

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
SEPTEMBER 21, 2010**

ITEM 3

SUBJECT

CONSIDERATION OF A RESOLUTION TO ALLOCATE \$535,000 FROM THE CLEANUP AND ABATEMENT ACCOUNT (CAA) TO COMPLETE THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REVIEW FOR THE SAN DIEGO BAY SHIPYARD SEDIMENT SITE (SITE) CLEANUP AND ABATEMENT ORDER (CAO PROJECT)

DISCUSSION

The San Diego Regional Water Quality Control Board (San Diego Water Board) is requesting \$535,000 from the CAA to complete the CEQA review for Tentative Cleanup and Abatement Order No. R9-2010-0002 (Order). The San Diego Water Board has been working with responsible parties towards completing the CAO Project for more than a decade. CEQA requires that an Environmental Impact Report (EIR) be prepared whenever it can be fairly argued that a project may have a significant effect on the environment. The CAO Project requires the cleanup of approximately 143,400 cubic yards of contaminated sediment at the Site. This CAO Project would be larger in scope than all previous San Diego Bay sediment dredging cleanups combined. An EIR is required before the San Diego Water Board can adopt the Order that approves the CAO Project.

San Diego Bay is designated as a State Estuary under Section 1, Division 18 (commencing with section 28000) of the Public Resources Code. The Site pollution threatens three target receptors in San Diego Bay: aquatic life, aquatic dependent wildlife, and human health. Results of a sediment study showed that benthic communities were likely impacted at six stations within the Site. Comprehensive risk assessments for aquatic dependent wildlife showed that ingestion of prey posed a risk to wildlife receptors. The chemicals in prey tissue include benzo[a]pyrene, total polychlorinated biphenyls, polychlorinated biphenyls (PCBs), copper, lead, mercury, and zinc. Fish and shellfish caught within the Site have chemicals that include cadmium, copper, mercury, and total PCBs.

The responsible parties have failed to reach an agreement on allocation of the costs to complete the CEQA review and prepare an EIR for the CAO Project, necessitating the San Diego Water Board's request for CAA funds. The State Water Resources Control Board (State Water Board) and San Diego Water Board will seek to recover any funds expended pursuant to this resolution, including interest and attorney fees from the responsible parties in accordance with Water Code sections 13304 and 13365. The San Diego Water Board Executive Officer has indicated that cost recovery provisions will be included within the Order.

The requested allocation is consistent with the purposes of Water Code section 13442. Section 13442 provides that the State Water Board may order moneys to be paid from the CAA to a public agency with authority to cleanup or abate the effects of a waste in order "to assist it in cleaning up the waste or abating its effects on the waters of the state."

POLICY ISSUE

Should the State Water Board approve funding \$535,000 from the CAA for the CAO Project?

FISCAL IMPACT

As of May 31, 2010, the uncommitted CAA balance is estimated to be no less than \$7.2 million according to the most current data.

REGIONAL BOARD IMPACT

No.

STAFF RECOMMENDATION

The State Water Board should approve funding \$535,000 from the CAA to the CAO Project.

State Water Board action on this item will assist the Water Boards in reaching Goal 4 of the Strategic Plan Update: 2008-2012, to comprehensively address water quality protection and restoration, and the relationship between water supply and water quality, and describe the connections between water quality, water quantity, and climate change, throughout California's water planning processes.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2010-

TO ALLOCATE \$535,000 FROM THE CLEANUP AND ABATEMENT ACCOUNT (CAA)
TO COMPLETE THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REVIEW
FOR THE SAN DIEGO BAY SHIPYARD SEDIMENT SITE (SITE) CLEANUP AND
ABATEMENT ORDER (CAO PROJECT)

WHEREAS:

1. The San Diego Regional Water Quality Control Board (San Diego Water Board) is requesting \$535,000 from the CAA for the CAO Project;
2. The Site pollution threatens three target receptors in the San Diego Bay: aquatic life, aquatic dependent wildlife, and human health;
3. The San Diego Bay is designated as a State Estuary under Section 1, Division 18 (commencing with section 28000) of the Public Resources Code;
4. Tentative Cleanup and Abatement Order No. R9-2010-0002 (Order) requires the cleanup of approximately 143,400 cubic yards of contaminated sediment at the Site. The CEQA review must be complete before the cleanup can proceed;
5. The State Water Resources Control Board (State Water Board) is authorizing a one-time expenditure from the CAA to allow the San Diego Water Board to hire a consultant to prepare the required CEQA documentation. The parties responsible for the Site contamination, however, should bear the cost of preparing the necessary environmental documents for the cleanup Project. The responsible parties identified thus far include: National Steel and Shipbuilding Company, BAE Systems, San Diego Ship Repair, City of San Diego, Marine Construction and Design Co., Campbell Industries, San Diego Gas and Electric, United States Navy, and Star and Crescent Boat Company;
6. The State Water Board will seek cost recovery from the responsible parties including interest and attorney fees, pursuant to the authority granted in Water Code sections 13304, 13365. The San Diego Water Board Executive Officer has indicated that cost recovery provisions will be included within the Order; and
7. The requested allocation is consistent with the purposes of Water Code section 13442. Section 13442 provides that the State Water Board may order moneys to be paid from the CAA to a public agency with authority to cleanup or abate the effects of a waste "to assist it in cleaning up the waste or abating its effects on the waters of the state."

D R A F T

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves funding \$535,000 from the CAA to the San Diego Water Board for the CAO Project;
2. Shall revert to the CAA any unexpended funds as of June 30, 2013, unless the Deputy Director or Assistant Deputy Director of the Division of Financial Assistance authorizes an extension. The funds will be available until June 30, 2013; and
3. Directs staff to seek cost recovery for the CAO Project.

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 Board held on September 21, 2010.

Jeanine Townsend
Clerk to the Board