

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

STAFF SUMMARY REPORT: Christina Toms
MEETING DATE: July 13, 2022

ITEM: 7

Proposed Basin Plan Amendment on Climate Change and Aquatic Habitat Protection, Management, and Restoration – Public Hearing to Consider Adoption of Proposed Basin Plan Amendment

DISCUSSION:

The attached Tentative Resolution (Appendix A) would adopt an amendment (Appendix B) to the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan). This is the second hearing to solicit testimony on and consider adoption of the proposed Basin Plan amendment (BPA). The Board had an initial hearing to receive public testimony on April 13, 2022. The proposed BPA describes efforts made to support the long-term resilience of aquatic habitats in the Region. It includes a suite of questions and information that may be relevant to permitting dredge or fill activities in or near the Region's coastal waters, especially shoreline climate change adaptation projects. It also updates references, corrects errors, and makes minor, non-substantive edits for clarity. The proposed BPA is informational and contains no new regulations. The Staff Report supporting the BPA is in Appendix C.

BACKGROUND

Globally and in the San Francisco Bay Region, climate change is manifesting through a variety of mechanisms including but not limited to higher temperatures; rising sea and groundwater levels; changes in the timing, frequency, intensity, and duration of precipitation and runoff; more frequent and severe storm surges, floods, and droughts; drowning and downshifting of wetlands; and landscape aridity that desiccates streams and increases the risk of catastrophic wildfires. These changes are impacting the health, integrity, and resilience of the Region's built and natural communities in complex and interconnected ways, and they pose a special threat to the Region's waters, including wetlands. The threats are especially acute in and near the San Francisco Baylands and low-lying areas of the Pacific coast, where climate change impacts to watersheds are compounded by impacts from rising sea and groundwater levels.

Efforts to respond to and prepare for climate change through the construction of traditional "grey" infrastructure and armoring, such as levees, seawalls, engineered flood control channels, and rock revetments, can exacerbate harm to aquatic ecosystems and vulnerable shoreline communities. On the other hand, nature-based infrastructure, and hybrid measures that integrate nature with engineered structural approaches, can help create resilient shorelines that support co-benefits such as recreation, water quality improvement, and habitat for native species. In some circumstances, they may perform better than grey infrastructure, and cost less over time. Projects that maximize the use of nature-based features and minimize reliance on grey infrastructure generally have fewer direct, indirect, and cumulative adverse impacts on aquatic resources than projects that rely solely on grey infrastructure.

The Basin Plan is the Water Board's master water quality control planning document. To help inform the planning, permitting, and implementation of projects in the Region's coastal waters, and to help avoid and minimize direct, indirect, and cumulative adverse impacts to these systems, it is

important that the Water Board update the Basin Plan to provide information related to climate change and share the knowledge the Water Board has acquired to protect the beneficial uses of waters in the face of climate change. The Basin Plan currently lacks any description of climate change and its relevance to the Water Board's regulatory programs, particularly dredge or fill activities in and near the Region's shorelines. The proposed BPA therefore includes the following informational changes to the Basin Plan:

Chapter 1, Introduction

Inserts a new Section 1.7, The Challenge of Climate Change, which describes the effects of a changing climate on water quality and the need to address these effects on a landscape scale.

Chapter 4, Implementation Plans

Insert a new Section 4.27 entitled "Climate Change and Aquatic Habitat Protection, Management, and Restoration," which:

- Acknowledges and describes how climate change can adversely impact aquatic habitats and their beneficial uses. Describes how certain climate adaptation approaches can exacerbate adverse impacts to aquatic resources. Describes efforts made to support the long-term resilience of aquatic resources in the Region.
- Provides information and poses questions that may be relevant when permitting dredge or fill activities in the era of climate change, especially those activities associated with climate change adaptation projects and strategies. When permitting such activities, under existing laws and regulations, the Water Board is required to ensure that adverse impacts to waters of the state have been appropriately avoided, minimized, and compensated. Understanding the reasonably foreseeable influence of climate change is important to adequately assess the impacts of these activities to waters of the state. In addition, the Water Board has increased its knowledge with respect to climate change adaption projects and their potential for adverse impacts to waters of the state and the questions and information incorporate this knowledge.

RESPONSE TO COMMENTS

The 45-day comment period for the proposed BPA closed on April 22, 2022. We received comment letters (Appendix D) from the following entities (listed in alphabetical order):

1. Alameda County Water District
2. Bay Area Clean Water Agencies
3. Bay Conservation and Development Commission
4. Bay Planning Coalition, Building Industry Association, Bay Area Council, North Bay Leadership Council, and San Mateo County Economic Development Association
5. California State Coastal Conservancy
6. Citizens Committee to Complete the Refuge
7. Coast Action Group
8. Robert Raven
9. Santa Clara Valley Water District

Most comments were supportive of the proposed BPA; many commenters suggested relatively minor edits to the BPA and supporting staff report for clarity and completeness. We accepted and incorporated these edits, which are explained in detail in the Response to Comments document (Appendix E). We also met with the Bay Conservation and Development Commission to discuss the proposed BPA.

The Bay Planning Coalition, Building Industry Association, Bay Area Council, North Bay Leadership Council, and San Mateo County Economic Development Association (BPC et al.) expressed concerns that the proposed BPA was regulatory, not informational, and that Basin Plan language will be used by the Water Board and staff when considering whether an applicant provided adequate information as part of its application, as well as when making decisions to approve, deny, or impose conditions on a permit approval. We met twice with BPC et al. to discuss the proposed BPA their comments and proposed revisions to the BPA.

To further clarify that the proposed BPA is informational and not regulatory, we revised it and the Staff Report to be clear that the BPA would not add or alter any rule, regulation, order, or standard into the permitting process. The permitting process for dredge or fill activities in waters of the State is and will continue to be governed by the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures) and the Clean Water Act Section 404(b)(1) Guidelines. Instead of amending or augmenting these regulations, the proposed BPA provides information and poses questions that may be relevant when permitting dredge or fill activities in the era of climate change, especially those activities associated with climate change adaptation projects and strategies. We revised the proposed BPA to state that the new language is not intended to and cannot be construed as modifying how dredge or fill activities are permitted under the Procedures or the Guidelines or augmenting the Board's authority. The Response to Comments document explains the revisions to the proposed BPA and Staff Report in detail and provides examples of how the information in the BPA is consistent with the existing requirements in the Dredge and Fill Procedures and Guidelines.

APPENDICES:

- A. Tentative Resolution Adopting the Revised Basin Plan Amendment
- B. Revised Basin Plan Amendment, showing changes
- C. Revised supporting Staff Report, showing changes
- D. Comment Letters Received
- E. Response to Comments

APPENDIX A

Tentative Resolution Adopting the Revised Basin Plan Amendment

APPENDIX B

Revised Basin Plan Amendment,
showing changes

APPENDIX C

Revised supporting Staff Report,
showing changes

APPENDIX D

Comments Letters Received

Comment Letters Received In accordance with Section 11546.7 of the California Government Code, an electronic version of the comment letters received has not been posted online as the letters do not meet specified accessibility standards. For an electronic copy of the comments, please contact Christina Toms via email at christina.toms@waterboards.ca.gov or at (510) 622-2383.

APPENDIX E

Response to Comments