

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

RESOLUTION R2-2008-0089

AMENDING THE WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY
REGION TO ESTABLISH NEW WATER QUALITY OBJECTIVES, TOTAL MAXIMUM
DAILY LOADS, AND AN IMPLEMENTATION PLAN FOR MERCURY IN THE
GUADALUPE RIVER WATERSHED

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

- 1) The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Water Board and approved by the State Water Resources Control Board (State Water Board), State Office of Administrative Law (OAL) and the United States Environmental Protection Agency (U.S. EPA), where required.
- 2) The Basin Plan may be amended in accordance with California Water Code § 13240, et seq.
- 3) A Basin Plan amendment, including specifications on its physical placement in the Basin Plan, is set forth in Exhibit A hereto (the Basin Plan Amendment). The Basin Plan Amendment would:
 - a) Establish new mercury water quality objectives in waters of the Guadalupe River watershed, except Los Gatos Creek and its tributaries upstream of Vasona Dam, Lake Elsman, Lexington Reservoir, and Vasona Lake, of the following:
 - i) 0.05 mg methylmercury per kg fish, average wet weight concentration measured in whole trophic level 3 fish 5–15 cm in length, and
 - ii) 0.1 mg methylmercury per kg fish, average wet weight concentration measured in whole trophic level 3 fish >15–35 cm in length;
 - b) Vacate the existing 4-day average water quality objective for mercury in the Basin Plan for waters of the Guadalupe River watershed, except Los Gatos Creek and its tributaries upstream of Vasona Dam, Lake Elsman, Lexington Reservoir, and Vasona Lake;

- c) Establish mercury TMDLs for the following waters:
 - i) Alamitos Creek, Guadalupe Creek, and Guadalupe River of 0.2 mg mercury per kg suspended sediment (dry wt., annual median), and
 - ii) Guadalupe Reservoir, Almaden Reservoir, Calero Reservoir, and Lake Almaden of 1.5 ng total methylmercury per liter water (seasonal maximum, hypolimnion);
 - d) Establish mercury allocations for the following sources:
 - i) Mercury mining waste discharged from mercury mines into surface waters of 0.2 mg mercury per kg erodible soil fines (dry wt., median),
 - ii) Mercury-laden sediment discharged from depositional areas in Alamitos Creek, Guadalupe Creek, Los Gatos Creek downstream of Vasona Dam, Canoas Creek, Ross Creek, Guadalupe River, tributaries to these creeks that drain mercury mines and/or convey urban stormwater runoff, and percolation ponds along these creeks of 0.2 mg mercury per kg erodible soil fines (dry wt., median),
 - iii) Methylmercury production in reservoirs and lakes of 1.5 ng total methylmercury per liter water (seasonal maximum, hypolimnion), and
 - iv) Urban stormwater runoff discharges, nonurban stormwater runoff discharges, and atmospheric deposition allocations proportionally equivalent to the mass allocations assigned by the San Francisco Bay mercury TMDL; and
 - e) Establish a Program of implementation to achieve the new water quality objectives and implement the TMDLs; and
 - f) Correct an inadvertent typographical error in Table 2-1 of the Basin Plan replacing the word Reservoir with the word River where it first appears after the word Guadalupe.
- 4) The following waters in the Guadalupe River watershed have been, or soon will be, identified under federal Clean Water Act §303(d) and State Water Board guidelines as impaired due to elevated concentrations of mercury:
- a) Reservoirs and lakes: Guadalupe Reservoir, Almaden Reservoir, Calero Reservoir, and Lake Almaden.
 - b) Creeks and river: Guadalupe Creek, Alamitos Creek, and Guadalupe River.
- 5) Under Clean Water Act § 303(d), the Water Board is required and/or authorized to establish total maximum daily loads (TMDLs) for pollutants causing impairment of water quality. Additionally, under Water Code § 13242, the Water Board is authorized to develop an implementation program for achieving water quality objectives.

- 6) The Basin Plan Amendment will reduce mercury-related risks to humans and wildlife and restore and protect water quality beneficial uses in the Guadalupe River watershed.
- 7) Water Code § 13241 authorizes the Water Board to adopt new water quality objectives such as the new mercury water quality objectives proposed in the Basin Plan Amendment upon consideration of the following factors: past, present, and probable future beneficial uses of water; environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto; water quality conditions that could reasonably be achieved through the coordinated control of all factors that affect water quality; economics; the need for developing housing; and the need to develop and use recycled water.
- 8) The Water Board has duly considered the Water Code § 13241 factors.
- 9) The Basin Plan Amendment includes the required Water Code § 13242 program of implementation for achieving the proposed new mercury water quality objectives.
- 10) The proposed mercury water quality objectives are based on sound scientific rationale and protect beneficial uses.
- 11) The scientific basis for the regulatory elements of the proposed Basin Plan Amendment was subjected to an independent, external peer review by Professors David Sedlak, Desiree Tullos, and Michael Josselyn, pursuant to the requirements of Health and Safety Code § 57004.
- 12) On March 5, 2008, a draft of the Basin Plan Amendment, Staff Report, and Environmental Checklist were distributed for public review and comment. 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.
- 13) On May 14, 2008, after a 45-day public comment period, and on October 8, 2008, the Water Board held public hearings to consider the Basin Plan Amendment and supporting documents.
- 14) The process of basin planning has been certified by the Secretary for Resources as exempt from the requirement of the California Environmental Quality Act (Public Resources Code § 21000 et seq.) to prepare an Environmental Impact Report or Negative Declaration.
- 15) The Basin Plan Amendment, Environmental Checklist, Staff Report, and supporting documentation serve as a substitute environmental document under the Water Board's certified regulatory program. 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 Water Board further finds, based on consideration of the record as a whole, that there is no potential for adverse effect, either individually or cumulatively, on wildlife as a result of the Basin Plan Amendment.

- 16) The Water Board has carefully considered all comments and testimony received, including responses thereto, on the Basin Plan Amendment and supporting documents, as well as all of the evidence in the administrative record.
- 17) The Basin Plan Amendment must be submitted for review and approval by the State Water Board, OAL, and U.S. EPA. Once approved by the State Water Board, the amendment is submitted to OAL and U.S. EPA. The Basin Plan Amendment will become effective upon approval by OAL and U.S. EPA.

NOW, THEREFORE BE IT RESOLVED THAT:

- 1) The Water Board adopts the Basin Plan Amendment as set forth in Exhibit A hereto.
- 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 CWC § 13245.
- 3) The Water Board requests that the State Water Board approve the Basin Plan Amendment in accordance with the requirements of CWC §§ 13245 and 13246 and forward it to the OAL and U.S. EPA for approval.
- 4) If, during the approval process, Water Board staff, the State Water Board, or OAL determines that minor, non-substantive corrections to the language of the Basin Plan Amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Water Board of any such changes.
- 5) 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 CEQA Filing Fee No Effect Determination Form 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 October 8, 2008.

BRUCE H. WOLFE
Executive Officer

Attachment

Exhibit A – Basin Plan Amendment to Amend the Water Quality Control Plan for the San Francisco Bay Region to Establish New Water Quality Objectives, Total Maximum Daily Loads, and an Implementation Plan for Mercury in the Guadalupe River Watershed