

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

TENTATIVE RESOLUTION NO. R9-2010-0102

A RESOLUTION REQUESTING THE STATE WATER RESOURCES CONTROL BOARD TO APPROVE FUNDING FROM THE STATE WATER POLLUTION CLEANUP AND ABATEMENT ACCOUNT FOR THE SAN DIEGO BAY SHIPYARD SEDIMENT SITE ENVIRONMENTAL IMPACT REPORT

WHEREAS, the California Regional Water Quality Control Board, San Diego Region (hereinafter, San Diego Water Board), finds that:

1. Elevated levels of pollutants above San Diego Bay background conditions exist in the San Diego Bay bottom sediment along the eastern shore of central San Diego Bay. The affected area extends approximately from the Sampson Street Extension southeast to Chollas Creek, and from the National Steel and Shipbuilding Company Shipyard (NASSCO) facility and the BAE Systems San Diego Ship Repair (BAE Systems) facility shorelines west to the main shipping channel in San Diego Bay. This area is hereinafter collectively referred to as the "Shipyard Sediment Site." The contaminated marine sediment has caused conditions of contamination or nuisance in San Diego Bay that adversely affects aquatic life, aquatic-dependent wildlife, human health, and San Diego Bay beneficial uses.
2. An initial Cleanup and Abatement Order (CAO) for the Shipyard Sediment Site was released for public comment in April 2005, and a revised CAO was released in April 2008. On June 9, 2008, Board Member David King, Presiding Officer of the prehearing proceedings for the tentative CAO, referred the proceedings to confidential mediation.
3. The Mediation Parties, which include the San Diego Water Board Cleanup Team (Cleanup Team), through the course of mediation, reached agreement on appropriate cleanup levels, the preliminary remedial design, remediation and post-remediation monitoring requirements, and a remedial action implementation schedule. Those agreements are contained in tentative CAO No. R9-2010-0002, released for public review on December 22, 2009.
4. The San Diego Water Board Cleanup Team intends to release a revised version of the tentative order (CAO No. R9-2011-0001) on August 27, 2010. This version will update and clarify the previously released tentative Order.
5. San Diego Water Board held a California Environmental Quality Act (CEQA) Scoping Meeting on January 21, 2010, for the purpose of identifying a range of possible implementation actions, implementation alternatives, mitigation measures, and significant environmental effects to be analyzed prior to adoption of the tentative CAO.

6. Under the CEQA, the San Diego Water Board, as lead agency, typically uses a categorical exemption for adopting CAOs. In the proposed tentative CAO, however, the remedial design includes the removal of approximately 143,400 cubic yards of contaminated sediment from San Diego Bay with dredge buckets. This type of physical disturbance to the environment includes, but is not limited to, sediment movement, air quality impacts from diesel emissions from dredging equipment, and potential impacts to traffic patterns and noise from equipment operations in the area where the sediment will be dewatered and from which it will be transported. Because of the proposed remedial design, this tentative CAO differs considerably from the typical agency enforcement action, or action to protect natural resources or the environment. The tentative CAO is considerably different in scope and detail, and the potential for significant impacts to the physical environment from the proposed remedial design is manifest. As documented in the December 22, 2009, Draft Technical Report and the Cleanup Team's December 22, 2009 Initial Study, the tentative CAO is not categorically exempt from CEQA. Accordingly, an EIR should be prepared for the tentative CAO.
7. The estimated cost to complete the technical studies to support EIR development and to complete a final EIR that is in compliance with CEQA is estimated to be \$535,000. The San Diego Water Board Executive Officer has submitted a request to the State Water Resources Control Board (State Water Board) to secure \$535,000 in funding from the Cleanup and Abatement Account (CAA) to complete the tasks outlined in the Scope of Work. Attachments A through E to this Resolution comprise the funding request package submitted to the State Water Board by the Executive Officer.
8. Since the funds will be used for environmental consultation on a cleanup and abatement order, in the event the cleanup and abatement order is adopted by the San Diego Water Board and upheld after all appeals, pursuant to authority granted in Water Code section 13304, the San Diego Water Board intends to recover the funds from the responsible parties. The tentative CAO will include a directive that requires the Responsible Parties to reimburse the CAA for the cost of preparing the final EIR.

NOW, THEREFORE, BE IT RESOLVED THAT, the San Diego Water Board affirms and concurs with the Executive Officer's request that the State Water Board approve an allocation of \$535,000 from the CAA to the San Diego Water Board to fund the activities outlined in the Scope of Work.

I, David Gibson, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of the resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on August 11, 2010.

David W. Gibson
Executive Officer