

**California Regional Water Quality Control Board  
Santa Ana Region**

**March 16, 2012**

**ITEM: 10**

**SUBJECT:** Lower Newport Bay Maintenance Dredge Project - Potential Use of Funds from Robinson-Skinner Newport Beach Account

**Lower Newport Bay Waste Discharge Requirements**

On October 28, 2011, the Regional Board adopted Order No. R8-2011-0050, issuing waste discharge requirements (WDRs) and a technically conditioned Clean Water Act Section 401 water quality standards certification (CWA 401 certification) to the U.S. Army Corps of Engineers (USACE) to dredge sediment from the navigational channels throughout Lower Newport Bay (the "Project"). The intent of the Project is to maintain the federal navigational channels in Lower Newport Bay (Lower Bay) to authorized depths that will allow continued safe navigation for recreational and commercial watercraft. The Project entails dredging of approximately 402,000 - 511,000 cubic yards of sediment from major federal channels and anchorages that were not dredged in previous projects conducted in 1998-1999 and 2003. Order No. R8-2011-0050 includes Receiving Water Limitations and Specifications, Standard Provisions, and a Monitoring and Reporting Program (MRP).

Between 259,000-368,000 cubic yards of the sediment planned to be dredged from Lower Bay is suitable for disposal at the LA-3 Ocean Dredged Material Disposal Site, located approximately five miles southwest of the entrance to Newport Harbor. The remaining approximately 143,000 cubic yards of dredged sediment is too contaminated for disposal at LA-3. The Port of Long Beach (POLB) is constructing the Middle Harbor Redevelopment Project, and has been accepting sediment as fill material from various parties. The POLB has agreed to accept the contaminated sediment from Lower Bay for use as fill material; however, the sediment must be available within a definite timeframe for placement at a specific depth. The current schedule requires placement of the sediment in mid-March 2012, however, the City and USACE are negotiating with the POLB to extend this timeframe due to the need to award the dredging contract, and to finalize dredge locations and depths.

The dredging and removal of the contaminated sediment from Lower Bay to the POLB is a unique opportunity. If the POLB does not receive the contaminated sediment, those locations in Lower Bay will not be dredged as there is no suitable alternative disposal location available.

### **Robinson-Skinner Newport Beach Account**

On December 3, 2002, the Regional Board adopted Resolution No. R8-2002-0054, which authorized the Executive Officer to enter into a Memorandum of Agreement (MOA) with the City of Newport Beach (City) to create, manage and disburse the "Robinson-Skinner Newport Bay Account for Maintenance Dredging and TMDL Compliance Projects in Newport Beach" ('Robinson-Skinner Account'). The Robinson-Skinner Account was funded in the amount of three million eight hundred fifty four thousand dollars (\$3,854,000) received by the Regional Board from the State Water Resources Control Board's Cleanup and Abatement Account (CAA). Attachment "A" to Resolution No. R8-2002-0054 includes the MOA plus the scope, term and conditions thereof that both the Regional Board and City are to adhere to access the Robinson-Skinner Account.

The MOA stipulates that the interest from the Robinson-Skinner Account will be used to fund periodic maintenance dredging of Newport Bay in perpetuity. The funds can be used for periodic dredging of the two sediment basins in Upper Newport Bay and other areas impacted by sediment deposition to comply with the Newport Bay sediment TMDL being implemented by San Diego Creek/Newport Bay stakeholders. If the interest generated by the Account exceeds that needed for maintenance dredging, then it can fund other projects that comply with other TMDLs adopted by the Regional Board for Newport Bay, and/or for a biological and hydrological monitoring program to assess compliance with TMDLs.

The MOA requires that the City submit a work plan that specifies the activity(ies) for the use of the Robinson-Skinner Account funds. This work plan must be approved by the Executive Officer pursuant to the MOA. The City submitted a work plan on May 4, 2004, requesting the funds be used for maintenance dredging of Basins 1 and 2 in Upper Newport Bay. The Executive Officer approved this plan. The City and other watershed stakeholders are to provide any funds beyond those available under the MOA if needed to complete the work plan project.

### **Lower Newport Bay Dredge Project Status**

Lower Bay is listed on the 2010 CWA Section 303(d) list for exceedances of copper, organics, sediment toxicity and other constituents. The execution of the Project will have the potential to cause decreases in dissolved oxygen, increases in turbidity, and mobilize sediment-bound contaminants. These effects can adversely impact fish populations, foraging bird populations – especially the least tern, and also local eelgrass beds. In addition, the removal of sediment from the dredge locations will result in the removal of the benthic community that inhabits these sediments. However, this effect is considered temporary as the community is expected to re-colonize the dredged area once the Project is completed. The Monitoring and Reporting Program (MRP) for the Project specifies monitoring for constituents of concern and a schedule to report the monitoring results.

The USACE originally anticipated another, more comprehensive project described in their environmental document released to the public in June 2011, with estimated costs of about \$25 million. However, the project did not receive the full appropriation and by November 2011, the USACE recommended the current Project with reduced dredge volumes and reduced dredge depths in some locations, citing their lack of funding to accomplish the full project. In response to this situation, the City of Newport Bay City Council voted unanimously in December 2011 to provide a contribution of \$2,500,000 to support dredging activities and take advantage of the opportunity for disposal at the POLB. In addition, the County of Orange has contributed \$675,000 because county tidelands are located in the Project area.

To date, the dredge Project has received funds totaling \$7.5 million, but the reduced Project will leave contaminated sediment in some Lower Bay locations that, under the comprehensive project, would have been removed. In fact, in some locations, dredging may expose sediment more heavily contaminated than that removed. USACE also advised Board staff that the Corps would not conduct the full suite of monitoring and reporting activities specified in the MRP. The City again volunteered to provide assistance and has requested review of the MRP to consider possible modifications and reductions in costs. On February 21, Board staff met and discussed possible revisions with City staff and consultants, and a revised MRP will be drafted for approval by the Executive Officer.

Regional Board staff has also discussed with the City of Newport Beach the possibility of using the Robinson-Skinner Account to support additional dredging in some locations where contaminated sediment would otherwise remain once the USACE project is completed. The Regional Board/City of Newport Beach MOA would allow for this if the removal of contaminated sediment satisfies the MOA's condition to comply with other Newport Bay TMDLs adopted by the Regional Board, e.g., the organochlorine compounds TMDLs. The funds could also be used to support the implementation of the monitoring and reporting program, if connected with potential delisting of Lower Bay per CWA Section 303(d) guidelines. Usage of the Robinson-Skinner Account will require the City to request a revision to the MOA work plan, changing the activity from dredging of the Upper Bay sediment basins to Lower Bay dredging. This additional dredging is also contingent on timing and the ability to transport the dredged material to the POLB. Under the original timeline, dredging was to be completed by mid-March, however, the USACE is just awarding the Project contract. Board staff understands that the City and USACE are requesting a time extension from the POLB to mid-June to complete the Project, but the status of this request is not currently known.

**RECOMMENDATION:**

This is an information item.