

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

STAFF SUMMARY REPORT (Kevin Lunde)
MEETING DATE: February 12, 2020

ITEM: 7

SUBJECT: **U. S. Army Corps of Engineers, San Francisco District** – Adoption of Reissued Waste Discharge Requirements and Water Quality Certification for the San Francisco Bay Federal Channel Maintenance Dredging Program 2020 through 2024

CHRONOLOGY: 2015 – Waste Discharge Requirements and Water Quality Certification for Maintenance Dredging Program adopted.

DISCUSSION: The Revised Tentative Order (Appendix A) would reissue Waste Discharge Requirements (WDRs) and Water Quality Certification (WQC) for the U. S. Army Corps of Engineers (USACE) 2020-2024 maintenance dredging program for the federal navigation channels in San Francisco Bay. This item was postponed from the December 11, 2019 Board meeting.

Background

The USACE maintenance dredging program involves 11 federal navigation channels, including the dredging activity itself, disposal of dredged material in the Bay at four designated disposal sites, and beneficial reuse of dredged material consisting of beach nourishment offshore of San Francisco's Ocean Beach. Beneficial reuse projects that use USACE dredged material, including restoration of tidal marsh habitat along the Bay margin and levee maintenance, are regulated under separate Board-adopted orders issued to each project site.

The Order's requirements include:

- 1) Limiting disposal of dredged material at in-Bay disposal sites consistent with the goals of the Long-Term Management Strategy (LTMS) for the placement of dredged material in the San Francisco Bay Region.
- 2) Continuing to restrict hydraulic suction hopper dredge use in the Bay to one channel (either Pinole Shoal or Richmond Outer Harbor) per year, to fully address potentially significant impacts of hydraulic dredging, i.e., entrainment of fish species listed as threatened or endangered under State and federal endangered species acts. Implementation of other measures to avoid, minimize, and mitigate entrainment impacts are also required.
- 3) Evaluation of sediment suitability for the proposed placement sites coordinated through the multi-agency Dredged Material Management Office (of which the Board is a member) for each proposed dredging episode.
- 4) A yearly analysis of alternatives to aquatic in-Bay disposal of dredged sediments pursuant to section 404(b)(1) of the Clean Water Act (CWA) prior to approval of dredging and disposal episodes.

Comments Received and Staff Responses

The initial tentative order was circulated for a 30-day public comment period on October 4, 2019. We received comments (Appendix B) from USACE, San Francisco Baykeeper (Baykeeper), and California Marine Affairs and Navigation Conference (CMANC). All the comments are addressed in the Response to Comments (Appendix C).

USACE recommended adoption of the Tentative Order. However, USACE commented that, as a federal agency, its project should only be subject to federal law and not to State requirements under the Water Code or WDRs. USACE also objected to the application of State environmental laws to a federal project and maintained that the requirement to reduce hopper dredging in the Bay is unnecessary and inappropriate.

We disagree with USACE's legal arguments in its comments. The Water Board has been issuing WDRs to the Corps for its navigational channel maintenance program since 1990, so we disagree with USACE about any lack of authority to issue WDRs or to regulate dredging to lessen the water quality and environmental impacts, including fish entrainment, of the dredging activities.

Baykeeper's most significant comments requested that the Tentative Order be revised to 1) prohibit hydraulic dredging to prevent entrainment of imperiled native fish species; and 2) require that USACE beneficially reuse a minimum of 40 percent of its dredged sediment, or, at a minimum retain Provision B.2.

We disagree with Baykeeper's requests. The Tentative Order requires implementation of mitigation measures necessary to protect fish habitat beneficial uses as recommended by CDFW, the primary agency charged with responsibility for protecting endangered species in California. Further, it is not logistically practicable to require USACE to beneficially reuse a minimum of 40 percent of the sediment from its maintenance dredging program over the five-year term of the Tentative Order.

CMANC largely asked for clarification about the Tentative Order and about the goals and process for the Long-Term Management Strategy for the Placement of Dredged Sediment in the San Francisco Bay Region (LTMS).

We have provided detailed responses to these comments in Appendix C explaining the State perspective and have made no significant changes to the Order.

In general, revisions to the Order consisted of non-substantive modifications to update language, or clarify language in the Order, correct typographical errors, and make minor editorial and formatting changes. As explained in Appendix C, two staff-initiated changes were also made to the Tentative Order to revise the text to be consistent with Clean Water Act section 404(b)(1) and to move up the due date for the fish entrainment monitoring plan and subsequent annual updates to the plan.

RECOMMEN- DATION:

Adopt the Revised Tentative Order

Appendices:

- A. Revised Tentative Order
- B. Comments Received
- C. Response to Comments