

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2012-0008**

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE LOS ANGELES REGION TO INCORPORATE A TOTAL MAXIMUM DAILY LOAD FOR TOXIC POLLUTANTS IN DOMINGUEZ CHANNEL AND GREATER LOS ANGELES AND LONG BEACH HARBOR WATERS

WHEREAS:

1. On May 5, 2011, the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) adopted [Resolution No. R11-008](#), an amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan amendment), to incorporate a total maximum daily load (TMDL) for Toxic Pollutants in Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters.
2. 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 Final Staff Report, entitled “Dominguez Channel and Greater Los Angeles and Long Beach Harbor Water Toxic Pollutants TMDL,” and the responses to comments prepared by Los Angeles Water Board staff, complies with the requirements of the State Water Resources Control Board’s (State Water Board) certified regulatory CEQA process, as set forth in the California Code of Regulations, Title 23, section 3775 et seq. The State Water Board has reviewed the substitute environmental documentation for the Basin Plan amendment and concurs with the Los Angeles Water Board’s findings and determinations, including the Statement of Overriding Considerations.
3. The Los Angeles Water Board also adopted the Basin Plan amendment pursuant to the “Necessity” standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b)(2)(C).
4. The Los Angeles Water Board found that adoption of this Basin Plan amendment is consistent with the Statement of Policy with Respect to Maintaining High Quality Waters in California ([State Water Board Resolution No. 68-16](#)) and 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.
5. The State Water Board finds that the TMDL is consistent with the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality (SQO – Part 1) through the application of the narrative SQO to protect aquatic life (“direct effects” SQO) and narrative SQO to protect human health (“indirect effects” SQO). The State Water Board finds that the use of sediment quality guidelines to establish numeric targets in the TMDL is necessary to meet federal requirements, but that compliance may be demonstrated using the direct effects SQO assessment approach and, once developed, the indirect effects SQO assessment methodology. The State Water Board also finds it appropriate to use the direct effects SQO assessment approach to prioritize contaminated sediment management as part of TMDL implementation.

6. The State Water Board reiterates that the mass-based sediment allocations in this TMDL indicate the allowable settleable pollutant load to bed sediments from each source.
7. The State Water Board reiterates the Los Angeles Water Board's direction that sediment targets included in the Basin Plan amendment are not intended to be used as "clean-up standards" for navigational, capital or maintenance dredging or capping activities; rather they are long-term sediment concentrations that should be attained after reduction of external loads, targeted actions addressing internal reservoirs of pollutants, and environmental decay of pollutants in sediment.
8. The State Water Board recognizes that this Basin Plan amendment does not dictate the manner of compliance with the TMDL and reiterates the Los Angeles Water Board's assessment that the implementation methods of the TMDL, as determined by the responsible parties, will likely include, though not be limited to, dredging and/or sequestering of some areas of highly contaminated sediment ("hot spots"), monitored natural attenuation of areas of less highly contaminated sediment, reduction of stormwater inputs, and reduction of aerial deposition for some pollutants through other regulatory programs. The State Water Board finds that this program of implementation over a period of 20 years will be sufficient to achieve final targets in place at 20 years and protect the beneficial uses.
9. The State Water Board joins with the Los Angeles Water Board in recognizing that scientific understanding of the impairments in the Dominguez Channel and Greater Harbor Waters will continue to increase as new monitoring data to refine watershed and hydrodynamic models are collected and special studies are undertaken, including but not limited to (1) foraging ranges of resident fish; (2) Harbor-specific sediment and fish tissue linkage studies; (3) further characterization of direct air deposition loadings; (4) further characterization of sediment deposition and transport; (5) evaluation of Los Angeles River and San Gabriel River loadings to the Harbors; (6) additional stressor identification studies; and (7) fish consumption rates within the Harbors. The State Water Board recognizes that the Los Angeles Water Board has included a specific opportunity to reconsider the TMDL in the 6th year of implementation to revise targets, waste load allocations, and load allocations based on new or amended policies, data, and results of special studies.
10. The State Water Board recognizes the importance of selecting resident fish species to track implementation of the "indirect effects" TMDLs and the value of additional Harbor-specific information on the linkages between pollutant concentrations in resident species and sediment concentrations, including bioaccumulation dynamics. The State Water Board finds that it would be premature to reconsider any allocations, including those assigned to existing bed sediments, necessary to achieve fish tissue targets prior to completion of these studies or prior to making significant progress toward achieving the final allocations.
11. Upon completion of these studies and an indication of the efficacy of completed sediment management actions, if the Los Angeles Water Board determines that implementation actions to achieve the "indirect effects" sediment allocations may not achieve the fish tissue targets, the State Water Board expects that the Los Angeles Water Board will work with stakeholders to determine the best course of action. This may include revisiting the implementation schedule to achieve the fish tissue targets and/or revising, if appropriate, the numeric targets.

12. Some of the areas and sediments covered by the TMDL have also been subject to federal consent decrees under the Comprehensive Environmental Response, Compensation, and Liability Act. Those consent decrees include covenants not to sue, which extend to certain administrative actions, for some responsible parties and certain activities. This TMDL is a scientific and technical document that is not self-implementing. The load allocations identify parties that contributed pollutants to the sediments; however, the basin plan amendment is not an administrative action that directs clean up. The extent of any covenant not to sue would be resolved if and when the Los Angeles Water Board issues an investigative order to responsible parties. The basin plan amendment cannot override a federal consent decree.
13. The State Water Board finds that the Basin Plan amendment conforms with Water Code section 13240, which specifies that Regional Water Quality Control Boards may revise Basin Plans, and with section 13242, which requires a program of implementation for achieving water quality objectives. The State Water Board also finds that the TMDL, as reflected in the Basin Plan amendment, is consistent with the requirements of federal Clean Water Act section 303(d).
14. A Basin Plan amendment does not become effective until approved by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law (OAL). The TMDL must also be approved by the U.S. Environmental Protection Agency (U.S. EPA).

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board directs the Los Angeles Water Board to carefully review and evaluate the results of special studies on foraging ranges of resident species and the linkages between pollutant concentrations in targeted species and sediment concentrations, including bioaccumulation dynamics, before reconsidering the wasteload allocation and load allocations (including allocations assigned to existing bed sediments) necessary to achieve fish tissue targets.
2. Should the responsible parties choose to demonstrate compliance with the “direct effects” or “indirect effects” allocations using the SQOs, the State Water Board acknowledges the Los Angeles Water Board’s intention, as provided for in the Basin Plan amendment, to utilize the multiple lines of evidence assessment methodology contained in the State’s SQO – Part 1 to determine compliance with the interim sediment allocations and final “direct effects” sediment allocations. The State Water Board further acknowledges the Los Angeles Water Board’s intention to utilize the assessment methodology developed as Phase 2 of the State’s SQOs to determine compliance with the final “indirect effects” sediment allocations or, alternatively, site-specific sediment quality values to address fish tissue impairments and protect human health, once developed.
3. The State Water Board directs State Water Board staff to prioritize development of the assessment methodology to support implementation of the “indirect effects” SQOs to protect human health as Phase 2 of the State’s SQOs, and to complete Phase 2 of the State’s SQOs for consideration by the State Water Board no later than February 2014 .

4. Upon completion of special studies to determine the site-specific linkage between pollutant concentrations in fish tissue and sediment and/or an indication of the efficacy of the completed sediment management actions, if the Los Angeles Water Board determines that implementation actions to achieve the indirect effects sediment allocations may not achieve the fish tissue targets, the State Water Board directs the Los Angeles Water Board to work with stakeholders to determine the best course of action. This may include revisiting the implementation schedule to achieve the fish tissue targets and/or revising, if appropriate, the numeric targets.
5. The State Water Board staff shall schedule a workshop, before the State Water Board, in the spring of 2015 to report on implementation of this TMDL.
6. The State Water Board approves the [Basin Plan amendment](#) as adopted under Los Angeles Water Board Resolution No. R11-008.
7. The State Water Board authorizes and directs the Executive Director or designee to submit the Basin Plan amendment adopted under Los Angeles Water Board Resolution No. R11-008 to OAL for approval of the regulatory provisions and to U.S. EPA for approval of the TMDL.

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 February 7, 2012.

AYE: Chairman Charles R. Hoppin
 Vice Chair Frances Spivy-Weber
 Board Member Tam M. Doduc

NAY: None

ABSENT: None

ABSTAIN: None



 Jeanine Townsend
 Clerk to the Board