

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

RESOLUTION NO. R7-2010-0011

Resolution Amending the Water Quality Control Plan
of the Colorado River Basin

To Establish the Total Maximum Daily Load and Implementation Plan for Dissolved Oxygen in
the New River at the International Boundary, Imperial County, California

WHEREAS, the California Regional Water Quality Control Board, Colorado River Basin Region (hereinafter Regional Water Board), finds that:

1. An updated Water Quality Control Plan for the Colorado River Basin (Basin Plan) was adopted by the Regional Water Board on November 17, 1993, approved by the California State Water Resources Control Board (State Water Board) on February 17, 1994, and approved by the California Office of Administrative Law (OAL) on August 3, 1994. This Basin Plan includes amendments adopted by the Regional Water Board through June 2006.
2. Water quality standards (WQSs) consist of designated uses (or beneficial uses), water quality criteria (or objectives) (WQOs) to protect the beneficial uses, and an anti-degradation (non-degradation) policy.
3. Warm freshwater habitat (WARM); wildlife habitat (WILD); preservation of rare, threatened, or endangered species (RARE); water contact recreation (REC I); non-contact water recreation (REC II); and freshwater replenishment (FRSH) are the beneficial use designations specified in the Basin Plan for the New River.
4. The Basin Plan includes WQOs related to Dissolved Oxygen (DO) to protect the beneficial uses listed in Finding No. 3, above. Applicable Basin Plan objectives include: (a) a general WARM DO WQO of a minimum of 5.0 (five) milligrams per liter (mg/l) at any time for the protection of aquatic life habitat in the Region's surface waters, including the New River; and (b) specific surface water objectives for the New River at the International Boundary (Qualitative Standards 1 through 5 of Minute No. 264 of the Mexican-American Water Treaty). This TMDL proposes a Numerical Target for DO for the New River that is a minimum of 5.0 (five) mg/l at any time.
5. WQOs and the Numerical Target are not being met in the United States (U.S.) section of the New River because materials causing low DO: (a) are discharged to the New River and tributaries in Mexico, (b) cross the International Boundary, and (c) impact beneficial uses of the New River in the U.S. Low DO concentrations adversely affect aquatic life habitat.
6. Section 303(d) of the federal Clean Water Act (CWA) (33 U.S.C. § 1313(d)) requires states to identify and list impaired water bodies, and develop water pollution control plans [or Total Maximum Daily Loads (TMDLs)] for pollutants that are causing the impairments. The U.S. Environmental Protection Agency (USEPA) has oversight of the CWA Section 303(d) program and must approve or disapprove the State's 303(d) List

and each TMDL. USEPA is ultimately responsible for issuing a TMDL, if the State fails to do so in a timely manner.

7. Pursuant to Section 303(d) of the CWA, the New River is listed as water quality impaired because of low DO, which requires the establishment of a TMDL and implementation plan to address the low DO impairment and to ensure compliance with and achievement of WQSs.
8. The subject TMDL focuses on the first 12 mile (19.3 kilometer (km)) reach of the New River downstream of the International Boundary, although the entire New River is listed as impaired on the state 303(d) List. This New River reach has been prioritized over other New River reaches because of proximity to the major source of materials causing low DO (which originates in Mexico), and because limited Regional Water Board resources are being targeted on the most polluted areas in the region. Achieving DO WQOs at the International Boundary will most likely lead to achieving the DO objective in downstream reaches.
9. DO is not considered a pollutant, but an indicator parameter for water quality. The pollutants of concern that cause in-stream low DO are biochemical oxygen demand (BOD) and ammonia (NH_3). The TMDL proposes to eliminate low DO impairment in the first 12 mile (19.3 kilometer) reach of the New River downstream of the International Boundary, and specifies allowable loads of 5.0 mg/l and 1529 kg/day of BOD, and 0.5 mg/l and 152 kg/day of NH_3 for the New River at the International Boundary, respectively. These loads address sources in Mexico. The mass/unit time values indicated are based on a flow rate of 125 cfs (3.54 cms), which reflects the average flow measured at the IB in 2007.
10. Regional Water Board staff developed a report, titled "Total Maximum Daily Load and Implementation Plan for Dissolved Oxygen in the New River at the International Boundary, Imperial County, California" (TMDL Staff Report) for external scientific peer review on November 13, 2008, in accordance with Health and Safety Code Section 57004. The draft final TMDL Staff Report has been changed to conform to the recommendations of the peer reviewers or staff has provided an explanation of why any particular change was not made.
11. All publicly owned treatment works that discharge pollutants from point sources in the New River watershed in the U.S. have been issued NPDES permits, which prescribe, among other requirements, effluent limitations for BOD concentrations. Therefore, wasteload allocations for these facilities are the BOD limitations prescribed in their existing permits. Although there are no effluent limitations for DO and NH_3 in these NPDES permits, DO and NH_3 are addressed in the receiving surface water limitation sections of the permits.
12. The Regional Water Board has determined that the scientific portions of the draft TMDL Staff Report are based on sound scientific knowledge, methods, and practices in accordance with Health and Safety Code Section 57004.
13. The TMDL is expected to achieve applicable WQSs for DO in the New River at the International Boundary within the first three years after USEPA approves the TMDL. If DO WQSs for the New River are not achieved by the end of the first three years, the TMDL allocations will be revised and implemented in a second three-year phase, if necessary.

14. The Regional Water Board does not have the authority to require Mexico or the U.S. government to reduce materials that cause low DO, which cross the International Boundary. However, the Regional Water Board does have the ability to raise awareness with U.S. agencies as third party cooperating agencies, which directly cooperate with Mexico on International Boundary issues. Accordingly, this TMDL requests, but does not require, that the U.S. government (i.e., the USEPA and the U.S. Section of the International Boundary and Water Commission (USIBWC): (a) specify in an Implementation Report submitted to the Regional Water Board one year after USEPA approval of this TMDL the measures taken or proposed to ensure that discharges from Mexico do not violate or contribute to a violation of this TMDL; (b) continue water quality monitoring in the New River at the International Boundary; and (c) describe in a Final Implementation Report to be submitted to the Regional Water Board three years after USEPA approval of the TMDL the progress in completing items (a) and (b).
15. In addition, this TMDL requests, but does not require, that all third party cooperating agencies and organizations increase their coordination of New River projects through the development of a Memorandum of Understanding, and to submit semi-annual progress reports beginning 12 months following USEPA approval of the TMDL on any on-going and proposed new projects to comply with this TMDL.
16. The New River is a designated Environmental Justice Pilot Project for the California Environmental Protection Agency with the goal of developing a children's environmental risk reduction plan through a Regional Advisory Group comprised of community members, Tribal/local/federal government, and the Mexican government.
17. The TMDL Staff Report and the Basin Plan Amendment, which establishes the TMDL and the Implementation Plan, are attached to this Resolution and meet the requirements of Section 303(d) of the CWA.
18. The Secretary for Natural Resources has certified the basin planning process as exempt from certain environmental review requirements of the California Environmental Quality Act (CEQA) (Public Resources Code (PRC) Section 21000 et seq.), including preparation of an Initial Study, Negative Declaration, and Environmental Impact Report (EIR). (Cal. Code of Regs. (CCR), Title 14, Section 15251(g).) The TMDL Staff Report, proposed Basin Plan Amendment, CEQA Environmental Checklist and Determination, and supporting documentation are considered Substitute Environmental Documents that may be relied on in lieu of the Initial Study, Negative Declaration, and EIR (CCR, Title 14, Section 15252). The Regional Water Board has complied with these exempt certified regulatory program procedures.
19. Regional Water Board staff has prepared and distributed the Substitute Environmental Documents and other supporting written materials regarding adoption of the Basin Plan Amendment in compliance with applicable state and federal laws (PRC Section 21080.5; Wat. Code Section 13240 et seq.; CCR, Title 14, Section 15252, and Title 23, Section 3775 et seq.; 40 Code of Federal Regulations (CFR) Parts 25, 130, 131).

20. The adoption of the Basin Plan Amendment is a regulatory action subject to the requirements of PRC Section 21159. Consistent with the requirements of that section, the CEQA Environmental Checklist and Determination includes an environmental analysis of reasonably foreseeable environmental impacts resulting from project implementation, an analysis of reasonably foreseeable feasible mitigation measures, and an analysis of reasonably foreseeable alternative means of compliance (PRC Section 21159(a)(1)-(3); CCR, Title 14, Section 15187(b), (c)(1)-(3)). The analysis in the CEQA Environmental Checklist and Determination takes into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites. The CEQA analysis determined that the proposed Basin Plan Amendment will have no potential for adverse effects. Regional Water Board staff has presented the CEQA Environmental Checklist and Determination to the Regional Water Board, which reviewed and considered the analysis before adopting this amendment.
21. The Regional Water Board has considered the costs of implementing the proposed Basin Plan Amendment, and finds these costs to be reasonable relative to the water quality benefits derived from implementing the amendment.
22. The Regional Water Board has considered federal and state anti-degradation policies and other relevant water quality control policies and finds that the Basin Plan Amendment is consistent with those policies.
23. The Regional Water Board's review of the project—the proposed Basin Plan Amendment to establish a TMDL for DO of 5.0 mg/L at any time in the first 12 mile (19.3 km) reach of the New River downstream from the International Boundary—showed that the project would not have any significant or potentially significant effects on the environment and thus, no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment.
24. This Basin Plan Amendment must be approved by the State Water Resources Control Board, the California Office of Administrative Law (OAL), and the U.S. Environmental Protection Agency (USEPA) before becoming effective.
25. On May 14, 2003, a CEQA Scoping Meeting for the subject TMDL was held in Calexico, California, as required by PRC Section 21083.9.
26. On September 19, 2008, in Seeley, California, and consistent with CCR, Title 23, Sections 3778 and 3779, Regional Water Board staff consulted with NPDES permittees discharging into the impaired section of the New River about the proposed action, and considered and addressed comments on the matter.
27. This regulatory action meets the “Necessity” standard of the Administrative Procedure Act, Government Code Section 11353(b)(1)(C).
28. On May 20, 2010, the Regional Water Board held a Public Hearing to consider the TMDL Staff Report, Basin Plan Amendment, and other supporting Substitute Environmental Documents. Notice of the Public Hearing was given to all interested persons and published for review and comment in accordance with state and federal environmental laws (Water Code Section 13244; CCR, Title 23, Section 3775; and 40 CFR Parts 25 and 131).

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Regional Water Board adopts the amendment to the Water Quality Control Plan for the Colorado River Basin as set forth in the attached Basin Plan Amendment.
2. The Executive Officer is directed to forward copies of the Basin Plan Amendment to the State Water Board in accordance with the requirement of Section 13245 of the California Water Code.
3. The Regional Water Board requests the State Water Board approve the Basin Plan Amendment in accordance with Sections 13245 and 13246 of the California Water Code and forward the Basin Plan Amendment to the OAL and USEPA for approval.
4. The Executive Officer is directed to transmit to the California Department of Fish and Game payment of its required CEQA filing fee for certified regulatory programs, which include this Basin Plan Amendment, as prescribed by California Fish and Game Code Section 711.4 and implementing regulations set forth at CCR, Title 14, Section 753.5.
5. If, during the approval process, the State Water Board, OAL, or USEPA 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 Regional Water Board of any such changes.
6. After USEPA approval of the Basin Plan Amendment, the Executive Officer is directed to file a Notice of Decision (NOD) with the Secretary for Natural Resources in accordance with PRC Section 21080.5, subdivision (d)(2)(E), and CCR, Title 23, Section 3781, and to include with the NOD a copy of the CEQA filing fee paid to the California Department of Fish and Game.

I, Robert Perdue, 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, Colorado River Basin Region, on May 20, 2010.

A handwritten signature in black ink, appearing to read "Robert Perdue", written over a horizontal line.

ROBERT PERDUE
Executive Officer