

State of California
California Regional Water Quality Control Board
Santa Ana Region

RESOLUTION NO. R8-2017-0019

Resolution Approving Amendments to the Basin Plan to: Revise Compliance Schedule for Fecal Coliform Total Maximum Daily Load (TMDL) for Shellfish Harvesting (SHEL) in Newport Bay; Revise SHEL Beneficial Use Definition; Add Antidegradation Targets for Non-contact Water Recreation (REC2) Only Waters; Add Certain Waters to Table 3-1 and Designate Beneficial Uses for Those and Other Select Waters; Add Chapter 6 TMDLs and Introductory Narrative, and Revise Subsequent Chapter Numbering; Add Fecal Indicator Bacteria Footnote to Chapters 4 and 5

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 Regional Board on March 11, 1994, and approved by the State Water Resources Control Board (State Water Board) on July 21, 1994. The updated Basin Plan was approved by the Office of Administrative Law (OAL) and became effective on January 24, 1995. The Basin Plan has been subsequently amended to incorporate Total Maximum Daily Loads (TMDLs), revised Nitrogen and Total Dissolved Solids (TDS) management strategies, language authorizing the inclusion of compliance schedules in National Pollutant Discharge Elimination System (NPDES) permits, revised recreation standards for inland surface waters, and other changes.
2. Federal and State laws and implementing regulations require that the Basin Plan identify surface and ground waters within the Santa Ana Region (Region), designate beneficial uses for those waters, establish water quality objectives for the protection of those uses, prescribe implementation plans whereby the objectives are to be achieved, and establish monitoring and surveillance programs.
3. Table 3-1 in Chapter 3 (BENEFICIAL USES) of the Basin Plan lists the Region's surface and ground water bodies and the beneficial uses designated for those waters. The Basin Plan recognizes twenty beneficial uses that are designated as existing or potential. Table 4-1 in Chapter 4 (WATER QUALITY OBJECTIVES) of the Basin Plan again lists the Region's waters and identifies narrative and numeric water quality objectives, if established, for those waters. Chapter 5 (IMPLEMENTATION) describes the actions that are necessary to achieve the water quality objectives specified in Chapter 4 and, thereby, protect the designated beneficial uses of the Region's surface and ground waters identified in Chapter 3.

4. California Water Code Section 13240 requires that Basin Plans be periodically reviewed. Section 303(c) of the federal Clean Water Act (CWA) requires that states hold public hearings for review of water quality standards (beneficial uses, water quality objectives, and antidegradation policy) at least once every three years. On July 24, 2015 the Regional Board approved the Santa Ana Regional Board Fiscal Years 2015-2018 Basin Plan Triennial Review Priority List and Work Plan (Triennial Review List), which identified nineteen (19) issues to be addressed. The Basin Plan amendments shown in Attachments 1 ("clean" version) and 2 (underline/strikeout version) to this Resolution address certain items on the Triennial Review list.
5. The proposed Basin Plan amendments are necessary to assure that the waters of the Santa Ana Region are properly identified and appropriate beneficial uses are designated for their protection.
6. The Regional Board expects to participate in a stakeholder process sponsored by the County of Orange and Orange County Coastkeeper. This stakeholder process is intended to investigate issues related to the Shellfish Harvesting (SHEL) TMDL in Newport Bay that is based on fecal coliform and to consider whether modifications may be necessary and appropriate. This may include the application of a reference system/antidegradation or natural source exclusion approach in order to account for bacterial contributions from uncontrollable sources. In light of the significant resource commitments entailed in this process and the time expected to be needed to consider and formulate recommended alternatives, it is appropriate to extend the date for compliance with the SHEL TMDL from December 30, 2019 to December 31, 2022. This three-year extension is expected to be sufficient to conduct requisite investigations, formulate specific recommendations for modification of the SHEL TMDL, and pursue approval of the revised TMDL, including approval by the U.S. Environmental Protection Agency (USEPA).
7. The addition of antidegradation pathogen indicator bacteria targets is consistent with Basin Plan requirements already identified in the Basin Plan (CHAPTER 5 IMPLEMENTATION, Recreation Water Quality Standards, *Antidegradation Targets for REC2 Only Waters*). These bacteria targets serve as triggers for further investigation and monitoring in these waters and for control actions where warranted by the data.
8. Revision of the definition of the SHEL beneficial use is necessary to provide consistency with the statewide definition.
9. The addition of certain waters to Table 3-1 and designation of beneficial uses for those and other select waters will provide updated information to Regional Board staff and stakeholders.

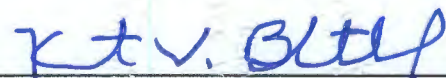
10. CWA Section 303 (d) requires that states identify waters that do not or are not expected to meet water quality standards with the implementation of technology-based controls. Once a waterbody has been placed on the 303(d) list of impaired waters, a state is required to develop a TMDL to address each pollutant causing impairment. Currently, all Regional Board-established TMDLs are incorporated in the Basin Plan in CHAPTER 5 IMPLEMENTATION. As a matter of reader convenience and clarity, existing TMDLs and new TMDLs will be moved into a new CHAPTER 6 TOTAL MAXIMUM DAILY LOADS (TMDLS). A narrative description of TMDLs will serve as an introduction to this new Chapter 6.
11. Again, as a matter of reader convenience and clarity, it is necessary to add a footnote to Chapters 4 and 5 explaining the use of different units applied to fecal indicator bacteria objectives and targets in the Basin Plan.
12. Pursuant to Public Resources Code Section 21080.5, the California Natural Resources Agency has approved the Regional Board's basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code §21000 *et seq.*) requirements for preparing environmental documents. (14 Cal. Code Regs. §15251(g); 23 Cal. Code Regs. 3782).
13. The Regional Board's environmental analyses for the proposed Basin Plan amendments are presented in a Substitute Environmental Document (SED), dated October 14, 2016.
14. A CEQA scoping meeting was held on October 4, 2016 to provide interested parties the opportunity to comment on the appropriate scope and content of the SED that was prepared for the proposed Basin Plan amendments. Any comments received in response to the scoping meeting were considered in preparing the subsequent environmental analysis.
15. Based on the environmental analyses described in the SED, the Regional Board finds that there is no fair argument that the proposed amendments could result in any reasonably foreseeable significant adverse environmental impacts; therefore, no alternatives or mitigation measures are proposed or analyzed.
16. Analysis of the proposed Basin Plan amendments was conducted to determine consistency with the State and federal antidegradation policies (State Water Board Resolution No. 68-16 "Statement of Policy with Respect to Maintaining High Quality Waters in California" and 40 CFR 131.12). None of the proposed amendments is expected to result in the lowering of water quality. Thus, the proposed amendments conform to both antidegradation policies' requirements.

17. Pursuant to California Health and Safety Code Section 57004, proposed rules that have a scientific basis or components must be submitted for scientific peer review. This additional review is not required if a new application of an adequately peer-reviewed product does not depart significantly from its scientific approach. No scientific peer review is necessary for the Basin Plan amendments identified in Attachments 1 and 2 to this Resolution. The components with a scientific basis, the recommended antidegradation targets, were calculated in accordance with the previously peer-reviewed methodology established in the Basin Plan.
18. The proposed amendments meet the necessity standard of the Administrative Procedures Act, Government Code Section 11353, subdivision (b). The proposed amendments are necessary to ensure conformance, in the most scientifically defensible manner, with State and federal laws and implementing regulations that require that water quality standards be established and periodically reviewed to assure that the standards accurately represent current and anticipated conditions in the Region.
19. A Notice of Public Hearing/Notice of Filing (Notice) regarding the proposed adoption of the recommended Basin Plan amendments was published in accordance with Water Code Section 13244, with a public hearing date of December 9, 2016. The Notice was distributed with the SED, staff report, and draft Basin Plan amendments to interested individuals and public agencies for review and comment on October 14, 2016, and all documents, as well as the Notice, were published on the Regional Board's website. Written responses were prepared to address comments received by the November 30, 2016 date specified in the Notice. The December 9, 2016 public hearing was postponed. On May 17, 2017, notice was provided of the updated public hearing date and an additional public comment period was provided to accept comments to limited revisions to the SED, staff report, and draft Basin Plan amendments. Although the May 17, 2017 notice incorrectly stated that the public comment period closed on June 2, 2017, written public comments were accepted up until the date of the public hearing on June 16, 2017.
20. The Regional Board conducted a public hearing on June 16, 2017 to consider the proposed Basin Plan amendments. The Regional Board considered all testimony offered at the hearing and the written comments submitted by interested parties and public agencies. All oral and written comments were considered by the Regional Board before taking any final action.
21. The Basin Plan amendments must be submitted for review and approval by the State Water Board, OAL, and USEPA. The Basin Plan amendments will become effective upon approval by USEPA. A Notice of Decision will be filed.

THEREFORE, BE IT RESOLVED THAT:

1. The Regional Board has reviewed and considered the entire record of this matter, including the information contained in the staff report and SED, all written comments, and all oral testimony provided at the public hearing of this matter held on June 16, 2017.
2. The Regional Board confirms the determination by Regional Board staff that the proposed amendments could not have a significant effect on the environment and, hereby, approves and certifies the SED.
3. The Regional Board hereby adopts the Basin Plan amendments delineated in Attachment 1 (underline/strike-out version) and Attachment 2 ("clean" version) to this Resolution.
4. The Executive Officer is directed to forward copies of the Basin Plan amendments to the State Water Board in accordance with the requirements of Section 13245 of the California Water Code.
5. The Regional Board requests that the State Water Board approve the Basin Plan amendments in accordance with the requirements of Sections 13245 and 13246 of the California Water Code and, thereafter, forward the amendments to OAL and USEPA for their approval.
6. If, during its approval process, the State Water Board or OAL determine that minor, nonsubstantive corrections to the language of the amendments are needed for clarity or consistency, the Executive Officer may make such changes and shall inform the Regional Board forthwith.
7. The Executive Officer is directed to take steps to promptly ensure payment to the California Department of Fish and Wildlife for its review of the SED or to file a Certificate of Fee Exemption, whichever is appropriate in order to file and post the Notice of Decision.

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 June 16, 2017.



Kurt V. Berchtold
Executive Officer