

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2006-XXX

AMENDMENT TO THE WATER QUALITY CONTROL PLAN
FOR
THE SACRAMENTO RIVER AND SAN JOAQUIN RIVER BASINS
TO DETERMINE CERTAIN BENEFICIAL USES ARE NOT APPLICABLE AND ESTABLISH
WATER QUALITY OBJECTIVES IN SULPHUR CREEK, COLUSA COUNTY

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds that:

1. In 1975 the Central Valley Water Board adopted the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan), which has been amended occasionally.
2. The Basin Plan may be amended in accordance with the California Water Code Section 13240, et seq.
3. Water Code section 13241 authorizes the Central Valley Water Board to establish water quality objectives and Water Code section 13242 sets forth the requirements for a program of implementation for achieving water quality objectives.
4. The Federal Clean Water Act (CWA) Section 303 requires the Central Valley Water Board to develop water quality objectives which are sufficient to protect beneficial uses designated for each water body found within its region.
5. The CWA Section 303 requires the Central Valley Water Board to review the Basin Plan at least every three years and where appropriate modify water quality objectives or beneficial uses in the Basin Plan.
6. Sulphur Creek has been identified under the federal Clean Water Act section 303(d) as impaired due to elevated concentrations of mercury in water. Pursuant to Clean Water Act section 303(d), a total maximum daily load (TMDL) is required to be developed that will bring the impaired water bodies into compliance with water quality standards.
7. In Resolution No. R5-2005-0146, the Central Valley Water Board adopted a Basin Plan amendment to reduce the overall mercury and methylmercury loads to Cache Creek, Bear Creek, Sulphur Creek and Harley Gulch.
8. Studies have been completed evaluating the attainability of the municipal and domestic supply (MUN) beneficial use and uses of water that support human consumption of aquatic organisms, which conclude that these beneficial uses are not existing and cannot be attained in Sulphur Creek due to natural sources of dissolved solids and mercury.

9. The Central Valley Water Board recognizes that the Basin Plan does not include numeric water quality objectives for mercury in Sulphur Creek.
10. The Central Valley Water Board has prepared draft amendments which determine that the MUN beneficial use and the human consumption of aquatic organisms do not exist and establishes water quality objectives for mercury based on natural background in Sulphur Creek.
11. The proposed amendment modifies Basin Plan Chapter II (Existing and Potential Beneficial Uses) and Chapter III (Water Quality Objectives).
12. The proposed water quality objectives and the water quality management program adopted in Resolution No. R5-2005-0146 fulfill requirements set by the Clean Water Act Section 303 for TMDLs for Sulphur Creek. The proposed water quality objectives are the TMDL targets for Sulphur Creek.
13. The Central Valley Water Board has considered the factors set forth in Water Code section 13241, including economic considerations, in developing this proposed amendment.
14. Central Valley Water Board staff developed a draft staff report and draft Basin Plan Amendment for external scientific peer review in May 2006 in accordance with Health and Safety Code Section 57004 and the draft final staff report and amendment have been changed to conform to the recommendations of the peer reviewers or staff has provided an explanation of why no change was made.
15. The Central Valley Water Board finds that the scientific portions of the Basin Plan Amendment are based on sound scientific knowledge, methods, and practices in accordance with Health and Safety Code Section 57004.
16. The Central Valley Water Board finds that the proposed amendment is consistent with the State Water Resources Control Board Resolution No. 68-16, in that the changes to water quality objectives (i) consider maximum benefit to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies, and the proposed amendment is consistent with the federal Antidegradation Policy (40 CFR part 131.12). The proposed amendment determines that certain beneficial uses are not applicable and establishes water quality objectives for mercury in Sulphur Creek. The proposed amendment are of maximum benefit to the people of the state and will not unreasonably affect present and anticipated beneficial uses nor result in water quality less than described in applicable policies because the amendment is intended to protect the existing and attainable beneficial uses. The actions to be taken are not expected to cause other impacts on water quality.

17. The regulatory action proposed meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).
18. The basin planning process has been certified as "functionally equivalent" to the California Environmental Quality Act requirements for preparing environmental documents as specified in Title 23 California Code of Regulations (23 CCR) Section 3782 and is, therefore, exempt from those requirements (Public Resources Code, Section 21000 et seq.).
19. The Central Valley Water Board staff held a scoping meeting on 28 September 2006 to identify any significant issues that must be considered. A notice of the CEQA Scoping hearing was sent to interested parties including cities or counties with jurisdiction in or bordering Sulphur Creek.
20. Central Valley Water Board staff has prepared a draft amendment and a staff report dated October 2006.
21. Central Valley Water Board staff completed an environmental checklist that concluded that the proposed amendment results in no potential for adverse effect, either individually or cumulatively, on wildlife or the environment.
22. The draft amendment, staff report, and environmental checklist have been noticed and circulated to interested individuals and public agencies for review and comment in accordance with state and federal environmental regulations (23 CCR Section 3775, 40 CFR 25, and 40 CFR 131).
23. The Central Valley Water Board held a public hearing on 7 December 2006, for the purpose of receiving testimony on the draft Basin Plan amendment. Notice of the public hearing was sent to all interested persons and published in accordance with California Water Code, section 13244.
24. A Basin Plan amendment must be approved by the State Water Board, Office of Administrative Law (OAL), and USEPA before becoming effective.
25. The Central Valley Water Board finds that the amendment to the Basin Plan was developed in accordance with California Water Code Section 13240, et seq.

THEREFORE BE IT RESOLVED:

1. Pursuant to Section 13240, et seq. of the California Water Code, the Central Valley Water Board, after considering the entire record, including oral testimony at the hearing, hereby approves the staff report and adopts the amendment to the Basin Plan as set forth in Attachment 1.

2. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Water Board in accordance with the requirements of Section 13245 of the California Water Code.
3. The Central Valley Water Board requests that the State Water Board approve the Basin Plan amendment in accordance with the requirements of Sections 13245 of the California Water Code and forward it to OAL and the USEPA.
4. The Central Valley Water Board requests that the State Water Board submit this Basin Plan Amendment with the Basin Plan Amendment adopted in Resolution No. R5-2005-0146 to the USEPA for approval as a TMDL for Sulphur Creek.
5. If during its approval process the Central Valley Water Board staff, State Water Board or OAL determines 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 Central Valley Water Board of any such changes.
6. Based on the record as a whole, including the draft Basin Plan amendments, the environmental document, accompanying written documentation, and public comments received, the Central Valley Water Board concurs with staff's conclusion that the amendments will not result in significant adverse effects on wildlife or the environment and therefore no alternatives or mitigation measures are proposed.
7. The environmental documents prepared by Central Valley Water Board staff pursuant to Public Resources Code Section 21080.5 are hereby certified and, following approval of the Basin Plan amendment by the OAL, the Executive Officer shall file a Notice of Decision with the Secretary for Resources.
8. The Central Valley Water Board concurs with staff's conclusion that the proposed amendment will have no potential for adverse effects, either individually or cumulatively, on wildlife or the environment and the Executive Officer is authorized to sign a Certificate of Fee Exemption and following approval of the Basin Plan amendment by the State Board submit this Certificate in lieu of payment of the Department of Fish and Game filing fee to the Secretary for Resources.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on 7 December 2006.

PAMELA C. CREEDON, Executive Officer

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Attachments: Attachment 1: Amendment to Basin Plan to Determine that Certain Beneficial Uses Are Not Applicable and Establish Water Quality Objectives for Mercury in Sulphur Creek, Colusa County

ATTACHMENT 1
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Revise Basin Plan sections as follows:

CHAPTER II: PRESENT AND POTENTIAL BENEFICIAL USES

Modify the first two paragraphs on page II-2.00 of the Basin Plan, under the heading **SURFACE WATERS**, as follows:

SURFACE WATERS

Existing and potential beneficial uses which currently apply to surface waters of the basins are presented in Figure II-1 and Table II-1. The beneficial uses of any specifically identified water body generally apply to its tributary streams, except as provided below:

- MUN, COLD, MIGR and SPWN do not apply to Old Alamo Creek (Solano County) from its headwaters to the confluence with New Alamo Creek
- MUN and the human consumption of aquatic organisms do not apply to Sulphur Creek (Colusa County) from its headwaters to the confluence with Bear Creek

In some cases a beneficial use may not be applicable to the entire body of water. In these cases the Regional Water Board's judgment will be applied.

It should be noted that it is impractical to list every surface water body in the Region. For unidentified water bodies, the beneficial uses will be evaluated on a case-by-case basis.

Water Bodies within the basins that do not have beneficial uses designated in Table II-1 are assigned MUN designations in accordance with the provisions of State Water Board Resolution No. 88-63 which is, by reference, a part of this Basin Plan, *except as provided below:*

- Old Alamo Creek (Solano County) from its headwaters to the confluence with New Alamo Creek
- Sulphur Creek (Colusa County) from its headwaters to the confluence with Bear Creek

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These MUN designations in no way affect the presence or absence of other beneficial use designations in these water bodies.

CHAPTER III: WATER QUALITY OBJECTIVES

Add a subsection on page III-5.00 of the Basin Plan, under the heading **WATER QUALITY OBJECTIVES FOR INLAND SURFACE WATERS**, as follows:

Mercury

For Sulphur Creek (Colusa County), waters shall be maintained free of mercury from anthropogenic sources such that beneficial uses are not adversely affected. During low flow conditions, defined as flows less than 3 cfs, the 30-day average total mercury concentration shall not exceed 1,800 ng/L. During high flow conditions, defined as flows greater than 3 cfs, the 30-day average ratio of mercury to total suspended solids shall not exceed 35 mg/kg. Both objectives apply at the mouth of Sulphur Creek.