

**California Regional Water Quality Control Board
San Diego Region**

TENTATIVE

Resolution No. R9-2020-0234

**A RESOLUTION AMENDING *THE WATER QUALITY
CONTROL PLAN FOR THE SAN DIEGO BASIN (9)* TO
INCORPORATE A WATER QUALITY OBJECTIVE FOR
BIOLOGICAL CONDITION**

WHEREAS, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), finds that:

1. The objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The objective of the Clean Water Act is achieved, in part, through the setting of water quality standards. Water quality standards include designated beneficial uses of waters and the water quality criteria (also known as water quality objectives in California) specific to those beneficial uses. In California, water quality standards are included in statewide or regional water quality control plans.
2. Federal and state laws mandate the periodic review of water quality standards – a process known as a triennial review—and the adoption of updated standards as appropriate. (Clean Water Act § 303(c)(1); Wat. Code, § 13240.) A primary purpose of conducting a triennial review is to ensure water quality standards are based on current science, methodologies, and USEPA mandates, recommendations and guidance.
3. The San Diego Water Board first developed and adopted the *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan) in 1975. To establish water quality standards, the Basin Plan designates beneficial uses, establishes water quality objectives, and contains implementation programs, policies, and prohibitions to achieve those objectives for waters in the San Diego region. The San Diego Water Board adopted an updated Basin Plan on September 8, 1994, which was approved by the State Water Resource Control Board (State Water Board) on December 13, 1994. Subsequent revisions to the Basin Plan have also been adopted by the San Diego Water Board and approved by the State Water Board and Office of Administrative Law (OAL), and as applicable, the U.S. Environmental Protection Agency (USEPA).
4. Of the 23 designated beneficial uses in the Basin Plan, ten are directly related to the biological integrity of ecosystems. The ten beneficial uses related to the biological integrity of surface waters are:

Beneficial Use	Abbreviation	Description of Beneficial Use
Warm Freshwater Habitat	WARM	support warm water ecosystems, including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish or wildlife, including invertebrates
Cold Freshwater Habitat	COLD	support cold water ecosystems, including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish or wildlife, including invertebrates
Inland Saline Water Habitat	SAL	support inland saline water ecosystems, including, but not limited to, preservation or enhancement of aquatic saline habitats, vegetation, fish, or wildlife, including invertebrates
Estuarine Habitat	EST	support estuarine ecosystems, including, but not limited to, preservation or enhancement of estuarine habitats, vegetation, fish, shellfish, or wildlife (e.g. estuarine mammals), waterfowl, (shorebirds)
Marine Habitat	MAR	support marine ecosystems including, but not limited to, preservation or enhancement or marine habitats, vegetation such as kelp, fish, shellfish, or wildlife (e.g. marine mammals, shorebirds)
Wildlife Habitat	WILD	support terrestrial ecosystems including, but not limited to, preservation and enhancement of terrestrial habitats, vegetation, wildlife (e.g. mammals, birds, reptiles, amphibians, invertebrates), or wildlife water and food sources
Preservation of Biological Habitats of Special Significance	BIOL	support designated areas or habitats, such as established refuges, parks, sanctuaries, ecological reserves, or Areas of Special Biological Significance, where the preservation of natural resources requires special protection
Rare, Threatened, or Endangered Species	RARE	support habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened or endangered
Migration of Aquatic Organisms	MIGR	support habitats necessary for migration, acclimatization between fresh and salt water, or other temporary activities by aquatic organisms, such as anadromous fish
Spawning, Reproduction, and/or Early Development	SPWN	support high quality habitats suitable for reproduction, early development and sustenance of marine fish and/or cold freshwater fish

5. The San Diego Water Board adopted Resolution No. R9-2020-0036 in March 2020 which approved a Basin Plan amendment to add three beneficial uses associated with tribal uses (CUL and T-SUB) and subsistence fishing uses (SUB). These tribal uses had been established by the State Water Resources Control Board in Resolution 2017-0027. This amendment to the Basin Plan has not yet been submitted to the State Water Resources Control Board or Office of Administrative Law, or U.S. EPA for approval.
6. The Basin Plan and federal Clean Water Act require water quality objectives to protect the most sensitive of the beneficial uses designated for a specific waterbody. For inland surface waters, enclosed bays, and estuaries, the Basin Plan establishes narrative and numeric water quality objectives for pollutants, including conventional, toxic, and bioaccumulative pollutants, to protect beneficial uses associated with human health risk and the environment.
7. However, existing water quality objectives are insufficient to protect biological integrity. The San Diego Water Board has adopted several resolutions to promote the Clean Water Act's objective to restore and protect biological integrity. On May 13, 2015, the San Diego Water Board adopted Resolution R9-2015-0043, *Adopting a Prioritized List of Basin Plan Revisions Developed Through the 2014 Basin Plan Review*. On October 10, 2018, the San Diego Water Board adopted Resolution R9-2018-0123, *Prioritized List of Basin Plan Revisions Developed Through the 2018 Basin Plan Review*. These resolutions identified and prioritized suggested revisions to the Basin Plan. Specifically, these resolutions identified the development of a water quality objective for biological conditions (which may also be referred to as biological water quality objectives or biological objectives) as a priority project.
8. Biological objectives are water quality objectives based on ecosystem conditions. Beneficial uses related to human health risk, including water contact or consumption beneficial uses, are traditionally measured using concentration-based methods to determine attainment or impairment. Unlike human health risk beneficial uses, ecosystem-related beneficial uses also require a biological assessment of the ecosystem to determine if beneficial use conditions are in attainment. These ecosystem conditions can be evaluated using biological assessments to determine biological integrity. Thus, a biological water quality objective furthers the objective of the Clean Water Act to restore and protect the biological integrity of the nation's waters.

9. Since existing water quality objectives may not adequately protect beneficial uses in inland surface waters, biological objectives will help the San Diego Water Board determine the attainment or impairment of beneficial uses for inland surface waters. Biological objectives are critical for restoring and protecting the biological integrity of the region's waters. Therefore, biological objectives are critical for the San Diego Water Board to comprehensively protect and restore beneficial uses.
10. The Basin Plan amendment incorporates narrative guidance for the development of numeric objectives for biological conditions. The narrative guidance is intended to ensure future numeric biological objectives will restore and protect existing beneficial uses. The Basin Plan amendment also establishes a numeric water quality objective for perennial and seasonal streams (Stream Biological Objective) based on the narrative guidance for biological conditions.
11. For perennial and seasonal streams, WARM and COLD beneficial uses support warm- and cold-water ecosystems, respectively, including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates. The Basin Plan amendment will establish a Stream Biological Objective based on the California Stream Condition Index (CSCI). The CSCI is a biological scoring tool that uses benthic macroinvertebrates in a stream to determine biological integrity. The CSCI is a predictive index that compares observed benthic macroinvertebrates in a sampled stream to those that are present at similar reference sites. In combination with existing water quality objectives, the CSCI will provide for a robust, direct assessment of whether WARM and COLD beneficial uses are in attainment or impaired. Thus, the Stream Biological Objective will help the San Diego Water Board assess the attainment of existing WARM and COLD beneficial uses in perennial and seasonal streams to which it applies.
12. The Stream Biological Objective does not apply to fully-hardened streambeds. There is insufficient data to evaluate the mitigation measures and timeframe necessary to achieve a numeric biological objective for fully-hardened streambed segments. The San Diego Water Board may consider establishing a numeric biological objective for fully-hardened streambeds when additional data and information becomes available.
13. The Basin Plan amendment to incorporate biological objectives is consistent with and supports Executive Order W-59-93. In August 1993, the Governor of California issued Executive Order W-59-93, referred to as the "no net loss and net gain policy," which directed that government programs and policies that affect wetlands to ensure no overall net loss and long term net gain in the quantity, quality, and permanence of wetlands acreage and values.

14. The Basin Plan amendment to incorporate biological objectives is consistent with and supports the October 10, 2003, California Clean Water Partnership Agreement, between the State Water Board and USEPA, Region 9. The California Clean Water Partnership Agreement identified the development of a bioassessment program and tools for managing water quality, with the goal of developing and adopting biological criteria into water quality standards, as needed to protect and improve the state's surface waters. This action meets USEPA's goal for perennial and seasonal streams in the San Diego region.
15. The Basin Plan amendment to incorporate biological objectives is consistent with and supports San Diego Water Board Resolution No. R9-2012-0069, *Resolution in Support of a Regional Monitoring Framework*. The Basin Plan amendment will assist in implementing a more holistic assessment of beneficial uses in surface waters by incorporating biological assessment into relevant monitoring and surveillance plans and programs, as well as providing criteria by which to benchmark assessment results.
16. The Basin Plan amendment to incorporate biological objectives is consistent with and supports San Diego Water Board Resolution No. R9-2015-0041, *Resolution to Support Restoration of Aquatic Ecosystems in the San Diego Region*. The Basin Plan amendment will guide restoration activities and documentation of restoration success through beneficial use attainment.
17. The Basin Plan amendment to incorporate biological objectives is consistent with and supports Executive Order N-10-19 and the State of California Water Resilience Portfolio released on July 28, 2020. The Basin Plan amendment advances resilience through the stated goal of protection and enhancement of natural ecosystems through "effective standard setting, continued investments, and more adaptive, holistic environmental management" and is necessary to support action 8.6 "...assess biological communities to determine stream health and condition future projects to protect high-quality high-functioning systems."
18. The Basin Plan amendment to incorporate biological objectives is consistent with and supports Executive Order N-82-20. On October 7, 2020, the Governor of California issued Executive Order N-82-20 which directs the California Environmental Protection Agency to "Conserve Biodiversity, Combat Climate Change, and Build Climate Resilience Through Nature-Based Solutions." The Basin Plan amendment promotes the efficient use of State and community water quality management resources towards protecting and restoring areas important for aquatic biodiversity.

19. The Basin Plan amendment complies with Water Code section 106.3, in which it is the policy of the state of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. The Basin Plan amendment does not lessen water quality protections in any portion of the basins that is currently serving, or is expected to serve, as a domestic or municipal water source.
20. The San Diego Water Board has prepared a technical report entitled *Staff Report for Biological Objectives for the San Diego Region* (Staff Report). The Staff Report, which includes a Substitute Environmental Document as an appendix, analyzes and describes the specific necessity and rationale for this Basin Plan amendment and is hereby incorporated into this Resolution by reference and constitutes part of the Findings of this Resolution.
21. As set forth in the Staff Report, the San Diego Water Board considered the factors in Water Code sections 13240, 13241, and 13242 in developing the Basin Plan amendment.
22. The scientific basis for this Basin Plan amendment was subject to external scientific peer review pursuant to Health and Safety Code section 57004. The San Diego Water Board has considered and responded to the peer review panel's comments and has modified the amendments and Staff Report as appropriate.
23. In developing, considering and adopting the Basin Plan amendment, the San Diego Water Board complied with the applicable procedural requirements and provided additional public participation opportunities to afford the public with a reasonable opportunity to participate in consideration of the Basin Plan amendment.
24. On July 28, 2016, the San Diego Water Board held a CEQA scoping meeting to provide information on the proposed Basin Plan amendment and to gather public input on potential environmental effects from the adoption of biological objectives.
25. The San Diego Water Board engaged in consultation with California Native American tribes consistent with CalEPA and State Water Board Tribal Consultation Policies. The San Diego Water Board sent notification letters for the proposed project to Native American tribes identified as those requesting notification of proposed projects for potential consultation. No requests for formal consultation were received from any Native American tribes.

26. The San Diego Water Board prepared and distributed the Notice of Filing, Notice of Public Hearing, draft Basin Plan amendment, and Staff Report, regarding adoption of the proposed Basin Plan amendment to interested persons and public agencies in accordance with applicable state and federal environmental regulations. (23 CCR § 3775-3779, 40 CFR Parts 25 and 131.)
27. On February 28, 2019, the San Diego Water Board circulated the draft Basin Plan amendment, Staff Report, including the Substitute Environmental Document, for public review and comment. Written comments were accepted through June 01, 2019. Comments were timely received from 11 parties, and a Response to Comments document was made available to the public on October 16, 2020.
28. On April 18, 2019, the San Diego Water Board conducted a public workshop on the draft Basin Plan amendment and Staff Report including Substitute Environmental Document.
29. On August 14, 2020, the San Diego Water Board released proposed revisions to the Basin Plan amendments and the Staff Report (exclusive of appendices) made in response to comments and scientific peer review. Written comments were accepted through September 04, 2020, on revisions to proposed Basin Plan amendments. Written responses to the comments on the revisions were provided to public agencies and other commenters more than ten days before the hearing on adoption of the Basin Plan amendment.
30. On October 16, 2020, the San Diego Water Board released proposed revisions to the Staff Report's Substitute Environmental Document appendix in response to public comments and scientific peer review. The proposed revisions to the Substitute Environmental Document were not significant and recirculation was not required pursuant to applicable regulations (Cal. Code Regs., tit. 23, § 3779 and tit. 14, § 15088.5.)
31. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) for preparing environmental documents. (Cal. Code Reg., tit. 14, § 15251, subd. (g); Cal. Code Reg., tit. 23, § 3775.) The San Diego Water Board is therefore exempt from CEQA's requirements to prepare an environmental impact report, negative declaration, or initial study for the proposed amendments. Instead, the San Diego Water Board has prepared "Substitute Environmental Documentation" for this project that contains the required environmental documentation. (Pub. Resources Code, § 21080.5, Cal. Code Reg., tit. 14, section 15252; Cal. Code Reg., tit. 23, § 3777.)

32. The Final Substitute Environmental Documentation includes the Staff Report and its appendices. The Staff Report contains a description of the project; a completed environmental checklist; an identification of any significant or potentially significant adverse impacts of the project; an analysis of reasonable alternatives to the project and mitigation measures; and an environmental analysis of the reasonably foreseeable methods of compliance, including a reasonable range of environmental, economic and technical factors over a range of population and geographic areas. (Cal. Code Regs., tit. 23, § 3777, subds. (a)-(c).)
33. The San Diego Water Board is the lead agency with respect to the adoption of the Basin Plan amendment. In preparing the environmental analysis pertaining to the reasonably foreseeable methods of compliance, the San Diego Water Board is “not required to conduct a site-specific project level analysis of the methods of compliance, which CEQA may otherwise require of those agencies who are responsible for complying with the plan or policy when they determine the manner in which they will comply.” (Cal. Code Regs., tit. 23, § 3777, subd. (c).)
34. For purposes of the Substitute Environmental Documentation, the project is the adoption of a numeric objective for perennial and seasonal wadeable streams using the CSCl, as well as narrative guidance for the development of future biological objectives for surface waters in the San Diego Region. The Staff Report is an integral part of the San Diego Water Board’s action and was considered and accepted by the San Diego Water Board before taking action on the Basin Plan amendment.
35. The Basin Plan amendment does not contain any specific requirements to implement the Stream Biological Objective but contains a program (framework) of implementation which discusses timeframes for incorporation into permits, as applicable (see Wat. Code § 13242). Dischargers that have the Stream Biological Objective incorporated into their respective permits select the specific method or methods to employ to achieve compliance. Project-level analysis is expected to be conducted by the appropriate public agency prior to implementation of project-specific methods if any additional methods are required to comply with the Stream Biological Objective. The environmental analysis assumes that the project-specific methods of compliance, if any, would be designed, installed, and maintained following all applicable state and local laws, regulations, and ordinances.

36. Consistent with CEQA, the Substitute Environmental Documentation does not engage in speculation or conjecture but, rather, analyzes the reasonably foreseeable environmental impacts related to compliance requirements associated with the Basin Plan amendment. As discussed in the Substitute Environmental Documentation, compliance with the Basin Plan amendment will not have a potentially significant adverse effect on the environment. The Substitute Environmental Documentation found that compliance with the Basin Plan amendment will have either “no effect” or a “less than significant” adverse effect on the environment.
37. The Final Substitute Environmental Documentation consists of the Staff Report (including documents referenced therein), the comments and responses to comments on the Staff Report and the Basin Plan amendment, the environmental checklist, and this resolution.
38. The Stream Biological Objective relies upon the best available science and information to establish appropriate numeric biological objectives for perennial and seasonal streams within the San Diego Region.
39. This Basin Plan amendment is in conformance with the federal Antidegradation Policy described in the Code of Federal Regulations, part 40, section 131.12, and State Water Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality Waters in California*. No lowering of water quality is anticipated to result from the amendment of the Basin Plan to include the Stream Biological Objective. The Stream Biological Objective will help protect existing water quality and facilitate long-term improvement by setting numeric standards for the protection of high-quality waters and guide meaningful restoration activities.
40. The regulatory action proposed meets the “Necessity” standard of Government Code section 11353, subdivision (b).
41. The San Diego Water Board notified all known interested parties by email distribution list and by publication in newspapers within the affected counties pursuant to Water Code section 13244 and Government Code section 6061, of its intent to hold a public hearing on November 18, 2020.
42. On November 18, 2020, the San Diego Water Board held a public hearing for, provided interested parties and the public an opportunity to comment on, and carefully considered all comments received and evidence in the administrative record pertaining to, this Resolution and Basin Plan amendment.

43. The Basin Plan amendment must be submitted for review and approval by the State Water Board, OAL, and USEPA. The Basin Plan amendment will become effective upon approval by the OAL except that the Stream Biological Objective, as a water quality standard, will not become effective until approved by USEPA.

THEREFORE, BE IT RESOLVED THAT:

The San Diego Water Board:

1. Approves and adopts the Substitute Environmental Documentation, which was prepared in accordance with the provisions applicable to the State Water Board's certified exempt regulatory programs, Public Resources Code section 21080.5, California Code of Regulations, title 14, section 15252, and California Code of Regulations, title 23, sections 3777 through 3779.
2. After considering the entire administrative record, including written comments received and oral comments received at the public hearing, hereby adopts the attached Basin Plan amendment as set forth in Supporting Documents 2 and 3.
3. Directs the Executive Officer to submit this Basin Plan amendment to the State Water Board in accordance with Water Code section 13245.r
4. Requests that the State Water Board approve the Basin Plan amendment in accordance with the requirements of Water Code sections 13245 and 13246 and forward it to the OAL and USEPA for approval.
5. Authorizes the Executive Officer, as appropriate, to request a "No Effect Determination" from the California Department of Fish and Wildlife, and/or transmit payment of the applicable fee as may be required by the California Department of Fish and Wildlife.
6. Authorizes the Executive Officer or designee to make minor non-substantive corrections to the language of the amendment and the supporting documentation if, the San Diego Water Board, the State Water Board, the OAL, or USEPA determines that such changes are needed for clarity or consistency, and inform the San Diego Water Board of any such changes.

I, David W. Gibson, 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 Diego Region, on November 18, 2020.

TENTATIVE

DAVID W. GIBSON

Executive Officer