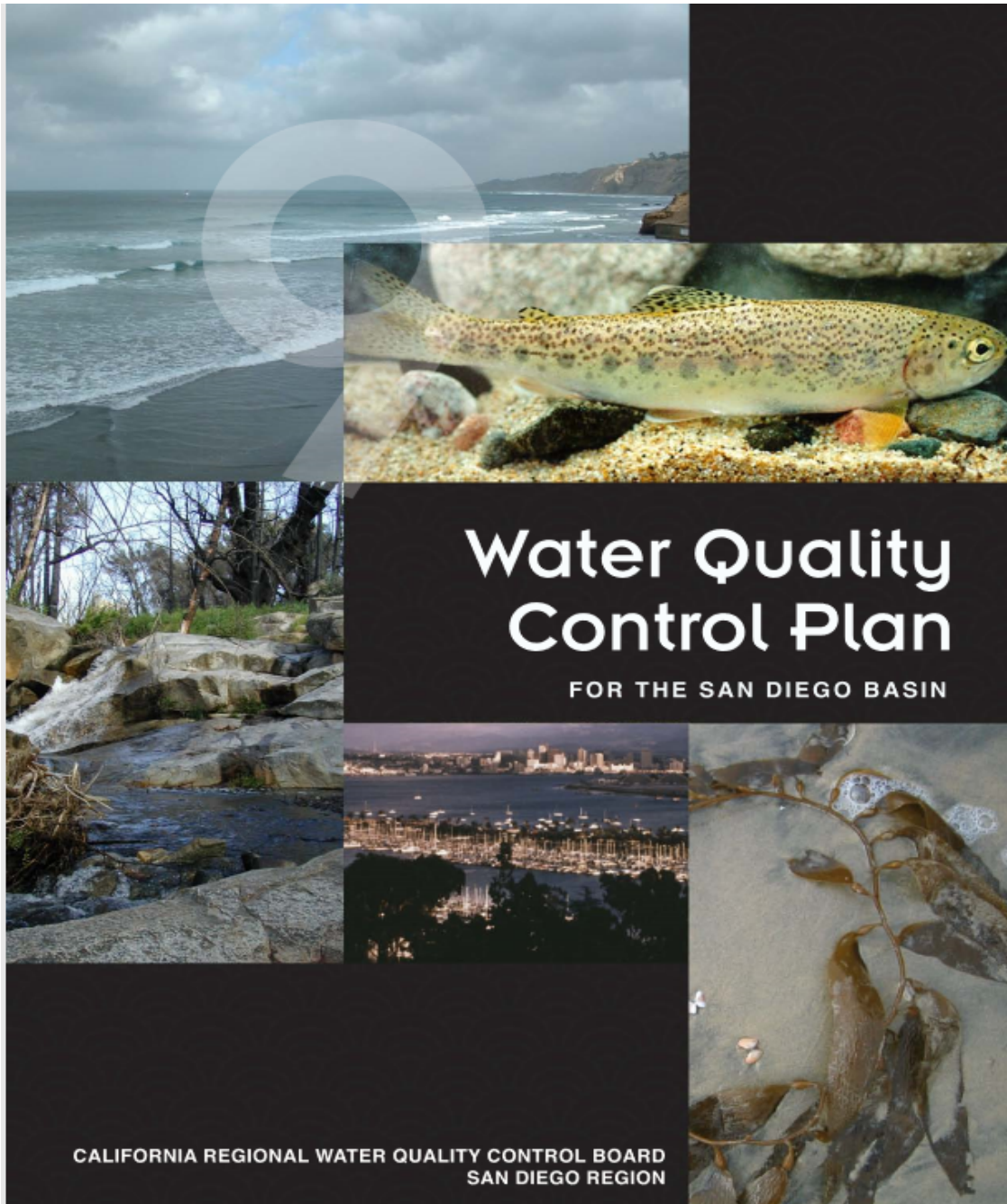


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Staff Report
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Non-Regulatory Updates to the Water Quality Control Plan for the San Diego Basin



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Summary

The Regional Water Quality Control Board, San Diego Region (San Diego Water Board) is proposing an amendment to make non-regulatory updates to the Water Quality Control Plan for the San Diego Basin ([Basin Plan](#)). Non-regulatory changes focus on Chapters 2,3, and 4 of the Basin Plan and include removing and/or updating outdated tables and text, identifying and incorporating applicable statewide regulations adopted by the State Water Board, adding hyperlinks to Resolutions, Plans and Policies, correcting typographical errors, and rearranging and renumbering tables. The formatting revisions will also facilitate web-based access.

The proposed amendments do not result in any regulatory changes. Documents pertaining to the proposed amendments will be available at the following link:

https://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/non_regulatory_updates/

Introduction

Water quality control plans (Basin Plans) form the basis for regulatory actions by Regional Water Boards taken to protect waters of the State and to assure compliance with the Water Code; waters of the State include all surface waters and groundwaters. The preparation, adoption, and periodic review of a Basin Plan is required by Water Code section 13240. The Basin Plan also serves to implement portions of Section 303 of the federal Clean Water Act, which requires that states adopt water quality standards, consisting of the designated uses of navigable waters covered by the Clean Water Act and water quality criteria (referred to as “water quality objectives” in California) designed to protect the designated uses. Pursuant to State law, Basin Plans must consist of all of the following: a) designated beneficial uses to be protected; b) water quality objectives; c) a program of implementation needed for achieving water quality objectives; and d) surveillance and monitoring to evaluate the effectiveness of the program.

Basin Plans are adopted and amended by the Regional Water Boards using a structured process involving independent scientific peer review, full public participation, State environmental review, and State and federal agency review and approval. Each of the nine Regional Water Boards in California has adopted Basin Plans for its geographic region. Although the authority for the Regional Water Boards to formulate and adopt Basin Plans is derived from Water Code section 13240, a Basin Plan does not become effective until approved by the State Water Board and the Office of Administrative Law (OAL). The United States Environmental Protection Agency (USEPA) must also review and approve amendments that add or modify water quality standards for waters of the United States.

State and federal laws require periodic review of the Basin Plan.¹ Because federal law requires a review every three years, the Basin Plan review is also referred to as the “triennial review.” The Basin Plan triennial review workplan adopted by the San Diego Water Board in October 2018 directed staff to complete two projects that required editorial, non-regulatory changes to the Basin Plan (see Projects 3 and 6 in the [2018 Staff Report and Prioritized List](#)). The project described in this staff report proposes to amend and make editorial non-regulatory changes that clarify, update, or eliminate outdated paragraphs, tables, figures, and references, and to correct minor inconsequential errors in the Basin Plan. These changes are necessary for clarity, and to ensure that the public is informed about the latest requirements to protect water quality. Corrections, clarifications, and general formatting changes are without regulatory effect. They do not alter or impose any new requirements on the regulated community. They simply improve the overall readability and utility of the Basin Plan.

Requirements and Process for Basin Plan Amendments

The Regional Water Boards must comply with the requirements of the California Environmental Quality Act (CEQA) when amending Basin Plans. The Secretary for Natural Resources has certified the basin planning process as exempt from the CEQA requirement to prepare an environmental impact report or other appropriate environmental document. Rather, State regulations require that Basin Plan amendments be accompanied by substitute environmental documentation that consists of, at a minimum, a written report and an Environmental Checklist and Determination with respect to Significant or Potentially Significant Environmental Impacts (23 CCR 3775-3781).

¹ State law requires basin plans to be periodically reviewed [California Water Code §13240]. Federal law requires water quality standards to be reviewed every three years [Clean Water Act §303(c)(1)].

The proposed amendments discussed in this report are non-regulatory changes to the Basin Plan. The proposed changes to the Basin Plan do not constitute an activity which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Therefore, the proposed amendments are not a “project”² for purposes of CEQA and are therefore exempt from CEQA provisions.³ Likewise, the proposed amendments are exempt from the State Water Board’s certified regulatory program requirements because those requirements do not apply if the Board determines that the activity is exempt from CEQA. Despite the exemption from certified regulatory program requirements, Board staff has implemented procedures for public participation (47-day notice of public hearing and 47-day comment period for review of the staff report and proposed amendments).

Proposed Updates

The San Diego Water Board is proposing non-regulatory amendments to the Basin Plan. The proposed amendments include removing and/or updating outdated tables and text, identifying and incorporating applicable statewide regulations adopted by the State Water Board, adding hyperlinks to State and federal regulations, Resolutions, Plans and Policies, correcting typographical errors, and rearranging and renumbering tables. The following section describes the proposed amendments in further details.

Chapter 2: Beneficial Uses

- *Add Hyperlinks*
Hyperlinks have been added to referenced State and federal regulations and to State and regional Resolutions and Orders.

² “Project” is defined by CEQA as a governmental activity “which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...” Pub. Resources Code § 21065.

³ Pub. Resources Code § 21080, subd. (a) (defining CEQA to apply only to discretionary “projects”): see also, Cal. Code Regs., tit.14, § 15060, subd. (c)(3) (clarifying that an activity is not subject to CEQA if it is not a project.)

- *Update BIOL Beneficial Use*
The description has been updated to (only) list Areas of Special Biological Significance which are designated by the State Water Board. This update removes the list of Marine Life Refuges, State Marine Parks, State Marine Reserves, State Marine Conservation Areas, Ecological Reserves, Wildlife Areas, and Natural Preserves which are designated by either the California Department of Fish and Wildlife, California Department of Parks and Recreation, the National Oceanic and Atmospheric Administration, or U.S. Fish and Wildlife. Because those areas are updated more often than the Basin Plan, the Basin Plan will now simply refer readers to the respective websites that maintains such listings.
- *Add Beneficial Uses*
On May 2, 2017 the State Water Board adopted Resolution 2017-0027, which approved "Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California—Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions." With the adoption of Resolution 2017-0027, the State Water Board established three new beneficial use definitions, for use by the State and Regional Water Boards, in designating Tribal Traditional Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing (SUB) beneficial uses to inland surface waters, enclosed bays, or estuaries in the State. This amendment proposes to incorporate the three new beneficial uses; beneficial use designations of specific waterbodies, where those uses are existing or attainable, will be considered under a separate Basin Plan amendment process.
- *Formatting*
The font has been changed from Univers to Arial, which is the standard for water board documents.
- *Correction of Typographical Errors and Clarifications*
Several typographical errors and grammatical changes were made to improve clarity and readability of the San Diego Basin Plan. Page numbers will need to be revised upon adoption of the amendment.

Chapter 3: Water Quality Objectives

- *Add Hyperlinks*
Hyperlinks have been added to referenced State and federal regulations and to State and Regional Water Board Resolutions and Orders.

- *Statewide Plans*
The San Diego Basin Plan incorporates (by reference) all applicable statewide plans and policies. This update will add hyperlinks to the most recent (online) versions of the documents and adds language for the newly adopted Inland Surface Waters, Enclosed Bays and Estuaries Plan (ISWEBE). This amendment also updates language, including but not limited to, water quality objectives for the Contact Recreation (REC-1) beneficial use. The regional REC-1 water quality objectives have been superseded by the statewide ISWEBE.
- *Formatting*
The font has been changed from Univers to Arial, which is the standard for water board documents. In addition the tables containing the 'Guidelines for Interpretation of Water Quality for Irrigation' and the Water Quality Objectives (for Inland Surface Waters and Groundwater) have been moved to the end of the chapter. Tables will be renumbered accordingly.
- *Update to Table 3-1*
The maximum contaminant level for Arsenic has been updated and perchlorate has been added to the table to be consistent with Table 64431-A of section 64431 of Title 22 of the California Code of Regulations.
- *Update Water Quality Objective for Radionuclides*
The Basin Plan references section 64441 (Natural Radioactivity) of Title 22 of the California Code of Regulations. Section 64441 was repealed in 2006. The reference has been updated to section 64442 (MCLs and Monitoring - Gross Alpha Particle Activity, Radium-226, Radium-228, and Uranium).
- *Update Water Quality Objective for Trihalomethanes*
The Basin Plan incorporates by reference section 64439 of Title 22 of the California Code of Regulations. Section 64439 was repealed in 2012. The reference has been updated to section 64533 (Maximum Contaminant Levels for Disinfection Byproducts)
- *Correction of Typographical Errors and Clarifications*
Several typographical errors were identified and corrected, and grammatical changes were made to improve clarity and readability of the San Diego Basin Plan. Page numbers will need to be revised upon adoption of the amendment.

Chapter 4: Implementation

- *Compliance and Enforcement*

On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020 amending the Water Quality Enforcement Policy. The Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017. This amendment will update the Enforcement section, including updated delegated authorities for Administrative Civil Liabilities, of the San Diego Basin Plan.

Public Participation

The draft Basin Plan amendment was made available to the public for review on December 5, 2019. Interested persons had an opportunity to submit written comments during a 47-day comment period which extended from December 5, 2019 through January 21, 2020.

Conclusion

The proposed revisions are non-regulatory and non-substantive; they consist entirely of editorial and formatting revisions, including the identification and incorporation of applicable statewide regulations adopted by the State Water Board, that improve the clarity and readability of the document. The proposed revisions to the San Diego Basin Plan do not constitute an activity which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Therefore, the proposed revisions are not a “project” for purposes of CEQA compliance. Furthermore, the proposed amendment does not affect nor is affected by existing federal or other State laws and regulations. Adoption of the proposed Basin Plan amendment is consistent with the San Diego Water Board’s 2018 Triennial Review Project No. 6 and with Chapter 4 of the Practical Vision (Proactive Public Outreach and Communication).