

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER QUALITY
OCTOBER 16, 2012**

ITEM 3

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION TO AMEND THE WATER QUALITY CONTROL PLAN FOR THE SANTA ANA REGION TO INCORPORATE ORGANOCHLORINE COMPOUNDS TOTAL MAXIMUM DAILY LOADS (TMDLS) FOR SAN DIEGO CREEK, UPPER AND LOWER NEWPORT BAY, ORANGE COUNTY, CALIFORNIA

DISCUSSION

On September 7, 2007, the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) approved [Resolution No. R8-2007-0024](#), adopting total maximum daily loads (TMDLs) for organochlorine compounds for Lower Newport Bay, Upper Newport Bay and San Diego Creek. On July 15, 2011, the Santa Ana Water Board approved [Resolution No. R8-2011-0037](#), adopting revised organochlorine compounds TMDLs for these waters. The revisions included an extended final compliance date and other minor, non-substantive modifications. The TMDLs include an implementation plan and are intended to replace organochlorine compounds TMDLs promulgated by U.S. Environmental Protection Agency (U.S. EPA) in 2002. Implementation of the Santa Ana Water Board approved TMDLs is already underway.

Pursuant to the requirements of the California Environmental Quality Act (CEQA), an environmental analysis was conducted by Santa Ana Water Board staff of the potential impacts of the Newport Bay watershed organochlorine compounds TMDLs Basin Plan amendment. The analysis was discussed in detail in a Substitute Environmental Document (SED) dated July 25, 2007. The SED found that the implementation of reasonably foreseeable methods of compliance with the organochlorine compounds TMDLs would have the potential to result in significant adverse environmental effects to some Air Quality, Biological Resources, Noise, Transportation/Traffic, and Utilities and Services categories. While the implementation of mitigation measures could substantially lessen these potentially significant impacts, the effects would not be reduced to less than significant levels; however, Board staff determined there are certain overriding economic, social, and other considerations for approving the TMDLs that staff found justify the possible occurrence of those impacts and render them acceptable. Therefore, a "CEQA Findings of Fact and Statement of Overriding Considerations" (FFSOC) document was prepared by Board staff and adopted by the Santa Ana Water Board pursuant to Public Resources Code section 21081(b) and CEQA Guidelines section 15093 before approving the TMDLs on September 7, 2007. The conclusion of the FFSOC document is that the potential effects remain significant and unavoidable notwithstanding the incorporation of all mitigation measures and alternatives found to be feasible in the SED. In accordance with CEQA requirements, the approval of Resolution No. R8-2007-0024 by the Santa Ana Water Board also approved the SED and the Statement of Overriding Considerations.

The Santa Ana Water Board then considered whether the amendment to the organochlorine compounds TMDLs Basin Plan amendment would require any changes to the July 25, 2007 SED and/or September 7, 2007 CEQA Findings of Fact and Statement of Overriding Considerations. The Santa Ana Water Board concluded no modifications to the CEQA documents were necessary, and included a finding to that effect in Resolution No. R8-2011-0037.

POLICY ISSUE

Should the State Water Board approve the amendment to the Basin Plan for the Santa Ana Region to incorporate organochlorine compounds total maximum daily loads (TMDLs) for San Diego Creek, Upper Newport Bay and Lower Newport Bay, as adopted under Santa Ana Water Board Resolution No. R8-2011-0037?

FISCAL IMPACT

Santa Ana Water Board and State Water Board staff work associated with or resulting from this action will be addressed with existing and future budgeted resources. The approval of this Basin Plan amendment should not significantly add or detract from current workloads.

REGIONAL BOARD IMPACT

Yes, approval of this resolution will amend the Santa Ana Water Board's Basin Plan.

STAFF RECOMMENDATION

That the State Water Board:

1. Approve the amendment to the Basin Plan adopted under Santa Ana Water Board Resolution No. R8-2011-0037.
2. Authorizes the Executive Director or designee to submit the amendment adopted by the Santa Ana Water Board's Resolution No. R8-2011-0037 to the Office of Administrative Law ("OAL") and to U.S. Environmental Protection Agency for approval.

State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012, implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030. In particular, approval of this item will assist in fulfilling Objective/Action 1.1 to prepare, adopt, and take steps to carry out TMDLs, designed to meet water quality standards, for all impaired water bodies on the 2006 list.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE SANTA ANA REGION TO INCORPORATE ORGANOCHLORINE COMPOUNDS TOTAL MAXIMUM DAILY LOADS (TMDLS) FOR SAN DIEGO CREEK, UPPER AND LOWER NEWPORT BAY, ORANGE COUNTY, CALIFORNIA

WHEREAS:

1. On September 7, 2007, the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) adopted [Resolution No. R8-2007-0024](#) approving an amendment to the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) to incorporate organochlorine compounds Total Maximum Daily Loads (TMDLs) for San Diego Creek, Upper Newport Bay and Lower Newport Bay. On July 16, 2011, the Santa Ana Water Board adopted [Resolution No. R8-2011-0037](#), approving revised organochlorine compounds TMDLs. The revised TMDLs include a revised final TMDL compliance date and other minor, non-substantive grammatical modifications and corrections.
2. The Santa Ana Water Board found that the analysis contained in the California Environmental Quality Act (CEQA) "Substitute Environmental Document" for the proposed Basin Plan amendment, including the CEQA Checklist, staff report, and the responses to public comments, complies with the requirements of the State Water Resources Control Board's (State Water Board's) certified regulatory CEQA process, as set forth in California Code of Regulations Title 23, section 3775 et seq. The State Water Board has reviewed the Substitute Environmental Document for the Basin Plan amendment and concurs with the Santa Ana Water Board's findings and determinations, including the Statement of Overriding Considerations.
3. The State Water Board finds that, in amending the Basin Plan, the Santa Ana Water Board complied with the requirements set forth in sections 13141, 13240, 13242, and 13245 of the Water Code. The State Water Board also finds that the regulatory action meets the "necessity" standard of the Administrative Procedures Act, Government Code section 11353, Subdivision (b).
4. The Santa Ana Water Board found that the Basin Plan amendment is consistent with the Statement of Policy with Respect to Maintaining High Quality of Waters in California ([State Water Board Resolution No. 68-16](#)) and the federal Antidegradation Policy (40 CFR section 131.12), in that it does not allow degradation of water quality, but requires restoration of water quality and attainment of water quality standards. The State Water Board agrees with this determination.
5. The 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 TMDL must also receive approval from the U.S. Environmental Protection Agency (U.S. EPA).

D R A F T

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendment to the Basin Plan as adopted under Santa Ana Water Board Resolution No. R8-2011-0037.
2. Authorizes the Executive Director or designee to submit the amendment adopted under Santa Ana Water Board R8-2011-0037 to the OAL and to U.S. EPA.

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 October 16, 2012.

Jeanine Townsend
Clerk to the Board