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CALIFORNIA
Water Boards

GAVIN NEWSOM
GOVERNOR

JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

Governor's Office of Planning & Research

May 31, 2019

STATE CLEARINGHOUSE

TO: Wade Crowfoot
Secretary
California Natural Resources Agency

FROM: Hope A. Smythe
Executive Officer
Santa Ana Regional Water Quality Control Board

DATE: May 30, 2019

SUBJECT: ELECTRONIC TRANSMITTAL OF NOTICE OF DECISION FOR AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE SANTA ANA REGION TO INCORPORATE TOTAL MAXIMUM DAILY LOADS (TMDLS) FOR SELENIUM IN FRESHWATER, NEWPORT BAY WATERSHED, ORANGE COUNTY, CALIFORNIA

On August 4, 2017, the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) adopted Resolution No. R8-2017-0014, approving amendments to the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) incorporating TMDLs for Selenium in Freshwater for the Newport Bay Watershed. The amendment to the Basin Plan was approved by the State Water Resources Control Board (State Water Board) on September 20, 2018, and the Office of Administrative Law (OAL) on April 19, 2019.

The Water Quality Control Planning Program of the State Water Board and the Regional Water Quality Control Boards is a certified regulatory program under the California Environmental Quality Act (CEQA), in accordance with section 21080.5 of the Public Resources Code. A Basin Plan amendment approved under a certified regulatory program is not final until the State Water Board files, with the Secretary of the Natural Resources Agency, a Notice of Decision and either a written No Effect Determination from the California Department of Fish and Wildlife (CDFW) or a copy of its Environmental Filing Fee Cash Receipt.

Attached are copies of the Notice of Decision; a copy of the Environmental Filing Fee Cash Receipt from CDFW; Santa Ana Water Board Resolution No. R8-2017-0014;

State Water Board Resolution No. 2018-00041, OAL's Notice of Approval, and the Environmental Checklist for the Basin Plan amendment.

If you have any questions regarding this submittal, please contact Terri Reeder, Supervisor of the Coastal Waters Planning and CEQA Section, at (951) 906-1899 or via e-mail Terri.Reeder@waterboards.ca.gov.

Attachments:

1. Notice of Decision
2. CDFW CEQA Environmental Filing Fee Cash Receipt
3. Resolution No. R8-2017-0014
4. State Water Board Resolution No. 2018-0041
5. OAL Notice of Approval
6. Environmental Checklist

cc: w/attachments:

California Natural Resources Agency – secretary@resources.ca.gov
California Natural Resources Agency – Deanna Ou
Deanna.Ou@resources.ca.gov
State Water Resources Control Board, Regional Board Liaison – Courtney Tyler
Courtney.Tyler@waterboards.ca.gov
State Water Resources Control Board, Office of Chief Counsel – Teresita Sablan
Teresita.Sablan@waterboards.ca.gov
State Clearing House – state.clearinghouse@opr.ca.gov

cc: w/o attachments:

State Water Resources Control Board, State Water Board Executive Director -- Eileen Sobeck
Eileen.Sobeck@waterboards.ca.gov
State Water Resources Control Board, Division of Water Quality Deputy Director – Karen Mogus -- Karen.Mogus@waterboards.ca.gov
State Water Resources Control Board, Water Quality Standards and Assessment Section Chief .....– Rebeca Fitzgerald – Rebeca.Fitzgerald@waterboards.ca.gov
State Water Resources Control Board, Inland Planning Standards & Implementation Section Chief – Zane Paulson – Zane.Paulson@waterboards.ca.gov

ATTACHMENT 1 – NOTICE OF DECISION

CALIFORNIA
Water Boards

GAVIN NEWSOM
GOVERNOR

JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

Notice of Decision

TO: Wade Crowfoot
Secretary of the California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
secretary@resources.ca.gov

FROM: Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

DATE: May 30, 2019

SUBJECT: Filing and Notice of Decision in compliance with section 21080.5 of the Public Resources Code

PROJECT TITLE: AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE SANTA ANA REGION TO INCORPORATE TOTAL MAXIMUM DAILY LOADS (TMDLS) FOR SELENIUM IN FRESHWATER, NEWPORT BAY WATERSHED, ORANGE COUNTY, CALIFORNIA

LOCATION: Newport Bay Watershed freshwater tributaries: Santa Ana-Delhi Channel, San Diego Creek, and Big Canyon Wash subwatersheds

DESCRIPTION: On August 4, 2017, the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) adopted Resolution No. R8-2017-0014, approving amendments to the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) incorporating TMDLs for Selenium in Freshwater for the Newport Bay Watershed. The amendment to the Basin Plan was approved by the State Water Resources Control Board (State Water Board) on September 20, 2018, and the Office of Administrative Law (OAL) on April 19, 2019.

The Santa Ana Water Board has made the following determinations regarding the above referenced project:

1. The project will not have a significant effect on the environment.
2. A substitute environmental document (SED) was prepared for the project. The final SED with comments and responses and a record of approval is available to the public at https://www.waterboards.ca.gov/santaana/water_issues/programs/tmdl/Se_tmdl.html
3. Mitigation measures were not made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan was not adopted for the project.
5. A statement of Overriding Considerations was not adopted for the project.
6. Findings were made pursuant to the provisions of CEQA.

CONTACT
PERSON: Terri Reeder at (951) 906-1899

This is to advise that the Santa Ana Water Board has made the following determination regarding the project described.

The project has been: ___X___ Approved
_____ Disapproved

Hope A. Smythe
Executive Officer
Santa Ana Regional Water Quality Control Board

5/30/19
Date

ATTACHMENT 2 – CDFW CEQA FILING FEE RECEIPT

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
ENVIRONMENTAL FILING FEE CASH RECEIPT
DFG 753.5a (01/2002)

Receipt No: **4086**

Date: 1/3/2019

Lead Agency: State Water Resources Control Board
State Agency of Filing: Department of Fish and Wildlife
Project Title: Sabtaaba River Basin to incorporate tot

Invoice Date:
Document No: 420-1700354
Deposit No: 2379000948

State Water Resources Control Board
PO Box 100
Sacramento, CA 95812

Project Applicant Name
Project Applicant Address:
City, State, Zip

Project Applicant (check appropriate box) Local Public Agency ☐ School District ☐ Other Special District ☐
State Agency ☑ Private Entity ☐

APPLICABLE FEES:

Environmental Impact Report:		$0.00
Negative Declaration:		$0.00
Application Fee Water Diversion (State Water Resources Control Board Only):		$0.00
Projects Subject to Certified Regulatory Programs		$1,077.00
Lien fee:	$0.00	
Penalty:	$0.00	
County Administrative Fee:		$0.00
☐ Project exempt from fees		$0.00
Total Received		**$1,077.00**

Person receiving payment: Valeriya Kryuchkov, Accounting Officer

2 copies - Project Applicant, DFG/ASB

Governor's Office of Planning & Research
May 31, 2019
STATE CLEARINGHOUSE

ATTACHMENT 3 – RESOLUTION NO. R8-2017-0014

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION
RESOLUTION NO. R8-2017-0014

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, the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board) finds that:

1. An updated Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) was adopted by the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) on March 11, 1994, approved by the State Water Resources Control Board (State Water Board) on July 21, 1994, and approved by the Office of Administrative Law (OAL) 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. The Basin Plan establishes water quality standards for each water body within the Santa Ana Region. Water quality standards include beneficial uses, narrative and numeric water quality objectives, and an antidegradation policy.

   The Basin Plan specifies the following narrative water quality objectives pertaining to toxic substances applicable to inland surface waters and enclosed bays and estuaries: 1) toxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health; and, 2) the concentrations of toxic pollutants in the water column, sediments or biota shall not adversely affect beneficial uses.

3. On May 18, 2000, the United States Environmental Protection Agency (U.S. EPA) promulgated the California Toxics Rule (CTR). The CTR established numeric criteria for priority toxic pollutants for the State of California, including a chronic exposure criterion of 5 µg/L for selenium in freshwater. The CTR criteria serve as enforceable numeric water quality objectives for the State of California.

4. Section 303(d) of the Clean Water Act (CWA) requires states to identify the waters within its boundaries that do not meet water quality standards. San Diego Creek and Newport Bay are included on the current CWA section 303(d) list due to evidence that the concentrations of toxic substances, including metals and pesticides, were adversely affecting beneficial uses in these water bodies. Selenium concentrations in a number of freshwater streams within the Newport

Bay Watershed, including San Diego Creek, Peters Canyon Wash, Big Canyon Wash, and the Santa Ana Delhi Channel, exceed the CTR criterion for chronic exposure.

5. States are required to establish a Total Maximum Daily Load (TMDL) for each pollutant associated with an impaired waterbody on the CWA section 303(d) list. The elements of a TMDL are described in title 40 Code of Federal Regulations, parts 130.2 and 130.7 and sections 303(d)(1)(C) and (D) of the CWA, as well as in U.S. EPA guidance documents (e.g., Report No. EPA/440/4-91/001). A TMDL is defined as the sum of the individual waste load allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources and natural background. (40 CFR § 130.2.) TMDLs must be set at levels necessary to attain and maintain the applicable narrative and numeric water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. (40 CFR §130.7(c)(1).) Title 40 Code of Federal Regulations part 130.7 also dictates that TMDLs shall take into account critical conditions for stream flow, loading and water quality parameters. TMDLs include one or more numeric targets, including numerical interpretation(s) of narrative water quality objectives that, if achieved, represent attainment of those objectives. TMDLs must account for all sources of the relevant pollutants, irrespective of whether the pollutant is discharged to impaired or unimpaired upstream reaches. A TMDL can also be established for a pollutant/waterbody that does not meet water quality standards even if that pollutant/waterbody combination is not yet included on the CWA section 303(d) list.

6. On June 14, 2002, in response to a consent decree, U.S. EPA promulgated TMDLs for toxic pollutants, including selenium, for San Diego Creek and Newport Bay (U.S. EPA Toxics TMDLs). The U.S. EPA Toxics TMDLs did not include an implementation plan, since such a plan is within the purview of the State.

7. Building upon the data and knowledge developed since the promulgation of the U.S. EPA Toxics TMDLs, Santa Ana Water Board staff initiated development of revised TMDLs, to include an implementation plan and compliance schedules. This included work to review the U.S. EPA Toxics TMDLs and to develop revised selenium TMDLs as necessary, together with an appropriate implementation plan.

8. As reflected in the administrative record of this matter, the proposed Basin Plan amendment to incorporate selenium TMDLs, shown in **Attachment A** to this Resolution (proposed Selenium TMDLs), is the result of an extensive public participation process. The development of the proposed Selenium TMDLs, issues and challenges encountered, and the elements of the proposed Selenium TMDLs have been discussed at numerous Santa Ana Water Board public meetings as well as meetings of the Newport Bay Watershed Executive

Committee. In addition, three special workshops were held on January 15, January 30, and February 10, 2014, to address scientific, technical and legal issues that required resolution in order to move forward with the Selenium TMDLs. Participants in those workshops included representatives from local agencies, state and federal agencies, environmental groups, consultants, and other interested members of the public.

9. Santa Ana Water Board staff has also worked with stakeholders, regulators and the scientific community to develop preliminary recommendations for site-specific objectives (SSOs) for selenium in freshwater within the Newport Bay Watershed. These recommendations will be refined and a separate staff report and associated documentation will be prepared to support a proposed future Basin Plan amendment establishing selenium SSOs for freshwater in the Newport Bay Watershed.

10. The State is required to incorporate TMDLs into the Basin Plan. (40 CFR §§ 130.6(c)(1), 130.7). Under the California Water Code, incorporation of TMDLs into the Basin Plan requires the inclusion of an implementation plan. Attachment A to this resolution contains the proposed Selenium TMDLs that, if approved, will be incorporated into the Basin Plan.

11. Pursuant to Health and Safety Code section 57004, all California Environmental Protection Agency (CalEPA) organizations are required to submit all proposed rules that have a scientific basis or components for external independent scientific peer review. Basin Plan amendments, such as the proposed Selenium TMDLs, are subject to this requirement.

12. Peer review of the scientific elements of the proposed Selenium TMDLs was completed through an Interagency Agreement between CalEPA and the University of California. This peer review was conducted in accordance with CalEPA guidelines. The peer reviewers' comments and Santa Ana Water Board staffs' responses are included as **Appendix B1** to the staff report. The staff report describes recommended changes to the proposed Selenium TMDLs in response to the peer review comments.

13. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Santa Ana Water Board's basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) requirements for preparing a "substitute environmental document" documents. (Cal. Code Regs., tit. 14, § 15251, subd. (g); Cal. Code Regs., tit. 23 § 3782.) The Santa Ana Water Board has prepared a Substitute Environmental Document (SED) and the Environmental Checklist and Analysis: Substitute Environmental Document for a Proposed Basin Plan Amendment to Incorporate Total Maximum Daily Loads for Selenium in Freshwater, Newport Bay Watershed, Orange County, California (Selenium TMDLs SED). The

Selenium TMDLs SED contains an environmental checklist and significant analysis and findings related to impacts and mitigation measures associated with the proposed Selenium TMDLs. The Selenium TMDLs SED can be found in **Appendix U** to the staff report.

14. A CEQA scoping meeting was held on November 20, 2008 to provide interested parties the opportunity to comment on the appropriate scope and content of the Selenium TMDLs SED. A notice of the CEQA Scoping meeting was sent to potentially interested and affected parties on October 20, 2008. Comments received at the scoping meeting where appropriate, were addressed in the staff report, SED and proposed Selenium TMDLs.

15. In preparing the Selenium TMDLs SED, the Santa Ana Water Board has considered the requirements of Public Resources section 21159 and section 15187 of title 14 of the California Code of Regulations, and intends this document to serve as a tier one environmental review. This analysis is not intended to be an exhaustive analysis of every conceivable impact, but an analysis of the reasonably foreseeable consequences of the adoption of this regulation from a programmatic perspective. Project level analysis, as necessary, will need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2.

16. The Selenium TMDLs SED concludes that there will be no or potentially significant impacts associated with the reasonably foreseeable implementation of the proposed Selenium TMDLs. Accordingly, no mitigation measures or alternative to the project are proposed.

17. The public has had a reasonable opportunity to participate in the review of proposed Selenium TMDLs and the associated Selenium TMDLs SED. Drafts of both documents were released for public comment on March 15, 2017 and were posted on the Santa Ana Water Board's website. A Notice of Public Hearing was published and circulated a minimum of 45 days preceding the Santa Ana Water Board's action. Santa Ana Water Board staff responded to written and oral comments from the public. Responses to comments received from the public can be found in **Appendix B2** to the staff report. The Santa Ana Water Board held a public hearing on August 4, 2017 to consider adoption of the proposed Selenium TMDLs. The Santa Ana Water Board considered all testimony offered at the hearing and the written comments submitted by the peer reviewers, interested parties and public agencies before taking final action.

18. Analysis of the proposed Selenium TMDLs was conducted to determine consistency with the antidegradation policy (SWRCB Resolution No. 68-16 and 40 CFR § 131.12). The proposed Selenium TMDLs do not allow for degradation of water quality, but requires restoration of water quality and attainment of water quality standards.

19. The proposed Selenium TMDLs meet the necessity standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b). The proposed amendments are required to fulfill the Santa Ana Water Board's obligation pursuant to the California Water Code and the federal Clean Water Act to exercise its full power and jurisdiction to protect the quality of waters of the state, including the duties to establish TMDLs for impaired waters and to identify the program of implementation, including monitoring, whereby these TMDLs, and thus water quality standards, will be achieved.

20. The proposed Selenium TMDLs must be submitted for review and approval by the State Water Board, Office of Administrative Law (OAL) and U.S. EPA. The proposed Selenium TMDLs will become effective upon approval by U.S. EPA.

21. Once adopted and effective, the proposed Selenium TMDLs will replace the selenium portions of the U.S. EPA's Toxics TMDLs in their entirety.

THEREFORE BE IT RESOLVED THAT:

1. The Santa Ana Water Board hereby approves and adopts the CEQA substitute environmental document, identified as the Selenium TMDLs SED above.

2. The Santa Ana Water Board, after considering the entire record, including oral testimony at the public hearing, hereby adopts the proposed Selenium TMDLs, as identified above and as set forth in the **Attachment A** to the Resolution for inclusion into the Santa Ana Water Board's Basin Plan.

3. The Executive Officer of the Santa Ana Water Board is directed to forward copies of the proposed Selenium TMDLs to the State Water Board in accordance with the requirements of section 13245 of the California Water Code.

4. The Santa Ana Water Board requests that the State Water Board approves the proposed Selenium TMDLs in accordance with sections 13245 and 13246 of the California Water Code, and, thereafter, forwards the amendment to OAL and U.S. EPA for approval.

5. If, during the State Water Board's approval process, Santa Ana Water Board staff, the State Water Board, or OAL determines that minor, non-substantive corrections to the language of the proposed Selenium TMDLs are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Santa Ana Water Board of any such changes.

6. The Executive Officer is directed, at the time of filing and posting the Notice of Decision, to take steps to promptly ensure payment of the applicable fee to the

Department of Fish and Wildlife for its review of the Selenium TMDLs SED or to file a Certificate of Fee Exemption, whichever is appropriate.

I, Hope A. Smythe, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a resolution adopted by the Santa Ana Regional Water Quality Control Board on August 4, 2017.

Hope A. Smythe
Executive Officer

ATTACHMENT 4 – SWRCB RESOLUTION NO. 2018-0041

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

Jeanine Townsend
Clerk to the Board

ATTACHMENT 5 – OAL NOTICE OF APPROVAL

State of California
Office of Administrative Law

In re:
State Water Resources Control Board

Regulatory Action:

Title 23, California Code of Regulations

Adopt sections: 3979.11
Amend sections:
Repeal sections:

NOTICE OF APPROVAL OF REGULATORY ACTION

Government Code Section 11353

OAL Matter Number: 2019-0307-05

OAL Matter Type: Regular (S)

This action, submitted pursuant to Government Code section 11353, amends the Water Quality Control Plan for the Santa Ana River Basin. On August 2, 2017, the California Regional Water Quality Control Board, Santa Ana Region, adopted Resolution No. R8-2017-0041 to incorporate Total Maximum Daily Loads for selenium in freshwater for Newport Bay Watershed. The State Water Resources Control Board approved the amendment under Resolution No. 2018-0014 on September 20, 2018.

OAL approves this regulatory action pursuant to section 11353 of the Government Code.

Date: April 19, 2019

Amy R. Gowan
Attorney

For: Holly Pearson
Acting Director

Original: Eileen Sobeck, Executive Director
Copy: Terri S. Reeder

11353 REGULAR

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2019-0307-05S	

For use by Office of Administrative Law (OAL) only

2019 MAR -7 P 2:40

OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

APR 19 2019

1:40 pm

NOTICE | REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Water Resources Control Board

AGENCY FILE NUMBER (If any)
2018-0041

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
☐ Notice re Proposed Regulatory Action ☐ Other			

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn		

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Santa Ana RWQCB BPA, Selenium TMDLs, Newport Bay Watershed

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	AMEND	REPEAL
TITLE(S) 23	3979.11		

3. TYPE OF FILING

- ☐ Regular Rulemaking (Gov. Code §11346)
- ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- ☐ Emergency (Gov. Code, §11346.1(b))
- ☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- ☐ Emergency Readopt (Gov. Code, §11346.1(h))
- ☐ File & Print
- ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- ☐ Print Only
- ☒ Other (Specify) Gov't Code 11353

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- ☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
- ☐ Effective on filing with Secretary of State
- ☐ §100 Changes Without Regulatory Effect
- ☒ Effective other (Specify) Upon Approval (Gov't Code 11353)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- ☐ Department of Finance (Form STD. 399) (SAM §6660)
- ☐ Fair Political Practices Commission
- ☐ State Fire Marshal
- ☐ Other (Specify)

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Terri S. Reeder	(951) 906-1899		terri.reeder@waterboards.ca.gov

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE: Hope Smythe

DATE: 02/20/2019

TYPED NAME AND TITLE OF SIGNATORY
Hope A. Smythe, Executive Officer

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 19 2019

Office of Administrative Law

ATTACHMENT 6 – CEQA ENVIRONMENTAL CHECKLIST

4.2.2 Environmental Checklist

ISSUES

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS -- Would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☒	☐
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☒
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☒	☐
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☒	☐
II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☒
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	☐	☐	☐	☒
III. AIR QUALITY -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☒	☐
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☒	☐
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	☐	☒	☐	☐
d) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☒	☐
e) Create objectionable odors affecting a substantial number of people?	☐	☒	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
IV. BIOLOGICAL RESOURCES -- Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?	☐	☒	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?	☐	☒	☐	☐
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☒	☐	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☒	☐	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☒
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☒	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
V. CULTURAL RESOURCES -- Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	☐	☐	☒	☐
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	☐	☐	☒	☐
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☐	☒
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☒
VI. GEOLOGY AND SOILS -- Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☒	☐
ii) Strong seismic ground shaking?	☐	☐	☒	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☒	☐
iv) Landslides?	☐	☐	☒	☐
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☒	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☒	☐
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☒	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	☐	☐	☐	☒
VII. GREENHOUSE GAS EMISSIONS. Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☒	☐	☐
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☐	☒	☐	☐
VIII. HAZARDS AND HAZARDOUS MATERIALS -- Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☒	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☒	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☒	☐	☐
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☒
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☒	☐	☐
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	☒
IX. HYDROLOGY AND WATER QUALITY -- Would the project:				
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☒	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☒
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	☐	☐	☒	☐
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	☐	☐	☒	☐
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☒	☐
f) Otherwise substantially degrade water quality?	☐	☒	☐	☐
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☒
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	☐	☐	☒	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☒
j) Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☒
X. LAND USE AND PLANNING - Would the project:				
a) Physically divide an established community?	☐	☐	☐	☒
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☒	☐
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☒	☐
XI. MINERAL RESOURCES -- Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☒
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☒
XII. NOISE -- Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☒	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☐	☒	☐	☐
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☒	☐
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☒	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒
XIII. POPULATION AND HOUSING -- Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☒
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XIV. PUBLIC SERVICES				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?	☐	☐	☐	☒
Police protection?	☐	☐	☐	☒
Schools?	☐	☐	☐	☒
Parks?	☐	☐	☐	☒
Other public facilities?	☐	☐	☐	☒
XV. RECREATION				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☒
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	☐	☒

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XVI. TRANSPORTATION/TRAFFIC -- Would the project:				
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	☐	☐	☒	☐
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	☐	☐	☒	☐
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☒
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☒
e) Result in inadequate emergency access?	☐	☐	☒	☐
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance of such facilities?	☐	☐	☐	☒

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XVII. UTILITIES AND SERVICE SYSTEMS -- Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☒
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☒	☐
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☒	☐	☐
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☒	☐	☐
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☒	☐
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☒	☐	☐
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☒
XVIII. MANDATORY FINDINGS OF SIGNIFICANCE				

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☒	☐	☐
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☒	☐
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☒	☐