

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF WATER QUALITY
SEPTEMBER 16, 2008**

ITEM 9

SUBJECT

CONSIDERATION OF A RESOLUTION TO ADOPT A WATER QUALITY CONTROL PLAN FOR ENCLOSED BAYS AND ESTUARIES – PART 1 SEDIMENT QUALITY

DISCUSSION

This Item was considered and adopted by the State Water Resources Control Board on February 19, 2008. However staff failed to publish the required newspaper notification prior to the November 2007 hearing. As a result, the State Water Board will continue the previous public hearing and consider re-adoption of the draft Water Quality Control Plan.

No substantive changes have been made to the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality. For those parties and organizations that submitted comments previously, it is not necessary to resubmit those comments as they are included in the record and the responses are provided in the staff report.

The history and background information is provided in the draft resolution attached. The draft Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 and Staff Report are available at:

http://www.swrcb.ca.gov/water_issues/programs/bptcp/sediment.shtml

POLICY ISSUE

Should the State Water Board:

1. [Approve the Substitute Environmental Documentation?](#)
2. [Adopt the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality?](#)
3. Direct staff to submit the administrative record to Office of Administrative Law (OAL)?
4. If, during the OAL approval process, OAL determines that minor, non-substantive modifications to the language of the draft plan are needed for clarity or consistency, direct the Executive Director or designee to make such changes and inform the State Water Board of any such changes?
5. Direct staff to initiate appropriate proceedings to amend the section 303(d) listing policy by February 2009?

FISCAL IMPACT

North Coast, San Francisco Bay, Central Coast, Los Angeles, Central Valley, Santa Ana, and San Diego Regional Water Boards and State Water Board staff work associated with the assessment and regulation of sediment will be addressed with existing and future budgeted resources.

REGIONAL WATER BOARD IMPACT

Requires North Coast, San Francisco Bay, Central Coast, Los Angeles, Central Valley, Santa Ana, and San Diego Regional Water Boards staff to assess and regulate sediment quality using MLOE. In those regions where MLOE is not currently being applied, greater costs will be incurred.

STAFF RECOMMENDATION

That the State Water Board:

1. Approves and adopts the CEQA Substitute Environmental Documentation, including all findings contained in the documentation, which was prepared in accordance with Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187, and directs the Executive Director or designee to sign the environmental checklist;
2. After considering the entire record, including oral testimony at the public hearing, hereby adopts the proposed Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality;
3. Directs staff to submit the administrative record to OAL for review and approval;
4. If, during the OAL approval process, OAL determines that minor, non-substantive modifications to the language of the draft plan are needed for clarity or consistency, directs the Executive Director or designee to make such changes and inform the State Water Board of any such changes; and
5. Directs staff to initiate appropriate proceedings to amend the section 303(d) listing policy by February 2009.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2008-

ADOPTION OF A WATER QUALITY CONTROL PLAN FOR ENCLOSED BAYS AND ESTUARIES – PART 1 SEDIMENT QUALITY

WHEREAS:

1. California Water Code section 13393 requires the State Water Resources Control Board (State Water Board) to develop sediment quality objectives (SQOs) for toxic pollutants for California's enclosed bays and estuaries.
2. In 1991, the State Water Board adopted a workplan for the development of SQOs for California's enclosed bays and estuaries (1991 Workplan).
3. Due to funding constraints, the State Water Board did not implement the 1991 Workplan; consequently, litigation by environmental interests against the State Water Board ensued.
4. In August 2001, the Sacramento County Superior Court ruled against the state and ordered the State Water Board to initiate development of SQOs. On May 21, 2003, the State Water Board adopted a revised workplan.
5. Based upon the scope of work in the revised workplan, staff developed narrative SQOs to protect benthic communities, which utilize an approach based upon multiple lines of evidence.
6. Narrative SQOs have also been developed to protect human health from exposure to contaminants in seafood.
7. Staff also developed an implementation program for the narrative SQOs based upon input from the Scientific Steering Committee, Sediment Quality Advisory Committee, staff of the State Water Board and the Regional Water Quality Control Boards (Regional Water Boards), and staff from other state and federal agencies. The work that has been completed, to date, is Phase 1 of the SQOs program.
8. The State Water Board recognizes this effort is an iterative process. Staff additionally have initiated a second phase of the SQOs program (Phase 2), which includes extensive sediment sampling in the Delta; further development of the estuarine chemistry, sediment toxicity, and benthic community indicators; and completion of a more prescriptive framework to address human health and exposure to contaminants in seafood. The tools, indicators, and framework developed under Phase 2 will be adopted into the Draft Staff Report and Substitute Environmental Document and the Draft Water Quality Control Plan for Enclosed Bays and Estuaries (draft plan) in 2010. Phase 3 is proposed as the development, within available resources, of a framework to protect fish and/or wildlife from the

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effects of pollutants in sediment. During Phases 2 and 3, staff would continue to evaluate the tools developed during the initial phase and the implementation language. As the Water Boards experience grows, the draft plan would be updated and amended as necessary to more effectively interpret and implement the narrative objectives.

9. In the process of developing SQOs, the State Water Board has identified the need to address statewide consistency in the regulation of dredging activities under the water quality certification program. While this issue is outside the scope of this draft plan, the State Water Board will consider initiating policy development in the future to address regulation of dredging activities under the water quality certification program.
10. The State Water Board's Clean Water Act section 303(d) listing policy was adopted prior to the development of SQOs and without the benefit of the scientific evidence supporting their development. The State Water Board recognizes the need to ensure that the listing policy and this draft plan are consistent. The State Water Board will, therefore, consider amending the 303(d) listing policy in the future to ensure consistency with this draft plan.
11. Staff has responded to significant verbal and written comments received from the public and made minor revisions to the draft plan in response to the comments.
12. In adopting this draft plan, the State Water Board has considered the requirements in Water Code section 13393. In particular, the SQOs are based on scientific information, including chemical monitoring, bioassays, and established modeling procedures; and the objectives provide adequate protection for the most sensitive aquatic organisms. In addition, SQOs for the protection of human health from contaminants in seafood are based on a health risk assessment.
13. As required by Water Code section 13393, the State Water Board has followed the procedures for adoption of water quality control plans in Water Code sections 13240 through 13247, in adopting this draft plan. In addition to the procedural requirements, the State Water Board has considered the substantive requirements in Water Code sections 13241 and 13242. The State Water Board has considered the past, present, and probable future beneficial uses of estuarine and bay waters that can be impacted by toxic pollutants in sediments; environmental characteristics of these waters; water quality conditions that can reasonably be achieved through the control of all factors affecting sediment quality; and economic considerations. Adoption of this draft plan is unlikely to affect housing needs or the development or use of recycled water. Further, the State Water Board has developed an implementation program to achieve the SQOs, which describes actions to be taken to achieve the objectives and monitoring to determine compliance with the objectives. Time schedules to achieve the objectives will be developed on a case-by-case basis by the appropriate Regional Water Board.

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14. This draft plan is consistent with the state and federal antidegradation policies (State Water Board [Resolution No. 68-16](#) and 40 C.F.R. Section 131.12, respectively). No lowering of water quality is anticipated to result from adoption of the draft plan. The draft plan contains scientifically-defensible SQOs for bays and estuaries, which can be consistently applied statewide to assess sediment quality, regulate waste discharges that can impact sediment quality, and provide the basis for appropriate remediation activities, where necessary. Adoption of the draft plan should result in improved sediment quality.
15. The Resources Agency has approved the State and Regional Water Boards' planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) requirements for preparing environmental documents. State Water Board staff has prepared a "substitute environmental document" for this project that contains the required environmental documentation under the State Water Board's CEQA regulations (California Code of Regulations, Title 23, Section 3777). The substitute environmental documents include the "Draft Staff Report – Water Quality Control Plan for Enclosed Bays and Estuaries, Part 1. Sediment Quality," the environmental checklist, the comments and responses to comments, the draft plan itself, and this resolution. The project is the adoption of SQOs and an implementation program, as Part 1 of the Water Quality Control Plan for Enclosed Bays and Estuaries.
16. CEQA scoping hearings were conducted on October 23, 2006 in San Diego, California, on November 8, 2006 in Oakland, California, and on November 28, 2006 in Rancho Cordova, California.
17. On September 26, 2007, staff circulated the draft plan – Part 1 Sediment Quality for public comment.
18. On November 19, 2007, the State Water Board conducted a public hearing on the draft plan and supporting Draft Staff Report and Substitute Environmental Document. Written comments were received through November 30, 2007.
19. The State Water Board adopted the Plan on February 19, 2008, and submitted it to the Office of Administrative Law (OAL) on February 29, 2008. Review by OAL revealed that the statutorily-required newspaper notification of the November 2007 hearing had not occurred. The State Water Board has, therefore, noticed and conducted a new public hearing for the draft plan on September 16, 2008.
20. In preparing the substitute environmental documents, the State Water Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187, and intends these documents to serve as a Tier 1 environmental review. The State Water Board has considered the reasonably foreseeable consequences of adoption of the draft plan; however, project level impacts may need to be considered in any subsequent environmental analysis performed by lead agencies, pursuant to Public Resources Code section 21159.1.

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21. Consistent with CEQA, the substitute environmental documents do not engage in speculation or conjecture but, rather, analyze the reasonably foreseeable environmental impacts related to methods of compliance with the draft plan, reasonably foreseeable mitigation measures to reduce those impacts, and reasonably feasible alternatives means of compliance that would avoid or reduce the identified impacts.
22. The draft plan could have a potentially significant adverse effect on the environment. However, there are feasible alternatives or feasible mitigation measures that, if employed, would reduce the potentially significant adverse impacts identified in the substitute environmental documents to less than significant levels. These alternatives or mitigation measures are within the responsibility and jurisdiction of other public agencies. When the SQOs are implemented on a project-specific basis, the agencies responsible for the project can and should incorporate the alternatives or mitigation measures into any subsequent project or project approvals.
23. From a program-level perspective, incorporation of the mitigation measures described in the substitute environmental documents will foreseeably reduce impacts to less than significant levels.
24. The substitute environmental documents for this draft plan identify broad mitigation approaches that should be considered at the project level.
25. Pursuant to Health and Safety Code section 57400, the draft Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality has undergone external peer review through an interagency agreement with the University of California.
26. This draft plan must be submitted for review and approval to OAL and the United States Environmental Protection Agency (U.S. EPA). The draft plan will become effective upon approval by OAL and U.S. EPA.
27. If, during the OAL approval process, OAL determines that minor, non-substantive modifications to the language of the draft plan are needed for clarity or consistency, the Executive Director or designee may make such changes consistent with the State Water Board's intent in adopting this draft plan, and shall inform the State Water Board of any such changes.

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THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. [Approves and adopts the CEQA substitute environmental documentation](#), including all findings contained in the documentation, which was prepared in accordance with Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187, and directs the Executive Director or designee to sign the environmental checklist;
2. After considering the entire record, including oral testimony at the public hearing, hereby adopts the proposed [Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality](#);
3. Directs staff to submit the administrative record to OAL for review and approval;
4. If, during the OAL approval process, OAL determines that minor, non-substantive modifications to the language of the draft plan are needed for clarity or consistency, directs the Executive Director or designee to make such changes and inform the State Water Board of any such changes; and
5. Directs staff to initiate appropriate proceedings to amend the section 303(d) listing policy by February 2009.

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 16, 2008.

Jeanine Townsend
Clerk to the Board