

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2018-0041**

**APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE
SANTA ANA RIVER BASIN TO INCORPORATE TOTAL MAXIMUM DAILY LOADS
FOR SELENIUM IN FRESHWATER: NEWPORT BAY WATERSHED,
ORANGE COUNTY, CALIFORNIA**

WHEREAS:

1. On August 4, 2017, the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) adopted [Resolution No. R8-2017-0014](#), amending the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) to incorporate Total Maximum Daily Loads (TMDLs) for Selenium in Freshwater, Newport Bay Watershed, Orange County, California (Basin Plan amendment). The TMDLs address exceedance of the chronic water quality criterion for selenium and potential impairments to fish and birds via bioaccumulation in the freshwater portions of the watershed.
2. The elements of a TMDL are described in 40 CFR sections 130.2 and 130.7 and section 303(d) of the federal Clean Water Act and U.S. Environmental Protection Agency guidance documents. A TMDL is defined as “the sum of individual waste load allocations for point sources and load allocations for nonpoint sources and natural background” (40 CFR §130.2). The Santa Ana Water Board has determined that the TMDLs for selenium in the freshwater portions of the Newport Bay watershed are set at levels necessary to attain and maintain the applicable water quality objectives taking into account seasonal variations and any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR §130.7(c)(1)). The regulations in 40 CFR section 130.7 also state that TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters. TMDLs are often expressed as a mass load of the pollutant but can be expressed as concentration or another appropriate measure (40 CFR §130.2(i)). Expressing these TMDLs in terms of concentration is appropriate in this case because these measures demonstrate attainment of applicable narrative water quality objectives for selenium and protection of applicable beneficial uses.
3. The Santa Ana Water Board found that the Basin Plan amendment would not result in a lowering of water quality and was, thus, consistent with State and federal antidegradation policies (State Water Board’s [Resolution No. 68-16](#) and 40 C.F.R. § 131.12). The State Water Board agrees with the Santa Ana Water Board’s finding.
4. The Santa Ana Water Board concurred with the analyses in the California Environmental Quality Act (CEQA) “Substitute Environmental Document” for the amendment, including the environmental checklist, and found that the analyses satisfied the requirements of the State Water Board’s certified regulatory CEQA process as set forth in California Code of Regulations, Title 23, Division 3, Chapter 27, commencing with section 3775. The Santa Ana Water Board approved and certified the Substitute Environmental Document prepared for the amendments. The State Water Board concurs with the Santa Ana Water Board’s findings and determination and finds that the environmental analysis has taken into account a reasonable range of environmental, economic, and technical factors.

5. The State Water Board finds that the Basin Plan amendment is in conformance with Water Code section 13240, which specifies that regional water quality control boards may revise water quality control plans; with section 13242, which requires a program of implementation to achieve water quality objectives; with section 13243, which authorizes regional water quality control boards to specify certain conditions or areas where the discharges of certain types of waste will not be permitted; and with section 13244, which specifies that regional water quality control boards must first hold a noticed public hearing before adopting water quality control plans. The State Water Board also finds that the TMDLs, as reflected in the Basin Plan amendment, are consistent with the requirements of Clean Water Act section 303(d).
6. The Santa Ana Water Board amendment meets the necessity standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b). The necessity of developing the TMDLs is established in the TMDL project report, the section 303(d) list, and the data contained in the administrative record documenting the selenium impairments in the freshwater portions of the Newport Bay watershed.
7. A Basin Plan amendment does not become effective until approved by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law (OAL). The TMDLs must also be approved by the U.S. Environmental Protection Agency (U.S. EPA).

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendment to the Basin Plan adopted under Santa Ana Water Board Resolution No. R8-2017-0014; and
2. Authorizes the Executive Director or designee to submit the amendment adopted under Santa Ana Water Board Resolution No. R8-2017-0014 and the administrative record for this action to OAL for approval of the regulatory provisions and to the U.S. EPA for approval of the water quality standards amendment.

CERTIFICATION


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 20, 2018.

AYE: Chair Felicia Marcus
 Vice Chair Steven Moore
 Board Member Tam M. Doduc
 Board Member E. Joaquin Esquivel

NAY: None

ABSENT: Board Member Dorene D'Adamo

ABSTAIN: None



 Jeanine Townsend
 Clerk to the Board