

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE RESOLUTION R2-2009-xxx

AMENDING THE WATER QUALITY CONTROL PLAN (BASIN PLAN) FOR THE SAN FRANCISCO BAY REGION TO ESTABLISH A TOTAL MAXIMUM DAILY LOAD (TMDL) FOR SEDIMENT IN THE NAPA RIVER AND AN IMPLEMENTATION PLAN TO ACHIEVE THE TMDL AND RELATED HABITAT ENHANCEMENT GOALS

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

1. An updated Water Quality Control Plan for the San Francisco Bay Region (Basin Plan) was adopted by the Water Board on January 21, 2004, approved by the State Water Resources Control Board (State Board) on July 22, 2004, and approved by the Office of Administrative Law (OAL) on October 4, 2005.
2. The Basin Plan may be amended in accordance with California Water Code § 13240, et seq.
3. The Basin Plan amendment, including specifications on its physical placement in the Basin Plan, is set forth in Exhibit A. The Basin Plan amendment will establish the following: a) a sediment TMDL for the Napa River at 125 percent of natural background (185,000 metric tons/year); b) numeric targets for spawning gravel permeability and the depth of streambed scour; c) allocations for all significant sediment sources; and d) an implementation plan to achieve the TMDL and related habitat enhancement goals.
4. The Napa River is listed pursuant to federal Clean Water Act § 303(d) requirements as an impaired waterbody due to fine sediment deposition.
5. The Napa River is not meeting narrative water quality objectives for sediment, settleable material, and population and community ecology, due to excess erosion and sedimentation in the Napa River watershed.
6. Under Clean Water Act § 303(d), the Water Board is required and authorized to establish a TMDL for those pollutants identified as causing impairment of waters on the § 303(d) list. Additionally, under California Water Code § 13242, the Water Board is authorized to develop an implementation program for achieving water quality objectives.
7. The scientific basis for the TMDL, described in Finding 3, was subjected to an independent, external peer review pursuant to the requirements of California Health and Safety Code §57004. Water Board staff revised the proposed Basin Plan amendment in response to the comments provided by the reviewers, or provided a written response that explained the basis for not incorporating their comments. The peer reviewers' responses confirmed that the rulemaking portions of the proposed TMDL and implementation plan are based on sound scientific knowledge, methods, and practices.
8. On January 23, 2007, the Water Board adopted Resolution R2-2007-0011, amending the Basin Plan to establish a TMDL for sediment in the Napa River and an Implementation Plan to achieve the TMDL and related habitat enhancement goals.

9. In May 2008, when the State Board was considering approval of the Basin Plan amendment, it received written comments on the Basin Plan amendment that challenged the adequacy of the environmental analysis.
10. In June 2008, the Water Board withdrew the Basin Plan amendment from further State Board consideration to further evaluate and address the written comments received by the State Board.
11. Water Board staff initiated revisions to the January 23, 2007, Basin Plan amendment, Staff Report, and Environmental Checklist, and publicly noticed and distributed for public review and comment these revisions on September 5, 2008, in accordance with applicable State and federal laws and regulations.
12. Following the September 5, 2008, comment period, Water Board staff initiated revisions to the September 2008 draft Basin Plan amendment, Staff Report, and Environmental Checklist.
13. On May 19, 2009, Water Board staff publicly noticed and distributed for public review and comment a second set of revisions to the draft Basin Plan amendment, Staff report, and Environmental Checklist, in accordance with applicable State and federal laws and regulations.
14. The process of basin planning has been certified by the State's Secretary for Resources as exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code § 21000 et seq.) to prepare an Environmental Impact Report or Negative Declaration. The Basin Plan amendment package includes a Staff Report, an Environmental Checklist, an assessment of the potential environmental impacts of the Basin Plan amendment, and a discussion of alternatives. 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.
15. The Water Board has duly considered the Environmental Checklist, Staff Report, and supporting documentation with respect to environmental impacts. The documents conservatively state that the proposed project may have the potential to result in significant impacts to biological resources. Specifically, in the unlikely event that compliance projects affect special status species outside the Water Board's jurisdiction, other local, State, and federal agencies have the responsibility and jurisdiction to mitigate significant impacts. These agencies can and should mitigate such impacts, but until such time as that occurs, the impacts are considered significant and unavoidable. Such impacts are acceptable due to overriding considerations because expected project benefits outweigh any unavoidable adverse environmental impacts, as set forth below. The environmental documents also indicate that the proposed project has the potential to alter drainage patterns and otherwise affect hydrology; however, changes have been incorporated into the project in the form of a performance standard to effectively attenuate significant increases in storm runoff to lessen any environmental effects to less than significant levels.
16. Based on specific economic, social, and other considerations, the significant and unavoidable environmental impacts of the project discussed above are considered acceptable because the benefits of the project outweigh its unavoidable adverse environmental effects. These benefits include: the project's substantial enhancement of substrate quality; stream and riparian habitat complexity, connectivity, and function; fish passage; baseflow persistence; stream temperature; lower costs for road maintenance and repair since roads that are less erosive are less costly to maintain; reduction in the costs associated with damage to infrastructure and property within or adjacent to stream channels by re-establishing a balance

17. The Water Board has carefully considered all comments and testimony received, including responses thereto, on the Basin Plan amendment, as well as all of the evidence in the administrative record.
18. After Water Board adoption, the Basin Plan amendment must be submitted for review and approval by the State Board, OAL, and the United States Environmental Protection Agency (USEPA). Once approved by the State Board, the amendment will be submitted to OAL and USEPA. The Basin Plan amendment will become effective upon approval by OAL and USEPA.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Water Board adopts the Basin Plan amendment as set forth in Exhibit A hereto, that establishes the TMDL and Implementation Plan to achieve the TMDL and related habitat enhancement goals, and its supporting documentation.
2. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirement of California Water Code § 13245.
3. The Water Board requests that the State Board approve the Basin Plan amendment, in accordance with the requirements of California Water Code § 13245 and § 13246, and forward it to the OAL and USEPA for approval.
4. If, during the approval process, Water Board staff, the State Board, or OAL determines that minor, non-substantive corrections to the language of the amendment and supporting documentation are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Water Board of any such changes.

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 September 9, 2009.

BRUCE H. WOLFE
Executive Officer

Attachment

Exhibit A - Basin Plan Amendment to Establish a Total Maximum Daily Load for Sediment in the Napa River and an Implementation Plan to Achieve the TMDL and Related Habitat Enhancement Goals