

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF WATER QUALITY  
APRIL 6, 2011**

**ITEM 9**

**SUBJECT**

CONSIDERATION OF A PROPOSED RESOLUTION TO ADOPT AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR ENCLOSED BAYS AND ESTUARIES - PART 1 SEDIMENT QUALITY

**DISCUSSION**

This Agenda Item proposed for consideration by the State Water Resources Control Board (State Water Board) consists of amendments to the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality. California Water Code section 13393 requires the State Water Board to develop sediment quality objectives (SQOs) for toxic pollutants for California's enclosed bays and estuaries. On September 16, 2008, the State Water Board conducted a public hearing and adopted the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality (Plan), containing narrative sediment quality objectives (SQOs) and a policy of implementation. The Plan became effective on August 25, 2009. On May 19, 2010, staff conducted a California Environmental Quality Act (CEQA) scoping meeting to inform the public on recent development efforts and plans for developing draft amendments to the Plan. Based upon comments received, staff redirected near-term efforts to focus on protecting resident finfish and wildlife. This agenda item addresses amendments to the Plan that include SQOs and related implementation policies for resident finfish and wildlife. The amendments also include non-substantive and other minor changes to the existing plan.

On January 28, 2011, State Water Board staff circulated a draft Staff Report and Substitute Environmental Documentation, which included a CEQA analysis, environmental checklist and economic analysis. The notice was sent via State Water Board email distribution lists, was posted on the State Water Board's website, and was also published in multiple newspapers. Staff and management of the affected Regional Water Boards were made aware of the documents' availability and content. In addition, state and federal resource trustee agencies were consulted. As the Regional Water Quality Control Boards that encompass enclosed bays and estuaries, the North Coast, San Francisco Bay, Central Coast, Los Angeles, Central Valley, Santa Ana, and San Diego Regional Water Quality Control Boards would be required to implement these proposed amendments. The Lahontan and Colorado River Regions are the only two regions that do not encompass enclosed bays and estuaries.

**POLICY ISSUE**

Should the State Water Board take the following action?

- Adopt proposed amendments to the Plan consisting of:
  1. A proposed narrative sediment quality objective that protects wildlife and resident finfish from the effects caused by exposure to pollutants in sediment;
  2. A proposed process for implementing these narrative objectives;
  3. Proposed definitions added to the glossary in support of the narrative objectives described above;

4. Revisions to the Plan, Section II(B), to clarify that all sediment quality objectives and related implementation policies adopted in the Plan supersede all applicable narrative water quality objectives and related implementation provisions in water quality control plans;
  5. Corrections to a variable defined in Equation 2 of the Plan;
  6. Corrections to PAHs, DDD, DDE and DDT values applied to the Chemical Score Index contained in Table 7 of the Plan;and
  7. Corrections to the list of chemicals described in Attachment A of the Plan
- Approve the draft Final Staff Report with Responses to Comments as the Final Staff Report;
  - Direct State Water Board staff to submit the amendments to the Office of Administrative Law (OAL) for approval; and
  - Direct State Water Board staff to submit the amendments to the United States Environmental Protection Agency (U.S. EPA) for final approval.

### **FISCAL IMPACT**

State Water Board staff work associated with or resulting from this action will be addressed with existing and future budgeted resources.

### **REGIONAL WATER BOARD IMPACT**

There is no Regional Water Board fiscal impact. All efforts will be addressed within existing and future related budgeted resources associated with the respective total maximum daily loads, permitting, enforcement, and site cleanup programs.

### **STAFF RECOMMENDATION**

That the State Water Board:

- Adopt proposed amendments to the Plan consisting of:
  1. A proposed narrative sediment quality objective that protects wildlife and resident finfish from the effects caused by exposure to pollutants in sediment;
  2. A proposed process for implementing these narrative objectives;
  3. Proposed definitions added to the glossary in support of the narrative objectives described above;
  4. Revisions to the Plan, Section II(B), to clarify that all sediment quality objectives and related implementation policies adopted in the Plan supersede all applicable narrative water quality objectives and related implementation provisions in water quality control plans;
  5. Corrections to a variable defined in Equation 2 of the Plan;
  6. Corrections to PAHs, DDD, DDE and DDT values applied to the Chemical Score Index contained in Table 7 of the Plan; and
  7. Corrections to the list of chemicals described in Attachment A of the Plan.
- Approve the draft Final Staff Report with Responses to Comments as the Final Staff Report;
- Direct State Water Board staff to submit the amendments to the OAL for approval; and
- Direct State Water Board staff to submit the amendments to U.S. EPA for final approval.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012: Enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies and procedures.

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## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2011-

### AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR ENCLOSED BAYS AND ESTUARIES - PART 1 SEDIMENT QUALITY

#### WHEREAS:

1. California Water Code section 13393 requires the State Water Resources Control Board (State Water Board) to develop sediment quality objectives (SQOs) for toxic pollutants for California's enclosed bays and estuaries.
2. On September 16, 2008, the State Water Board adopted [Resolution No. 2008-0070](#) approving the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality (Plan).
3. On August 25, 2009, the United States Environmental Protection Agency (U.S. EPA) approved the Plan in its entirety.
4. The Plan contains a narrative SQO protecting benthic communities from direct exposure to toxic pollutants in sediment and a narrative SQO protecting human consumers of fish and shellfish from pollutants that bioaccumulate into tissue from sediment.
5. On May 19, 2010, staff conducted a California Environmental Quality Act (CEQA) scoping meeting to inform the public on recent development efforts and plans for developing draft amendments to the Plan. Based upon comments received, staff redirected near-term efforts to focus on protecting resident finfish and wildlife.
6. Since the Plan became effective, State Water Board staff also identified non-substantive and other minor changes to be made to the Plan.
7. On January 28, 2011, State Water Board staff issued a Notice and circulated for public review and comment a [draft staff report - substitute environmental document](#); [CEQA Checklist](#) and [draft Economic Analysis](#). The Notice was circulated in multiple newspapers and electronically through State Water Board email distribution lists.
8. The draft staff report supports the following [proposed amendments](#):
  - a. A proposed narrative sediment quality objective that protects wildlife and resident finfish from the effects caused by exposure to pollutants in sediment;
  - b. A proposed process for implementing these narrative objectives;
  - c. Proposed definitions added to the glossary in support of the narrative objectives described above;
  - d. Revisions to the Plan, Section II(B), to clarify that all sediment quality objectives and related implementation policies adopted in the Plan supersede all applicable narrative water quality objectives and related implementation provisions in water quality control plans;
  - e. Corrections to a variable defined in Equation 2 of the Plan;
  - f. Corrections to PAHs, DDD, DDE and DDT values applied to the Chemical Score Index contained in Table 7 of the Plan; and
  - g. Corrections to the list of chemicals described in Attachment A of the Plan

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9. Affected Regional Water Quality Control Boards and state and federal resource trustee agencies were consulted and apprised of the proposed amendments.
10. The process for implementing the resident finfish and wildlife SQO relies upon ecological risk assessment. Ecological risk assessment, which is used by U.S. EPA, California Department of Fish and Game and other resource trustee agencies, has been peer reviewed by U.S. EPA, as described in the draft staff report.
11. On March 15, 2011, the public written comment period for the proposed amendments closed.
12. On April 4, 2011, the State Water Board held a Public Hearing to receive oral comments on the proposed amendments.
13. In preparing the substitute environmental documents, the State Water Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187, and intends these documents to serve as a Tier 1 environmental review.
14. The State Water Board has considered the reasonably foreseeable consequences of adoption of the draft plan; however, project-level impacts may need to be considered in any subsequent environmental analysis performed by lead agencies, pursuant to Public Resources Code section 21159.1.
15. Consistent with CEQA, the substitute environmental documents do not engage in speculation or conjecture but, rather, analyze the reasonably foreseeable environmental impacts related to methods of compliance with the draft amendments to the Plan, reasonably foreseeable mitigation measures to reduce those impacts, and reasonably feasible alternatives means of compliance that would avoid or reduce the identified impacts.
16. The proposed amendments, if adopted, could have a potentially significant adverse effect on the environment. However, there are feasible alternatives or feasible mitigation measures that, if employed, would reduce the potentially significant adverse impacts identified in the substitute environmental documents to less than significant levels. These alternatives or mitigation measures are within the responsibility and jurisdiction of other public agencies. When the SQOs are implemented on a project-specific basis, the agencies responsible for the project can and should incorporate the alternatives or mitigation measures into any subsequent project or project approvals.
17. From a program-level perspective, incorporation of the mitigation measures described in the substitute environmental documents will foreseeably reduce impacts to less than significant levels.
18. The substitute environmental documentation associated with the proposed amendments identifies broad mitigation approaches that should be considered at the project level.

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19. The draft plan will become effective upon approval by the Office of Administrative Law (OAL) and U.S. EPA. If, during the OAL approval process, OAL determines that minor, non-substantive modifications to the language of the draft plan are needed for clarity or consistency, the Executive Director or designee may make such changes consistent with the State Water Board's intent in adopting this draft plan, and shall inform the State Water Board of any such changes.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves and adopts the CEQA substitute environmental documentation, including all findings contained in the documentation, which was prepared in accordance with Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187, and directs the Executive Director or designee to sign the environmental checklist;
2. After considering the entire record, including oral testimony at the public hearing, hereby adopts the proposed amendments to the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality;
3. Directs staff to submit the administrative record to OAL and U.S. EPA for review and approval; and
4. If, during the OAL approval process, OAL determines that minor, non-substantive modifications to the language of the draft plan are needed for clarity or consistency, directs the Executive Director or designee to make such changes and inform the State Water Board of any such changes

## 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 April 6, 2011.

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Jeanine Townsend  
Clerk to the Board