

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Jan O'Hara)
MEETING DATE: July 14, 2010

ITEM: 6

SUBJECT: **Proposed Amendment to the Water Quality Control Plan (Basin Plan) to Add Surface Water Bodies and Designate Beneficial Uses – Hearing to Consider Adoption of the Proposed Basin Plan Amendment**

CHRONOLOGY: May 2010 - Testimony Hearing

DISCUSSION: This is the second hearing on an amendment to the Basin Plan to add surface water bodies and to designate beneficial uses. At this hearing the Board will be asked to consider adopting the Tentative Resolution (Appendix A) amending the Basin Plan. At the hearing, we will also discuss revisions to the proposed amendment (Appendix B) that were made in response to stakeholder comments and comments raised by Board members at the May 2010 testimony hearing. Additional documentation in this package includes our revised Staff Report (Appendix C), Response to Comments (Appendix D), copies of all written comments received during the public comment period (Appendix E), and the transcript of the May testimony hearing (Appendix F).

The objective of this Basin Plan amendment is to provide clarity and transparency to the public about how we are protecting water quality in surface waters in the Region, supporting the federal Clean Water Act's (CWA) mandate of maintaining high quality waters that are fishable and swimmable.

The proposed Basin Plan amendment would:

- Augment Table 2-1, *Existing and Potential Beneficial Uses of Water Bodies in the San Francisco Bay Region*, with approximately 280 additional surface water bodies.
- Designate beneficial uses for the newly added surface water bodies and for the approximately 100 water bodies in Table 2-1 for which beneficial uses have not yet been explicitly designated.
- Amend Chapter 2 text to support the water body and beneficial use additions and amend the maps in Figures 2-3 to 2-9b.

Since the May 2010 testimony hearing, we have considered and responded to the sixteen comment letters we received and to issues raised by Board members during the hearing. Based on information provided by commenters, we made several changes to the proposed amendment, such as:

- Removing the cold freshwater beneficial use from numerous creeks.
- Clarifying the definition of E* and adding the E* designation for body contact recreation to several additional lakes and reservoirs. E* is used to show that public access to the reservoir is limited or prohibited to protect drinking water quality and public health.

- Removing Mallard Reservoir in Contra Costa County from the Basin Plan, based on information that it is not a water of the United States and is a totally man-made facility designed to hold water prior to treatment for use as drinking water supply. The reservoir receives no runoff and does not discharge to other surface water bodies.
- Correcting the maps and Table 2-1 based on comments that clarify locations and names of water bodies.

We did not make changes in response to several stakeholders' concerns about proposed designations of "presumptive uses," particularly the body-contact recreation beneficial use. "Presumptive uses" are associated with what is more commonly known as the "fishable, swimmable waters goal" of the CWA and include warm freshwater habitat, wildlife habitat, body-contact recreation, and noncontact recreation. The concerns included designating the "presumptive uses" consistently throughout the Region for all surface waters, and designating beneficial uses for entire water bodies, rather than identifying uses on a reach by reach basis, or on a seasonal basis. Designation of these presumptive uses is required unless it can be demonstrated that they are not warranted. The U.S. EPA has a formal procedure for doing this that requires a detailed assessment of existing uses as well as information about whether the uses are attainable. We do not have adequate information and the commenters did not submit detailed information with which to conduct these use attainability assessments at this time. However, the designation could be changed in the future based on use assessments.

A number of municipal stormwater permittees also expressed concern about the potential costs of taking actions to comply with water quality objectives protective of the "presumptive use" of body-contact recreation. However, this beneficial use implicitly applies to water bodies whether or not they are designated in the Basin Plan because of the presumptive use premise or the tributary rule, and the associated water quality objectives already apply. The proposed amendment provides transparency about what beneficial uses apply and clarifies how we apply the tributary rule (which states that the beneficial uses of a water body apply to its tributaries) for determining beneficial uses. Thus, any vulnerability to compliance issues exists whether or not these uses are identified in the Basin Plan.

**RECOMMEN-
DATION:**

Adopt the proposed Basin Plan amendment

APPENDICES:

- A. Tentative Resolution with Exhibit A, Proposed Basin Plan Amendment
- B. Proposed Basin Plan Amendment Showing Changes
- C. Staff Report (except Attachment A – Documentation Tables*)
- D. Response to Comments
- E. Comment Letters*
- F. Transcript of the May 12, 2010, Testimony Hearing*

* Available at http://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2010/July/07-14-10_Board_Meeting_Agenda.pdf