

Appendix A

Tentative Resolution and Proposed Basin Plan Amendment

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

TENTATIVE RESOLUTION R2-2011-00xx

**AMENDING THE WATER QUALITY CONTROL PLAN
FOR THE SAN FRANCISCO BAY BASIN
TO REFINE THE BENEFICIAL USES OF HAYWARD MARSH**

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

1. The Water Quality Control Plan for the San Francisco Bay Region (Basin Plan) is the Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Water Board and approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL), and the United States Environmental Protection Agency (U.S. EPA), where required.
2. The Basin Plan may be amended in accordance with California Water Code (CWC) § 13240, et seq.
3. The proposed Basin Plan amendment, including specifications on its physical placement in the Basin Plan, is set forth in Exhibit A hereto.
4. The Basin Plan currently contains Table 2-4, which lists wetland areas and their designated beneficial uses. Table 2-4 assigns the beneficial uses estuarine habitat, water contact recreation (REC-1), noncontact recreation (REC-2), fish spawning, and wildlife habitat to wetlands in the Hayward area.
5. Hayward Marsh is a distinct portion of the wetlands identified in Table 2-4 as Hayward area wetlands.
6. The proposed amendment separates Hayward Marsh from the rest of the Hayward area wetlands in Table 2-4 and refines the beneficial uses specific to Hayward Marsh by removing the REC-1 beneficial use currently attributed to it and adding the existing preservation of rare and endangered species (RARE) beneficial use, while sustaining the other existing beneficial uses designated for the Hayward area wetlands, including REC-2. To provide more clarity, Table 2-4 was modified to identify some of the remaining Hayward area wetlands.
7. Consistent with the removal of REC-1 uses for Hayward Marsh, the proposed amendment also adds implementation language to Chapter 4 to clarify that NPDES permits for Hayward Marsh are not required to contain effluent limitations from Table 4-2A. This is needed because Table 4-2A contains enterococcus limitations for discharges into water bodies with REC-1 uses and currently states that all NPDES permits for discharges that contain sanitary waste shall include the applicable effluent limitations from Table 4-2A.
8. In addition, the proposed amendment includes non-regulatory corrections of typographical errors made during adoption of the 1995 Basin Plan. At that time, SALT was incorrectly identified as a beneficial use, instead of a wetland type, in Table 2-4.

9. A use attainability analysis was conducted in accordance with Clean Water Act regulations at 40 CFR 131.10(g) to demonstrate that achieving the REC-1 use is not feasible based on the factors set forth in those regulations. Based on the use attainability analysis, two of those factors preclude attainment of the REC-1 beneficial use in Hayward Marsh:
 - a. Naturally occurring pollutant concentrations prevent the attainment of the REC-1 use, as large numbers of waterfowl at Hayward Marsh contribute substantially to bacteria counts in the Marsh.
 - b. Human-caused conditions or sources of pollution prevent the attainment of the REC-1 use, and these conditions cannot be remedied or would cause more environmental damage to correct than to leave in place. This factor applies because Hayward Marsh was created and is sustained using reclaimed wastewater to create wildlife habitat.
10. The proposed amendment is necessary to assign bacterial water quality objectives that accurately reflect the uses of Hayward Marsh.
11. Health and Safety Code, Sect. 57004 requires an external peer review for work products that constitute the scientific basis for a rule "...establishing a regulatory level, standard, or other requirement for the protection of public health or the environment." External peer review is not needed for source documents that have been previously peer reviewed by a recognized expert or body of experts. The underlying science supporting the use attainability analysis, linking waterfowl usage of the marsh to naturally occurring pollution, is based on peer-reviewed literature. Therefore, no additional external scientific peer review was conducted.
12. On June 20, 2011, the Water Board publicly noticed the proposed amendment and notice of filing of a draft environmental document and distributed the proposed amendment along with a draft supporting Staff Report and Environmental Checklist for a 45-day public comment period in accordance with applicable State and federal environmental regulations (CWC § 13244, Title 23, California Code of Regulations, § 3775 et seq., and 40 CFR Part 25).
13. The process of basin planning has been certified by the 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.
14. The Basin Plan amendment package includes a Staff Report, an Environmental Checklist, and an assessment of the potential environmental impacts of the proposed amendment. The proposed amendment, Staff Report, Environmental Checklist 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 and finds that the proposed amendment will not have a significant or potentially significant effect on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. The Water Board further finds, based on consideration of the record as a whole, that there is no potential for adverse or any effect, either individually or cumulatively, on wildlife as a result of the Basin Plan amendment.

16. The Water Board has carefully considered all comments and testimony received, including responses thereto, on the proposed Basin Plan amendment, as well as all of the evidence in the administrative record.
17. The Basin Plan amendment, once adopted by the Water Board, must be submitted for review and approval by the State Water Board, OAL, and U.S. EPA. Once approved by the State Water Board, the amendment is submitted to OAL and U.S. EPA. The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Water Board adopts the Basin Plan amendment as set forth in Exhibit A hereto.
2. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Water Board in accordance with the requirement of CWC Section 13245.
3. The Water Board requests that the State Water Board approve the Basin Plan amendment in accordance with the requirements of CWC Sections 13245 and 13246 and forward it to OAL and U.S. EPA for approval.
4. If, during the approval process, Water Board staff, the State Water Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Water Board of any such changes.
5. Since the Basin Plan amendment will involve no potential for adverse effect, either individually or cumulatively, on wildlife, the Executive Officer is directed to sign a CEQA Filing Fee No Effect Determination Form and to submit the exemption in lieu of payment of the Department of Fish and Game CEQA filing fee.

I, Bruce H. Wolfe, Executive Officer, do hereby certify 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 XX, 2011.

BRUCE H. WOLFE
Executive Officer

Attachment: Exhibit A – Basin Plan Amendment

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Exhibit A

Proposed Basin Plan Amendment

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4.5.5.1 LIMITATIONS FOR CONVENTIONAL POLLUTANTS

Table 4-2A contains both daily maximum and longer-term effluent limitations for bacteriological indicator organisms. All NPDES permits for discharges that contain sanitary waste shall include the applicable effluent limitations from Table 4-2A, except for discharges into Hayward Marsh, for which REC-1 is not a designated beneficial use. The water quality based effluent limitations in Table 4-2A may be adjusted to account for dilution in a manner consistent with procedures in the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (see footnotes ‘a’ and ‘e’ in Table 4-2A).