

**California Regional Water Quality Control Board
Santa Ana Region**

RESOLUTION NO. R8-2011- 0037

**Resolution Revising the Amendment to the Water Quality Control Plan for the
Santa Ana River Basin to Incorporate Organochlorine Compounds
Total Maximum Daily Loads (TMDLs) for San Diego Creek,
Upper and Lower Newport Bay, Orange County, California, Adopted by
Resolution No. R8-2007-0024**

WHEREAS, the California Regional Water Quality Control Board, Santa Ana Region (hereinafter, Regional Board), finds that:

1. An updated Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) was adopted by the Santa Ana Regional Water Quality Control Board (Regional Board) on March 11, 1994, approved by the State Water Resources Control Board (SWRCB) on July 21, 1994, and approved by the Office of Administrative Law (OAL) on January 24, 1995.
2. On September 7, 2007, the Regional Board adopted Resolution No. R8-2007-0024, incorporating Total Maximum Daily Loads (TMDLs) for organochlorine compounds for San Diego Creek, Upper Newport Bay and Lower Newport Bay into the Basin Plan. The Basin Plan amendment is shown in Attachment 2 to Resolution No. R8-2007-0024.
3. The organochlorine compounds TMDLs Basin Plan amendment specifies that compliance with the TMDLs is to be achieved as soon as possible but no later than December 31, 2015. This date was established based on the assumptions that: (a) requisite approval of the TMDLs by the Office of Administrative Law (OAL) would occur in 2008 and that the TMDLs would become effective for regulatory purposes upon that approval; and, (b) no more than seven years after OAL approval would be required to achieve the TMDLs. This approach was appropriate to assure that implementation efforts were not compromised by any changes to the TMDLs, including the implementation plan, that might be made as the Basin Plan amendment proceeded through the approval process and before the TMDLs became effective for regulatory purposes.
4. The organochlorine compounds TMDLs Basin Plan amendment includes an implementation plan that identifies individual tasks that must be performed in order to achieve compliance with the TMDLs. The schedules for completion of these tasks are also contingent on the date of OAL approval of the TMDLs.

5. Approval of the organochlorine compounds TMDLs Basin Plan amendment by the State Water Resources Control Board (State Board, or SWRCB) is necessary prior to approval of the amendment by OAL. Unforeseen and significant delays occurred in the submittal of the Regional Board-approved amendment to the State Board, resulting in delay of State Board and thus OAL consideration of approval of the Basin Plan amendment. Given these delays in consideration of approval by OAL, it is appropriate to revise the final compliance date for the organochlorine compounds TMDLs.
6. It is appropriate to extend the final compliance date for the organochlorine compounds TMDLs to a date certain seven years from the date of approval of the TMDLs by OAL. This approach is consistent with the original intent to provide sufficient time after approval of the TMDLs by OAL to implement actions necessary to achieve the TMDLs. It is also appropriate as a matter of clarity and accuracy to make minor, non-substantive modifications to the organochlorine compounds TMDLs Basin Plan amendment in order to correct grammatical and other inadvertent errors and to clarify terms employed in the Basin Plan amendment.
7. The Regional Board prepared and distributed a written report (staff report) regarding the adoption of revisions to the organochlorine compounds TMDLs Basin Plan amendment in accordance with applicable State and federal environmental regulations (California Code of Regulations, Section 3775, Title 23, and 40 CFR Parts 25 and 131).
8. The process of basin planning has been certified by the Secretary for Resources as exempt from the requirement of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) to prepare an Environmental Impact Report (EIR) or Negative Declaration (ND). In lieu of an EIR or ND, the Regional Board must comply with applicable regulations on exempt regulatory programs that require the preparation of a substitute environmental document (SED) to take the place of an EIR or ND. Consistent with this requirement, as part of the consideration of Resolution No. R8-2007-0024 to approve the Basin Plan amendment incorporating organochlorine compounds TMDLs, the Regional Board prepared an SED dated July 25, 2007. In compliance with CEQA, the Regional Board distributed the SED for public review, together with relevant Regional Board staff reports. This SED complied with applicable CEQA requirements to describe the proposed project, assess the potential adverse environmental effects of implementation of reasonably foreseeable methods of compliance, identify mitigation measures and evaluate alternatives.
9. The July 25, 2007 SED is considered a First Tier environmental document per Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187. When and if specific projects are proposed to achieve compliance with the requirements of the organochlorine compounds TMDLs, as

revised, these projects shall be reviewed, as required in conformance with applicable CEQA regulations, on a project-specific basis.

10. As set forth in Resolution No. R8-2007-0024, Findings 22 *et seq.*, the Regional Board found that implementation of reasonably foreseeable methods of compliance with the organochlorine compounds TMDLs has the potential to result in certain significant adverse environmental effects. The Regional Board found that while mitigation measures can be employed to substantially lessen these potentially significant environmental effects, the effects cannot be wholly avoided (i.e., reduced to less than significant levels). The Regional Board declared (Finding 33) that “despite the occurrence of significant unavoidable environmental effects associated with the TMDLs, there exist certain overriding economic, social and other considerations for approving the TMDLs that the Regional Board believes justify the occurrence of those impacts and render them acceptable.” In accordance with Public Resources Code section 21081(b) and CEQA Guidelines section 15093, the Regional Board adopted, as part of the adoption of Resolution No. R8-2007-0024, “CEQA Findings of Fact and Statement of Overriding Considerations for the Organochlorine Compounds Total Maximum Daily Loads for San Diego Creek, Upper Newport Bay and Lower Newport Bay – Substitute Environmental Document, September 7, 2007” (Attachment 1 to Resolution No. R8-2007-0024).
11. Pursuant to the requirements of CEQA, the Regional Board has considered whether the proposed modifications of the organochlorine compounds TMDLs Basin Plan amendment would necessitate any changes to the July 25, 2007 SED and/or September 7, 2007 CEQA Findings of Fact and Statement of Overriding Considerations. The Regional Board concludes that no modifications to these documents are required.
12. The Regional Board considered whether there are any economic implications associated with the proposed modifications of the organochlorine compounds TMDLs. Costs for some or all of the Best Management Practices that may be necessary to achieve the TMDLs may have increased since consideration of the TMDLs by the Regional Board in 2007. Delays in consideration of approval of the TMDLs and their implementation may have resulted in cost savings to the responsible parties during the period of delay.
13. Water Code Section 13421 requires a Regional Board, in establishing water quality objectives, to consider the costs of compliance. (*City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, 1415.). The Regional Board is here considering only revisions to the compliance date for the organochlorine compounds TMDLs and other, minor modifications to the organochlorine compounds TMDLs Basin Plan amendment, not changes to water quality objectives. Therefore, Water Code section 13241 does not apply. The Regional Board has nevertheless considered the costs of compliance with the TMDLs, and revisions to extend the compliance end date. That analysis,

presented in Section 9 of the November 17, 2006 Staff Report for the TMDLs and in the SED, and supplemented in the July 15, 2011 staff report supporting revisions to the organochlorine compounds TMDLs Basin Plan amendment, fully satisfied any obligation to address Water Code section 13241.

14. The revised Basin Plan amendment will assure the reasonable protection of the beneficial uses of surface waters within the Region and is consistent with the State antidegradation policy (SWRCB Resolution No. 68-16).
15. The revisions to the Basin Plan amendment meet the "Necessity" standard of the Administrative Procedure Act, Government Code, Section 11352(b).
16. Scientific peer review of the organochlorine compounds TMDLs was conducted prior to their approval by the Regional Board in September 7, 2007. The proposed changes to the Regional Board-approved organochlorine compounds TMDLs do not raise any scientific issues that would necessitate additional scientific peer review.
17. The proposed revised amendment will result in revisions to the Basin Plan Chapter 5 "Implementation".
18. The U.S. Environmental Protection Agency (USEPA) indicated support of the Regional Board's organochlorine compounds TMDLs Basin Plan amendment, based on the technical approach and adaptive implementation plan. As such, these Regional Board TMDLs, once approved by the State Board and the Office of Administrative Law, will replace those that were promulgated by USEPA on June 14, 2002.
19. The Notice of Filing, Notice of Public Hearing, the TMDL Report, Substitute Environmental Document, and the draft revised amendment were prepared and distributed to interested individuals and public agencies for review and comment, in accordance with state and federal regulations (23 CCR 3775, 40 CFR 25 and 40 CFR 131).
20. The Regional Board discussed the revisions to the Basin Plan amendment at a public hearing conducted on July 15, 2011 after a public hearing notice was distributed on May 24, 2011 to all interested persons in accordance with Section 13244 of the California Water Code.
21. The revised Basin Plan amendment must be submitted for review and approval by the State Water Resources Control Board (SWRCB), Office of Administrative Law (OAL) and U.S. Environmental Protection Agency (USEPA). Once approved by the SWRCB, the amendment is submitted to OAL and USEPA. A Notice of Decision will be filed.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Regional Board reaffirms the CEQA Findings of Fact and Statement of Overriding Considerations adopted as part of the approval of Resolution No. R8-2007-0024 (Attachment 1 to Resolution No. R8-2007-0024).
2. The Regional Board adopts the revised amendment to the Water Quality Control Plan for the Santa Ana River Basin (Region 8), as set forth in Attachment 2.
3. The Executive Officer is directed to forward copies of the revised Basin Plan amendment to the SWRCB in accordance with the requirements of Section §13245 of the California Water Code.
4. The Regional Board requests that the SWRCB approve the revised Basin Plan amendment, in accordance with Sections §13245 and §13246 of the California Water Code, and forward it to the OAL and USEPA for approval.
5. If, during its approval process, Regional Board staff, SWRCB or OAL determines that minor, nonsubstantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
6. The Executive Officer is directed, at the time of filing and posting the Notice of Decision, to take steps to promptly ensure payment of \$850 to the Department of Fish and Game for its review of the SED or to file a Certificate of Fee Exemption, whichever is appropriate.

I, Kurt V. Berchtold, 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, Santa Ana Region, on July 15, 2011.

Kurt V. Berchtold
Executive Officer