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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2018-

ADOPTION OF AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR ENCLOSED BAYS AND ESTUARIES: SEDIMENT QUALITY PROVISIONS, AND THE STAFF REPORT INCLUDING THE SUBSTITUTE ENVIRONMENTAL DOCUMENTATION

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, or Enclosed Bays and Estuaries Plan).
3. The Plan, comprising Phase 1 of the SQOs program, included narrative SQOs to protect benthic communities, utilizing an approach based upon multiple lines of evidence, as well as a narrative SQO developed to protect human health from exposure to contaminants in seafood.
4. The Plan included an implementation program for the narrative SQOs based upon input from the Scientific Steering Committee, Sediment Quality Advisory Committee, staff of the State Water Board and the Regional Water Quality Control Boards (Regional Water Boards), and staff from other state and federal agencies. Phase 1 was approved by U.S. EPA on August 25, 2009.
5. On April 6, 2011, the State Water Board adopted [Resolution No. 2011-0017](#), approving amendments to the Water Quality Control Plan for Enclosed Bays and Estuaries that consisted of a narrative SQO protecting wildlife and resident finfish from pollutants in sediments. This narrative SQO was approved by the Office of Administrative Law (OAL) on June 8 2011 and was submitted to U.S. EPA on September 28, 2011.
6. The proposed amendments are intended to provide a more prescriptive framework to address human health and exposure to contaminants in seafood. The tools, indicators, and framework developed for these amendments, together with the previously adopted provisions of the Enclosed Bays and Estuaries Plan, is planned for future incorporation into the new Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries Plan, when it is adopted.
7. In adopting the proposed Plan amendments, the State Water Board has considered the requirements in Water Code section 13393. In particular, the SQOs and the analytical framework are based on scientific information, including chemical monitoring, bioassays, and established modeling procedures; and the objectives as implemented will provide adequate protection for the most sensitive aquatic organisms. In addition, SQOs for the protection of human health from contaminants in seafood are based on a health risk assessment.

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8. As required by Water Code section 13393, the State Water Board has followed the procedures for adoption of water quality control plans in Water Code sections 13240 through 13247, in adopting these proposed amendments. The proposed amendments do not include new objectives. However, in addition to the procedural requirements, the State Water Board has considered the substantive requirements for adoption of water quality objectives as set forth in Water Code sections 13241 and 13242. The State Water Board has considered the past, present, and probable future beneficial uses of estuarine and bay waters that can be impacted by toxic pollutants in sediments; environmental characteristics of these waters; water quality conditions that can reasonably be achieved through the control of all factors affecting sediment quality; and economic considerations. Adoption of the proposed amendments is unlikely to affect housing needs or the development or use of recycled water. The proposed amendments include an implementation program to achieve the SQOs, which describes actions to be taken to achieve the objectives and monitoring to determine compliance with the objectives. Time schedules to achieve the objectives will be developed on a case-by-case basis by the appropriate Regional Water Board.
9. The proposed amendments are consistent with the state and federal antidegradation policies (State Water Board [Resolution No. 68-16](#) and 40 C.F.R. Section 131.12, respectively). No lowering of water quality is anticipated to result from adoption of the proposed amendments. The Plan and its proposed amendments contain scientifically-defensible SQOs for bays and estuaries, which can be consistently applied statewide to assess sediment quality, regulate waste discharges that may impact sediment quality, and provide the basis for appropriate remediation activities, where necessary. Adoption of the proposed amendments should result in improved sediment quality.
10. The Resources Agency has approved the State and Regional Water Boards' planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) requirements for preparing environmental documents. State Water Board staff has prepared a "substitute environmental document" for this project that contains the required environmental documentation under the State Water Board's CEQA regulations (California Code of Regulations, Title 23, Section 3777). The substitute environmental documents include the "Draft Staff Report Including Draft Substitute Environmental Documentation for Amendments to the Water Quality Control Plan for Enclosed Bays and Estuaries--Part 1 Sediment Quality Provisions," the environmental checklist, the comments and responses to comments, the proposed amendments, and this resolution. The project is the adoption of amendments to the Water Quality Control Plan for Enclosed Bays and Estuaries, addressing implementation of the SQOs.
11. A CEQA scoping meeting was conducted on May 19, 2010 in Sacramento, California.
12. On January 30, 2017, the State Water Board notified Tribes requesting Assembly Bill 52 Consultation of the intent to release the substitute environmental document. No tribes requested formal consultation on this project, though some tribes did request and were provided additional information about the project.

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13. On October 24, 2017, staff circulated the proposed amendments and Draft Staff Report including Substitute Environmental Documentation for public comment.
14. On December 5, 2017, the State Water Board conducted a public hearing on the proposed amendments and supporting Draft Staff Report including Substitute Environmental Documentation. Written comments were accepted through December 14, 2017.
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 proposed amendments, reasonably foreseeable mitigation measures to reduce those impacts, and reasonably feasible alternative means of compliance that would avoid or reduce the identified impacts.
16. The State Water Board finds that the proposed amendments would not cause a substantial adverse change in the significance of a tribal cultural resource, as defined in Public Resources Code section 21074.
17. The proposed amendments could have a potentially significant adverse effect on the environment, including potentially significant impacts to air quality, biological resources, greenhouse gas emissions, and hydrology and water quality resulting from reasonably foreseeable methods of compliance. Neither the amendments nor the previously-adopted SQOs mandate corrective action. However, the assessment framework and implementation provisions for the SQOs could potentially result in additional findings that sediments are impacted or possibly impacted. In that event, control activities to limit sources of contaminants or methods used to remediate impacted areas could result in the above-mentioned impacts. Such impacts would result from separate, project-specific regulatory actions that would themselves require environmental analysis pursuant to CEQA. 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, and such public agencies will be required to comply with CEQA in approving the methods of compliance. 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.
18. The substitute environmental documents for the proposed amendments identify broad mitigation approaches that should be considered at the project level.
19. Pursuant to Health and Safety Code section 57004, the draft amendments have undergone external peer review through an interagency agreement with the University of California.
20. The proposed amendments do not become effective until approved by the Office of Administrative Law and the State Water Board has paid the applicable fee established by the Department of Fish and Wildlife for an environmental document adopted pursuant to a certified regulatory program as required by the CEQA, section 21089(b).

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THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves and adopts the Draft Staff Report Including Draft Substitute Environmental Documentation for Amendments to the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality (Sediment Quality Provisions), including all findings contained in the documentation, which was prepared in accordance with the provisions applicable to the State Water Board's certified exempt regulatory programs, California Code of Regulations, title 23, sections 3777 through 3779, 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;
3. Directs staff to submit the administrative record to OAL for review and approval;
4. If, during the OAL approval process, OAL determines that minor, non-substantive modifications to the language of the proposed amendments 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 June 5, 2018.

Jeanine Townsend
Clerk to the Board