

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

RESOLUTION R2-2004-0082

**AMENDING THE WATER QUALITY CONTROL PLAN FOR THE SAN
FRANCISCO BAY REGION TO ESTABLISH A TOTAL MAXIMUM DAILY LOAD
AND IMPLEMENTATION PLAN FOR MERCURY IN SAN FRANCISCO BAY**

WHEREAS an updated Water Quality Control Plan for the San Francisco Bay Region (Basin Plan) was adopted by the San Francisco Bay Regional Water Quality Control Board (Water Board) on June 21, 1995, approved by the State Water Resources Control Board on July 20, 1995, and approved by the Office of Administrative Law (OAL) on November 13, 1995, and has since been revised; and

WHEREAS the Basin Plan may be amended in accordance with California Water Code § 13240, et seq.; and

WHEREAS San Francisco Bay has been identified under federal Clean Water Act § 303(d) as an impaired waterbody due to elevated concentrations of mercury; and

WHEREAS the Water Board finds that elevated mercury in fish tissue poses a threat to humans, wildlife, and rare and endangered species who consume Bay fish, and that San Francisco Bay is not meeting the Basin Plan's narrative bioaccumulation water quality objective; and

WHEREAS under Clean Water Act § 303(d) the Water Board is required and authorized to establish the total maximum daily load (TMDL) for those pollutants identified as causing impairment of waters on the § 303(d) list. Additionally, the Water Board is authorized to develop a program of implementation for achieving water quality objectives, such as the narrative bioaccumulation water quality objective; and

WHEREAS a Basin Plan Amendment has been prepared in accordance with California Water Code § 13240 that will establish the TMDL and Implementation Plan to reduce mercury related risks to humans and wildlife in order to implement the narrative bioaccumulation water quality objective and restore and protect beneficial uses. The TMDL and Implementation Plan also serve as a translator of the narrative bioaccumulation water quality objective as it relates to mercury; and

WHEREAS the Basin Plan Amendment, including specifications on its physical placement in the Basin Plan, is set forth in Exhibit A hereto; and

WHEREAS regulatory elements of the Basin Plan Amendment were reviewed by external peer reviewers Dr. James Kirchner, University of California, Berkeley; Dr. David L. Sedlak, University of California, Berkeley; and Dr. Rhea Williamson, San Jose State University; and they found the scientific portion of the Basin Plan Amendment to be based on sound scientific knowledge, methods, and practices; and

WHEREAS a draft Basin Plan Amendment, Staff Report, and Environmental Checklist were prepared and distributed for public review and comment on April 30, 2004, in accordance with applicable state and federal laws and regulations; and

WHEREAS the Water Board held public hearings on June 16, 2004, and on September 15, 2004, to consider the Basin Plan Amendment and supporting documents, and the changes made thereto in response to public comments. A Notice of Public Hearing and Notice of Filing of a Draft Environmental Document was given to interested persons and was published in accordance with applicable state and federal laws and regulations; and

WHEREAS the process of basin planning has been certified by the Secretary for Resources as exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code § 21000 et seq.) to prepare an Environmental Impact Report or Negative Declaration; and

WHEREAS the Water Board has duly considered the Environmental Checklist, Staff Report, and supporting documentation with respect to environmental impacts and finds that the Basin Plan Amendment will not have a significant impact on the environment. The Basin Plan Amendment will result in no potential for adverse effect, either individually or cumulatively, on wildlife. The Water Board has also considered the environmental analysis contained in the Staff Report of the reasonably foreseeable methods of compliance with the Basin Plan Amendment, including economics; and

WHEREAS the Water Board has carefully considered all comments and testimony received, including responses thereto, on the Basin Plan Amendment, as well as all of the evidence in the administrative record; and

WHEREAS the Basin Plan Amendment must be submitted for review and approval by the State Water Resources Control Board, OAL, and the United States Environmental Protection Agency (USEPA). Once approved by the State Water Resources Control Board, the amendment will be submitted to OAL and USEPA. The Basin Plan Amendment will become effective upon approval by OAL and USEPA; and

WHEREAS the regulatory components of the Basin Plan Amendment meet the "Necessity" standard of the Administrative Act, Government Code § 11353, Subdivision (b).

NOW, THEREFORE BE IT RESOLVED that the Water Board adopts the Basin Plan Amendment, as set forth in Exhibit A hereto, that establishes the TMDL and Implementation Plan for mercury in San Francisco Bay; and

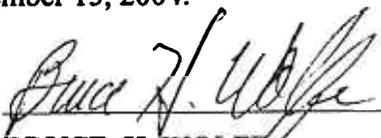
BE IT FURTHER RESOLVED that the Executive Officer is directed to forward copies of the Basin Plan Amendment to the State Water Resources Control Board in accordance with the requirement of California Water Code § 13245; and

BE IT FURTHER RESOLVED that the Water Board requests that the State Water Resources Control Board approve the Basin Plan Amendment in accordance with the requirements of California Water Code § 13245 and § 13246 and forward it to the OAL and USEPA for approval; and

BE IT FURTHER RESOLVED that if, during the approval process, the State Water Resources Control Board or OAL determines that minor, non-substantive corrections to the language of the amendment and supporting documentation are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Water Board of any such changes; and

BE IT FURTHER RESOLVED that since the Basin Plan Amendment will involve no potential for adverse effect, either individually or cumulatively, on wildlife, the Executive Officer is directed to sign a Certificate of Fee Exemption for a "De Minimis" Impact Finding and to submit the exemption in lieu of payment of the Department of Fish and Game CEQA filing fee.

I, Bruce H. Wolfe, 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, San Francisco Bay Region, on September 15, 2004.



BRUCE H. WOLFE
Executive Officer

Attachment

Exhibit A - Basin Plan Amendment to Establish a Total Maximum Daily Load and Implementation Plan For Mercury in San Francisco Bay