weather runoff treatment facility came from the CBI. And finally, as a long time vice-chair of the Santa Monica Bay Restoration Commission, Heal the Bay has been instrumental in helping Malibu get funds for water quality projects including Legacy Park and the dry weather runoff treatment facility. Clearly, Heal the Bay has a strong interest in the ecological health of Malibu Creek and Lagoon, and the public health of the over 1.2 million people that enjoy Surfrider Beach every year.



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There is great urgency in solving the water quality issues in the Malibu Civic Center area. World-class Surfrider Beach continues to get Ds and Fs on Heal the Bay's Beach Report Card, as wastewater from commercial and residential septic systems in the area leaches into Malibu Creek and Lagoon and then flows into the ocean, and its poor water quality places public health at risk. Malibu Creek and Lagoon are listed on the State's 2006 303(d) List as impaired by numerous pollutants, and TMDLs were adopted five years ago for bacteria and nutrients. Surfrider Beach and Malibu Lagoon's legacy of polluted water has continued unabated for decades. For years, we've participated and commented on the development and implementation of plans and studies, from the 1992 Warshall study to the present. Clearly, Malibu's voluntary efforts to clean up Malibu Lagoon and Surfrider Beach have met with limited success. Yes, there have been improvements in on-site wastewater treatment systems and stormwater ordinances, the Local Coastal Plan, and dry weather runoff treatment. The bottom line is that Malibu Lagoon and Surfrider Beach are still two of the most polluted receiving waters in the region, if not the state. The public and aquatic life should not have to wait much longer for the promise of clean water. The Regional Board's adopted prohibition of Onsite Wastewater Disposal Systems ("OWDS") in the Civic Center is a long overdue, legally enforceable action that should fulfill the promise of clean water in Malibu.

In general, Heal the Bay strongly supports the *Amendment to the Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center*, Resolution No. R4-2009-007 ("prohibition"). It has long been assumed and established that existing OWDS in the Civic Center area are a significant source of nutrients and pathogens to the Creek and Lagoon. The technical memos have provided the information to demonstrate that there are numerous violations of WDRs at OWDS in the civic center. Also, groundwater monitoring data frequently exceeds both drinking water standards and receiving water standards for total coliforms and total nitrogen (nitrate + nitrite, and ammonia). Studies have demonstrated that groundwater is connected to Malibu Creek and Lagoon, and that people who swim at Surfrider Beach when water quality standards are exceeded are far more likely to get sick than those that swim in clean water nearby. Moreover, the addition of discharge to the already over-taxed waste disposal systems and leach fields will lead to further water quality degradation and contribute to violations of water quality standards and TMDL requirements at a time when the City is legally obligated to reduce its nutrient and fecal bacteria contributions. Board staff's technical memos, which we reviewed and commented on, have definitely exceeded the burden to demonstrate that OWDS cause or contribute to water quality standards exceedances and beneficial use impairment in Malibu Lagoon and at Surfrider Beach.

The prohibition outlines a reasonable schedule, including interim and final deadlines, for developing and implementing a project to allow for a cease in discharge from existing commercial and residential OWDS in the Civic Center area within 5 years and 9 years,



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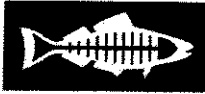
respectively. The proposed State Water Board draft resolution needs to be amended to reflect the Regional Board action. The current resolution only includes a 2019 deadline in the findings (finding #8) rather than the commercial deadline of 2015 and residential by 2019. Due to the pressing nature of the water pollution problems in this area, the prohibition appropriately calls for an immediate prohibition on new OWDS. However, the prohibition provides exemptions for those properties in the midst of a project at the time of the Regional Board's hearing. The prohibition also appropriately excludes from the prohibition any publicly-owned, community-based wastewater solution. The final State Board resolution must make it clear that there are no exceptions or additions to the exemption list. All other new development must meet the prohibition requirements.

Heal the Bay has long maintained that the city can comprehensively address the bacteria and nutrient problems and meet TMDL requirements by constructing and operating a centralized wastewater treatment plant. Although the city has promised that this is the route they plan to take in the Civic Center area, there has been no legally binding commitment or major progress towards this "goal". The prohibition places the city on track for developing such a project and moving forward on water recycling and watershed protection.

Although Heal the Bay is very supportive of the prohibition as adopted by the Regional Board – especially the deadlines, we urge the State Board to consider the Civic Center, Winter Canyon and Serra Retreat Prohibitions:

Prior to and since the prohibition was adopted by the Regional Board, Heal the Bay has been in frequent discussions with the City of Malibu to review areas of common-ground on the geographic scope of the prohibition depicted in "Exhibit 1". Our take-away from these conversations is that both Heal the Bay and the City of Malibu feel that certain areas in the Civic Center may be inappropriately included in the prohibition while other areas may be inappropriately excluded. In general we believe that these issues were inadequately addressed in the Regional Board staff report and during the Regional Board hearing and would like the State Board to consider these elements. Specifically, the concerns are as follows:

- 1) Please provide clarifications that a centralized wastewater treatment plant can dispose highly treated wastewater in Winter Canyon, not the Malibu Creek drainage area. The groundwater from the Winter Canyon area does not drain into the nutrient impaired waters of Malibu Creek and Lagoon. The prohibition as written may eliminate subsurface disposal of highly treated effluent from the new Civic Center water recycling facility in Winter Canyon.
- 2) Substantiation is needed for the inclusion of so many of the residents in the area from Malibu Colony to Marine Canyon. We are unaware of any beach monitoring data from



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the Colony to Marie Canyon (all of Amarillo Beach). Malibu's previous groundwater studies demonstrated that about 6 to 10 houses near the western edge of Surfrider Beach can drain into the nutrient and fecal bacteria impaired lagoon. Perhaps the houses in the Malibu Colony that do not drain to the lagoon could meet requirements by installing disinfection systems instead of tying into a new sewer in the area. A requirement to either tie into the sewer or install a disinfection system (individual or centralized) by a date certain (no more than 5 to 8 years) would be acceptable to Heal the Bay.

- 3) Further, the project geographic scope should include commercial properties (especially hotels and restaurants) south from the Civic Center on Pacific Coast Highway to at least 21237 Pacific Coast Highway, Malibu. At a minimum, within 5 to 8 years, commercial property OWDSs south of the proposed boundary on PCH should be required to disinfect their wastewater prior to leach field disposal to ensure no bacteria contribution to groundwater and surface water. This is a more cost effective approach to meeting Santa Monica Bay beach bacteria TMDL requirements. The project geographic scope should be modified accordingly.
- 4) Substantiation for the inclusion of the Malibu Knolls area in the prohibition was not provided by the Regional Water Board. This residential area has a large depth to groundwater and should not be included in the prohibition area.

The scientific and regulatory facts are clear: dischargers of wastewater in the Civic Center area often fail to meet water quality objectives and they have the reasonable potential to cause or contribute to impairments of existing or potential beneficial uses. Thus we urge the State Board to approve this legally-binding prohibition with the considerations of geographic scope discussed above. It is critical that the State Board move forward with this prohibition as soon as possible, as we already see developers in the Civic Center area trying to rush large projects through the cracks before State Board adoption.

A prohibition is needed to finally clean up Malibu Lagoon and Surfrider Beach to protect human health and aquatic life. Malibu has the potential to move forward with an integrated watershed management approach that utilizes recycled water and filtered stormwater instead of relying on potable water for all City needs.

Thank you for your consideration of these comments. If you have any questions, please contact us at 310-451-1500.

Sincerely,



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