

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2011-0057**

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN
FOR THE SAN FRANCISCO BAY REGION THAT REFINES THE
BENEFICIAL USES FOR HAYWARD MARSH AND CLARIFIES THE
BACTERIAL WATER QUALITY OBJECTIVES THAT APPLY TO IT

WHEREAS:

1. On September 14, 2011, the San Francisco Bay Water Board adopted [Resolution No. R2-2011-0057](#) amending the Basin Plan to refine the beneficial uses of Hayward Marsh to remove the water contact recreation (REC-1) use, add the preservation of rare and endangered species use, and clarify the bacterial water quality objectives that apply to Hayward Marsh.
2. The federal regulations at 40 Code of Federal Regulations (CFR) section 131.10(g) allow the San Francisco Water Board to remove a designated use, which is not an “existing use,” if the state can demonstrate that achieving the use is not feasible based on the factors set forth in that section. REC-1 is not an “existing use” as that term is defined in 40 CFR section 131.3 because, since the time that Hayward Marsh was constructed in 1988, the use has not been attained in the water body. Removal of the REC-1 beneficial use is based on the results of a Use Attainability Analysis (UAA) in the Hayward Marsh. REC-1 is not attainable because naturally occurring pollutant concentrations prevent attainment (40 CFR 131.10(g)(1)) and because human-caused conditions or sources of pollution prevent the attainment (40 CFR 131.10(g)(1)).
3. The San Francisco Bay Water Board found that the analysis contained in the California Environmental Quality Act (CEQA) “Substitute Documentation” for the proposed Basin Plan amendment, including the CEQA checklist, the staff report, and the responses to public comments, complies with the requirements of the State Water Resources Control Board’s certified regulatory CEQA process, as set forth in the California Code of Regulations, Title 23, section 3775 et seq.
4. The San Francisco Bay Water Board found the Basin Plan amendment would not have a significant adverse effect on the environment and is consistent with the State Antidegradation Policy ([State Water Board Resolution No. 68-16](#)) and the federal Antidegradation Policy (40 CFR 131.12).
5. The State Water Board finds that the Basin Plan amendment is in conformance with Water Code section 13240, which specifies that Regional Water Quality Control Boards may revise Basin Plans.
6. The State Water Board also finds that the regulatory action meets the “necessity” standard of the Administrative Procedures Act, Government Code section 11353, Subdivision (b). The necessity of the Basin Plan amendment is established in the Staff Report for the amendment.

7. A Basin Plan amendment does not become effective until approved by the State Water Board and until the regulatory provisions are approved by OAL. The amendment must also receive approval from the U.S. Environmental Protection Agency (U.S. EPA).

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendment to the Basin Plan adopted under San Francisco Bay Water Board Resolution No. R2-2011-0057.
2. Authorizes the Executive Director or designee to submit the amendment adopted under San Francisco Bay Water Board Resolution No. R2-2011-0057 as approved, and the administrative record for this action to the Office of Administrative Law and the amendment to the U.S. Environmental Protection Agency for approval.

CERTIFICATION


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 5, 2011.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Tam M. Doduc

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board