

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

STAFF SUMMARY REPORT (Jan O'Hara)  
MEETING DATE: September 14, 2011

**ITEM:** 7

**SUBJECT:** **Proposed Amendment to the Water Quality Control Plan (Basin Plan) to Refine the Beneficial Uses of Hayward Marsh** – Hearing to Consider Adoption of the Proposed Basin Plan Amendment

**DISCUSSION:** The Tentative Resolution (Appendix A) would adopt the proposed Basin Plan amendment in Exhibit A of that appendix, which would refine the beneficial uses specific to Hayward Marsh by removing water contact recreation (REC-1) as a beneficial use. Hayward Marsh was constructed in 1988 on diked baylands, formerly used as salt ponds, to utilize treated wastewater to create brackish marsh habitat. It successfully supports large wintering and migratory bird populations, including special status species. It is one of several marshes along the Hayward shoreline. The Basin Plan currently includes REC-1 as a beneficial use of all Hayward area marshes, including Hayward, Cogswell, Hayward Area Recreation District, Oro Loma and Triangle marshes.

As described in the Staff Report (Appendix B), in order to refine beneficial uses and comply with the federal Clean Water Act, we must demonstrate that the beneficial use is not an existing use, the refinement must be supported by a “use attainability analysis” under conditions specified in 40 CFR 131.10(g), and the designated beneficial uses must reflect the highest attainable uses. Because Hayward Marsh was created after November 28, 1975, to benefit wildlife, REC-1 is not considered an existing use under the Clean Water Act. A use attainability analysis demonstrated that water quality supportive of REC-1 use is not attainable. The highest attainable use is non-contact recreation (REC-2), which we propose to sustain as a beneficial use.

The proposed Basin Plan amendment would:

- Modify Table 2-4 of the Basin Plan, *Beneficial Uses of Wetland Areas*, by adding Hayward Marsh as a distinct wetland and sustaining the beneficial uses of estuarine habitat, fish spawning, wildlife habitat, and REC-2.
- Remove REC-1 for Hayward Marsh.
- Based on documented evidence, add preservation of rare and endangered species (RARE) as a beneficial use.
- Modify Table 2-4 to identify example remaining marshes in the Hayward area.
- Amend 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 shall include the limitations from Table 4-2A.
- Make non-regulatory corrections of typographical errors in Table 2-4 created during adoption of the 1995 Basin Plan.

We have prepared responses to comments (Appendix C) on the proposed amendment that we received from two entities (Appendix D). U.S. EPA commented in support of the proposed amendment and stated an expectation that the quality of the treated wastewater discharged to the Marsh would be maintained. In response to the latter, we accounted for antidegradation in the Staff Report. The Union Sanitary District requested corrections and clarifications within the Staff Report, which we largely accepted. In addition, staff initiated a revision to the proposed amendment to clarify in Chapter 4 that Hayward Marsh is currently the only water body in the region that both receives treated wastewater and has no REC-1 uses.

**RECOMMEN-  
DATION:**

Adopt the Tentative Resolution that would amend the Basin Plan

**APPENDICES:**

- A. Tentative Resolution with Exhibit A, Proposed Basin Plan Amendment
- B. Staff Report
- C. Responses to Comments
- D. Comment Letters