

ADDITIONAL WRITTEN COMMENTS RECEIVED BY MARCH 7, 2017

for

Tentative Resolution No. R9-2017-0030

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1. Karen Holman, Unified Port of San Diego	2
2. Cathleen Pieroni (via Mai-Lan Le), City of San Diego	10

From: Karen Holman [mailto:kholman@portofsandiego.org]
Sent: Friday, March 3, 2017 1:38 PM
To: sandiego <sandiego@waterboards.ca.gov>; Haas, Jeremy@Waterboards <Jeremy.Haas@waterboards.ca.gov>; Posthumus, Bruce@Waterboards <Bruce.Posthumus@waterboards.ca.gov>
Cc: Jason Giffen <jgiffen@portofsandiego.org>; John Carter <jcarter@portofsandiego.org>; Kelly Tait <ktait@portofsandiego.org>; Karen Holman <kholman@portofsandiego.org>
Subject: Comment - Tentative Resolution No. R9-2017-0030

Dear Mr. Hass and Mr. Posthumus,

Attached please find the San Diego Unified Port District comment on *TENTATIVE RESOLUTION NO. R9-2017-0030 Supporting Use of the*

Key Beneficial Uses / Key Areas Concept to Help the San Diego Water Board Focus on What is Most Important.

The Port appreciates the opportunity to comment on this critical item.

Please feel free to contact me if you have any questions

Respectfully,

Karen



Karen Holman, Principal

Planning & Green Port

PORT OF SAN DIEGO

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VIA EMAIL

March 3, 2017

California Water Quality Control Board - San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108-2700
Attn: Bruce Posthumus and Jeremy Haas

**Re: Comment – Tentative Resolution No. R9-2017-0030,
Attn: Bruce Posthumus and Jeremy Haas**

Dear Mr. Posthumus and Mr. Haas:

The San Diego Unified Port District (District) appreciates the opportunity to provide comments in response to the Tentative Resolution No. R9-2017-0030, *Resolution Supporting Use of the Key Beneficial Uses/Key Areas Concept to Help the San Diego Water Board Focus on What Is Most Important* (Tentative Resolution) as well as the corresponding Staff Report *Key Beneficial Uses and Key Areas: Focusing on What Is Most Important* (Staff Report). As the public trustee of San Diego Bay (Bay), the District shares a common interest with the San Diego Regional Water Quality Control Board (Regional Board) in ensuring the protection of the Bay's beneficial uses. The District supports the Regional Board's continued efforts to address water quality issues within the Bay, and remains committed to working collaboratively with the Regional Board to fulfill our agencies' shared goals. To this end, the District respectfully submits the following comments regarding the Tentative Resolution and Staff Report

1. The Regional Board should work closely with the District to align the key areas/uses approach to be consistent with actual and potential uses that are identified in the Port Act and Public Trust Doctrine.

- a. The District is the trustee of the tidelands and submerged lands of San Diego Bay.

The State of California created the Port District in 1962 to manage, control and develop tidelands and submerged lands of San Diego Bay. As the Legislature recognized,

Because of the several separate cities and unincorporated populated areas in the area [of San Diego Bay] only a specially created district can operate effectively in developing the harbors and port facilities. Because of the unique problems presented by this area, and the facts and circumstances relative to the development of harbor and port facilities, the adoption of a special act and the creation of a special district is required. Harbors & Navigation Code App. 1 et seq. (the "Port Act") § 2.

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As trustee for the tidelands, the District has authority over “control, regulation, and management of the harbor of San Diego upon the tidelands and lands lying under the inland navigable waters of San Diego Bay” and authority over the trust’s natural resources, including the “powers and authority ... to protect, preserve, and enhance ... [t]he natural resources of the bay, including plant and animal life.” *Id.* at 4, 68.

As the Regional Board moves forward in identifying key areas/uses, it is important that it do so in a manner that is consistent with the suite of actual and potential uses of these vital public resources as authorized by the Port Act and the Public Trust Doctrine and as determined by the District.

- b. The Regional Board’s designation of key areas and uses in the Bay should integrate with the District’s efforts to update the Port Master Plan.

The District understands and supports the Regional Board’s effort to “be more strategic and more proactive” and “consider a variety of factors in decisions about how to prioritize its work and how to allocate and use its resources”, including “key beneficial uses and key areas”. San Diego Bay is identified as a “key water body type” for key beneficial uses, such as fish and shellfish consumption (second rank), recreation (first rank), and habitat and ecosystems (first rank). As the tidelands and submerged lands are managed by the District, we highly encourages the Regional Board to work with the District to fully understand the planning and management efforts related to these key beneficial uses.

- i. **Port Master Plan Update**

The District is currently involved in a multi-year “Integrated Planning” process leading to an update of its Port Master Plan (PMPU) with its own corresponding environmental compliance document. This process includes updates to land and water use designations and new Baywide and Planning District goals and policies for land and water use, mobility, natural resources, resiliency, coastal access, and economic development. The PMPU is intended to provide the official planning policies of the District consistent with the general statewide purpose, for the physical development of the tidelands and submerged lands conveyed and granted in trust to the District, as well as acquired uplands.

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The District encourages collaboration with the Regional Board to ensure consistency in planning initiatives for key areas under District management identified as “areas of special importance”, including, but not limited to:

Fish and Shellfish Consumption

- Shelter Island Shoreline Park shoreline and pier
- Spanish Landing Park shoreline
- Harbor Island Park shoreline
- Embarcadero Marina Park South shoreline and pier
- Pepper Park shoreline and pier
- Coronado Tidelands Park shoreline
- Coronado Landing Park shoreline and pier
- Imperial Beach Pier

Recreation

- Shelter Island Shoreline Park shoreline and pier
- Shelter Island Yacht Basin beaches
- Spanish Landing Park shoreline
- Harbor Island Park shoreline
- Embarcadero Marina Park North shoreline and pier
- Embarcadero Marina Park South shoreline and pier
- Grand Caribe Shoreline park
- Coronado Tidelands Park shoreline
- Coronado Landing Park shoreline and pier
- Glorietta Bay Park
- Lane Field
- Tuna Harbor Park
- Ruocco Park
- Fifth Avenue Landing
- San Diego Bayfront Park
- Cesar Chavez Park, including pier
- Pepper Park
- National City Marina
- Downtown Marina
- Broadway Pier
- Imperial Beach Pier

Habitats and Ecosystems

- Grand Caribe Shoreline park
- Eelgrass beds along outside of Shelter Island
- Wetlands in intertidal flats and shallow subtidal in the south bay and along the bay side of Silver Strand
- South Bay Biological Study Area

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ii. **Public Engagement – Workshops and Open Houses**

The District has organized a series of Board of Port Commissioner (BPC) workshops intended to obtain critical feedback and guidance as the work proceeds with finalizing the draft PMPU document and the Project Description for the PMPU Programmatic Environmental Impact Report (PEIR). Below is the anticipated timing of these workshops, along with the topic groupings planned for discussion:

- March 9, 2017: Approach to reorganization of the PMPU document, land and water use designations, land and water use goals, and a simplification of Planning District and associated sub-District naming conventions.
- April 27, 2017: Planning development opportunities, approach to mobility, and economic development policies
- May 25, 2017: Coastal access and recreation, natural resources, and resiliency and safety.

The District will hold public open house events to elicit feedback on the comprehensive ideas and goals. The District has utilized the robust public feedback obtained during the Integrated Planning Vision process as the basis for policy language contained in the PMPU. The open houses are scheduled for late March and Mid-May 2017.

The District highly encourages all interested stakeholders, including the Regional Board, to participate and provide input on this important effort.

2. **The Staff Report and Tentative Resolution should include Navigation (NAV) as a key beneficial use of the Bay.**

While the District supports the Regional Board's approach for identifying key ecosystems and areas for fishing and swimming, it is important that the development of strategies that address these uses do not impact or impede other critical Bay uses, and that all key uses are appropriately recognized. As such, the protection of navigational uses should be integrated into the Regional Board's focused beneficial uses as a primary consideration.

Navigation is one of the most predominant uses of San Diego Bay and the District's operations, allowing for the accommodation of commercial and military shipping, providing recreational fishing and boating opportunities, as well as protecting commerce and promoting maritime navigation in the San Diego Region. In the Port Act that established the District, the Legislature identified the statewide purposes for which the Bay and tidelands should be used and the establishment and maintenance of a harbor for commerce and navigation was the first purpose listed (*Harb. & Nav. Code App. 84 (a)(1)*). Navigation is also identified as a beneficial use in Chapter 2 of the 2016 Updated Basin Plan. As a purpose for which the Legislature has already identified as key to the Bay and surrounding cities, the Regional Board should not relegate navigation to a secondary or "other" use of the Bay.

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Continued unobstructed use of the Bay for navigation is essential to the other key uses the Regional Board has identified, as well as to the local economy. For example, several public facilities depend on navigational use of the Bay:

- 3 recreational anchorages,
- 1 commercial anchorage,
- 30 marinas & yacht clubs (over 8,000 slips),
- 462 mooring balls,
- 9 boatyards & shipyards,
- marine cargo terminals,
- passenger/ cruise terminals,
- berthing piers,
- fishing piers, and
- a commercial fishing facility with 111 useable slips

Without unobstructed navigation, the ability to use the Bay for fish and shellfish consumption and recreation, both listed as key beneficial uses, would be greatly impaired. Navigation has always been vital to the use, development and environmental sustainability of the Bay. The District requests that the Regional Board properly considers navigation as a key beneficial use and lists it along with the other key beneficial uses if the Tentative Resolution is adopted.

3. When developing regulatory documents pertaining to a specific water segment or water body, the Regional Board should engage stakeholders with local knowledge early on, and regularly throughout the process.

Within the Tentative Resolution, the Regional Board identified several reasons that support the need for staff to focus on what is important to protect and restore the integrity of waters throughout the San Diego Region. Different waterbodies and water segments may require different focuses to achieve the desired environmental outcomes the Regional Board seeks. The local stakeholders and regulated entities are valuable resources whose feedback and engagement may help the Regional Board determine and focus on what is important, as they are the groups most familiar with the waterbody or water segment in question. Further, effective long-term management depends on well-thought-out strategies that often require both manpower and time to meaningfully solve environmental problems. The Regional Board may be more successful in having its regulatory directives bring about *meaningful* environmental outcomes if those entities have been involved often and frequently throughout the decision making process and understand the importance of their directives

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4. The District supports the Organizational Structure and Management Strategies recommendation within the Staff Report regarding the creation of internal units explicitly focusing on the protection and restoration of the integrity of waters in key areas for key beneficial uses.

The District recognizes the value in having particular groups tasked with each focus area (i.e. Drinking Water Supply Unit, Fish and Shellfish Consumption Unit, Recreational Waters Unit, etc.) all of which may allow for better data management, more focused regulatory guidance, and reduce data collection overlap. However, it is also important that the individual focus units communicate regularly amongst each other and with stakeholders so the implementation strategies are coordinated in a manner that produces meaningful environmental results.

5. Data limitations must be considered when assessing the status and trends of water body conditions as they pertain to various key beneficial uses in corresponding key areas.

As the Regional Board moves to reorganize internal units and management strategies, data sets assessing key beneficial uses in corresponding key areas may be limited for the first several years of the concept rollout. Spatially and temporally robust data sets are extremely important to ensure validity when developing status and trends assessments. Creating public documents that make overarching statements about status and trends ascertained via limited data sets would be premature; findings should only reflect what collected data supports.

6. To truly understand the impacts to the key beneficial use of fish and shellfish consumption, a better understanding of habitat use and home ranges of fish in areas for which OEHHA has issued fish and/or shellfish consumption advisories is needed.

In the Bay, a known data gap is understanding the range and habitat use of fish that have been identified as having elevated tissue contaminants. The District recommends that the Regional Board develop a data-driven understanding of species-specific habitat use and home ranges of fish species listed in the OEHHA Consumption Advisories. The Staff Report suggests that if an area has been identified in the OEHHA Consumption Advisory, it automatically becomes an area of special importance. Without having data to support the fact that fish are accumulating the pollutants from the same area it was caught, it is impossible to make a designation as an "area of special importance" based on OEHHA Consumption Advisories alone. Moreover, fish are highly mobile species. Without fully understanding fish feeding and migration patterns, it is highly possible that they may be accumulating pollutants from locations other than a designated fishing area. To truly protect the fish and shellfish consumption uses in the Bay, all areas having elevated levels of pollutants known to accumulate in fish tissue should be prioritized.

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7. As trustee for the tidelands, the District plays an integral role in identifying locations of the key areas and key beneficial uses for the land and water areas of the tidelands. Table 13 should include the District and the reports mentioned herein as a source of information.

On the District's website, documents are available that detail additional information regarding key areas of habitats and ecosystems in the Bay.

The District requests that the Regional Board incorporate the Regional Harbor Monitoring Program:

(<https://www.portofsandiego.org/document/environment/regional-harbor-monitoring-program.html>) and the 2013 Integrated Natural Resources Management Plan: (<https://www.portofsandiego.org/environment/natural-resources/312-natural-resources-management-plan.html>) into Table 13 of the Staff Report.

The District is committed to participating in processes that assist in achieving our agencies' shared goal of improving the water quality and natural resources in San Diego Bay. The District greatly appreciates the Regional Board's continued efforts and looks forward to continued collaboration on programs and initiatives throughout the Bay.

If you have any questions or would like additional information related to the comments submitted herein, please contact Kelly Tait at (619) 686-6372 or via email at ktait@portofsandiego.org.

Sincerely,



Karen Holman
Principal,
Planning and Green Port
San Diego Unified Port District

CC: Jason Giffen, Assistant Vice President, Planning and Green Port
John Carter, Deputy General Counsel, Office of the General Counsel

KH/te

From: Le, Mai-Lan [mailto:MLe@sandiego.gov]
Sent: Tuesday, March 7, 2017 10:30 AM
To: sandiego <sandiego@waterboards.ca.gov>
Cc: cpieroni@SANDIEGO.GOV
Subject: Comment Letter on Tentative Resolution No. R9-2017-0030

Attn: Mr. David Gibson

Please find attached our comment letter regarding the above subject from the City of San Diego. If you should have any questions, please contact Jeffery Pasek at (619) 533-7599.

Best Regards,

Mai-Lan Le

Administrative Aide II

City of San Diego

Public Utilities Department | External Affairs

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March 7, 2017

THE CITY OF SAN DIEGO

Sent via Electronic Mail: sandiego@waterboards.ca.gov

Mr. David Gibson, Executive Officer
San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108-2700

Subject: Resolution No. R9-2017-0030, Key Beneficial Uses and Key Areas – Focusing on
What is Most Important Tentative Resolution: **SUPPORT**

Dear Mr. Gibson,

The City of San Diego Public Utilities Department (San Diego) has reviewed the *California Regional Water Quality Control Board, San Diego Region Tentative Resolution No. R9-2017-0030*, that endorses the February 15, 2017 staff report, “*Key Beneficial Uses and Key Areas - Focusing on What is Most Important.*”

San Diego strongly supports the staff report and adoption of the resolution.

San Diego’s Public Utilities Department provides drinking water to 1.3 million people in the City of San Diego and surrounding communities, plus wastewater collection, treatment, and disposal services for 2.5 million people in a larger San Diego region. The mission of the Public Utilities Department is “To provide reliable water utility services that protect the health of our communities and the environment.” The concepts put forward in the staff report and the resolution wholly aligns with our mission.

We recognize the challenges that the San Diego Water Board faces in protecting and enhancing the health of region’s waters with its limited resources, and applaud your efforts to focus on what is most important, both with the 2013 Practical Vision, and now with the Key Beneficial Uses and Key Areas concept.

Thank you for the opportunity to provide comments. Please contact Jeffery Pasek if you have any questions at (619)533-7599 or by email at jpasek@sandiego.gov.

Sincerely,

Cathleen Pieroni
External Water Policy Program Manager

cc: Jeffery Pasek, Watershed Manager, San Diego Public Utilities Department
Halla Razak, P.E., Director, San Diego Public Utilities Department

