

California Regional Water Quality Control Board  
Santa Ana Region

RESOLUTION NO. R8-2002-0047

Resolution Requesting Cleanup and Abatement Account Funds (American Trader Settlement) for Cleanup of Discharges to Newport Bay, Maintenance Dredging, and TMDL Compliance Fund

WHEREAS:

1. Section 13440-43 of the California Water Code established the State Water Pollution Cleanup and Abatement Account (CAA or Account) to be administered by the State Water Resources Control Board (State Board).
2. Grants to public agencies and the Regional Boards are available from the Account. The State Board may order that funds be paid from the Account to a public agency or the Regional Board to assist cleaning up a waste, or abating its effects, on waters of the State.
3. There is a serious threat to public health from microbial pollution, toxicity, and sedimentation in Newport Bay waters at numerous locations. These water quality problems are exacerbated by sedimentation that impedes circulation, eutrophication from nutrients (including a major source of phosphorous in the sediment), and discharges of toxic substances in the sediment. The Orange County Health Officer routinely closes portions of the Bay for extended periods during peak recreation periods due to microbial contamination of the bay waters. All the sources of these problems have not been identified. Low mixing due to siltation and urban runoff from tributary areas discharging into the bay from storm drains are suspected sources of the microbial contamination.
4. The Regional Board has established Total Maximum Daily Loads (TMDLs), in accordance with Section 303(d) of the Clean Water Act, for discharges of fecal coliform bacteria, sediment, and nutrients into Newport Bay, in order to correct these serious water quality problems. The USEPA will be establishing TMDLs for a number of toxic substances in Newport Bay water, and toxic substances in the sediment. The Regional Board has also adopted Implementation Plans for the adopted TMDLs, and is developing an implementation plan for the TMDLs for toxic substances that will be promulgated by the USEPA.
5. The Region Board, the Department of Fish and Game, the City of Newport Beach, the County of Orange, and other cities in the Newport Bay

watershed have established the Newport Bay Watershed Management and Executive Committees. This Watershed Committee has developed and implemented plans to comply with the TMDLs established by the Regional Board. All of the TMDLs established by the Board require that watershed-based solutions be developed by the watershed stakeholders, and that the stakeholders jointly fund and implement these projects throughout the watershed.

6. The most significant project being developed and implemented by the watershed stakeholders is the restoration and expansion of the two sediment retention basins in Upper Newport Bay that are part of the watershed sediment control plan, including a plan to ensure the long term maintenance dredging for these basins. This project is in design and scheduled to start construction in early 2004. As part of this project, the Corps of Engineers requires that the local agency participants in the project, the County of Orange and the City of Newport Beach, provide assurances that they will provide for the long-term maintenance of the restored areas in Newport Bay.
7. The CAA received approximately \$3.8 million from the American Trader settlement, resulting from an oil spill that occurred along the Newport Coast. The City of Newport Beach and the Regional Board are jointly applying for the CAA funds from this settlement, to be used for water quality improvement and cleanup projects in Newport Bay. The main project to be funded is the long term maintenance dredging of Newport Bay to ensure compliance with the TMDL for sediment. The funds will be put into an annuity account by the City and invested in low risk annuities to generate funding for maintenance dredging in Newport Bay, in perpetuity. It is estimated that maintenance dredging needs will start at \$3 million per year, following the completion of the dredging/restoration project, and reduce over time as the watershed is built out and sediment transport reaches an equilibrium. It may take 50 to 200 years for the watershed to stabilize. Based on past experience, there is also a need for more maintenance dredging after El Nino years and major storm events, which cannot be predicted. Therefore, the City will need to manage the maintenance-dredging fund on an as-needed basis. The City will use the \$3.8 million in principal, along with other funds, to generate the income necessary for the maintenance dredging. Other agencies and watershed stakeholders will add to the account to meet the maintenance dredging needs and to fund other TMDL compliance projects in Newport Bay.
8. The Regional Board will enter into a Memorandum of Agreement (MOA) with the City to establish and manage the annuity fund. The MOA will be completed by May 31, 2002, and the Regional Board will then request the transfer of CAA funds to the annuity account. It has been estimated by the Corps of Engineers that the first maintenance dredging will be required by

approximately 2017, if the dredging restoration project is started in 2004 and completed in 2007, as currently scheduled. The need for maintenance dredging may occur before 2017, due to the inherent variability in sediment transport and deposition in the watershed. The annuity fund will need to accumulate approximately \$30 million for the maintenance dredging that will be required in 2017. The MOA will specify that the principal in the fund will not be spent, but will be used, along with other funds, to generate the necessary funding for maintenance dredging in Newport Bay. The maintenance dredging may be needed in perpetuity, but the MOA will include provisions for the principal to be returned to the CAA in the event maintenance dredging is no longer needed in the Bay, or that the principal may be used for other TMDL compliance projects in Newport Bay, if both the City and the Regional Board agree to an amendment to the MOA. The MOA will also allow for the allocation of income from the fund to other TMDL compliance projects in the Bay, if agreed to by both parties under the MOA. The MOA will be modeled after the MOA between the Coastal Conservancy and the San Elijo Lagoon Conservancy, which was established for similar maintenance dredging, in perpetuity, in San Elijo Lagoon in San Diego County.

9. After notice to all interested parties, this Regional Board conducted a public hearing on April 26, 2002 to consider all evidence introduced at and prior to the hearing with regard to the request for Account monies for the Newport Bay Maintenance Dredging and TMDL Compliance Fund.

THEREFORE, BE IT RESOLVED THAT:

1. The project described in Attachment 1 is recommended to the State Board for allocation of funds from the Account.
2. The total amount of funds requested from the Account for this project is \$3,800,000 (three million eight hundred thousand dollars)

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 26, 2002.



Gerard J. Thibeault  
Executive Officer



# California Regional Water Quality Control Board

## Santa Ana Region



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*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at [www.swrcb.ca.gov/rwqcb8](http://www.swrcb.ca.gov/rwqcb8).*

**TO:** Barbara Evoy, Chief  
Division of Clean Water Programs

**FROM:** Gerard J. Thibeault  
Executive Officer  
**SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD**

**DATE:** April 12, 2002

**SUBJECT: Request for Cleanup and Abatement Account Funds (American Trader Settlement Funds)-Newport Bay Maintenance Dredging and Total Maximum Daily Load Compliance Fund**

There is a serious threat to public health from microbial pollution, toxicity, sedimentation and nutrients in Newport Bay waters. This water quality problem is exacerbated by sedimentation that impedes circulation, eutrophication from nutrients (including a major source of phosphorous in the sediment), and discharges of toxic substances in the sediment. The Orange County Health Officer routinely closes portions of the Bay for extended periods during the peak recreation period due to microbial contamination of the bay waters. All of the sources of these problems have not been identified. Low mixing due to siltation and urban runoff from tributary areas discharging into the bay from storm drains are suspected sources of the microbial contamination.

The Regional Board has established Total Maximum Daily Loads (TMDLs), in accordance with Section 303(d) of the Clean Water Act, for discharges of fecal coliform bacteria, sediment, and nutrients into Newport Bay, in order to correct these serious water quality problems. The USEPA will be establishing TMDLs for a number of toxic substances in Newport Bay water and toxic substances in the sediment. The Regional Board, the Department of Fish and Game, the City of Newport Beach, the County of Orange, together with the other cities in the Newport Bay watershed have established the Newport Bay Watershed Management and Executive Committees. This Watershed Committee has developed and implemented plans to comply with the TMDLs established by the Regional Board. All of the TMDLs established by the Board require that watershed-based solutions be developed by the watershed stakeholders, and that the stakeholders jointly fund and implement these projects throughout the watershed.

The most significant project being developed and implemented by the stakeholders, which include the U.S. Army Corps of Engineers and the State Department of Fish and Game, is the restoration and expansion of the two sediment retention basins in Upper Newport Bay that are part of the watershed sediment control plan, including provision

for the long-term maintenance dredging for these basins. This project is in design and scheduled to start construction in early 2004. As part of this project, the Corps of Engineers requires that the local agency participants in the project, the County of Orange and the City of Newport Beach, provide assurances that they will provide for the long-term maintenance of the restored areas in Newport Bay.

The City of Newport Beach also manages a general permit for maintenance dredging in Newport Bay. Some portions of the Bay, such as the Rhine Channel, have been identified as having toxic pollutants in the sediment and will need remediation to address the forthcoming TMDL for toxic substances.

As part of the long-term watershed management plans, it is proposed to establish an account to provide an annuity to be used to fund maintenance dredging and other compliance activities concerning the TMDLs for sediment, fecal coliform bacteria, nutrients, and toxic substances in Newport Bay. Stakeholder shares and contributions will be deposited in the annuity account, and the income will be used to fund these activities. It is estimated that the initial dredging/restoration projects will cost approximately \$32 million and the maintenance dredging projects to maintain design depths and habitat areas will require \$3 million per year.

The State Board's Cleanup and Abatement Account received approximately \$3.8 million from the American Trader settlement resulting from an oil spill that occurred along the Newport Coast. The City of Newport Beach and the Regional Board are jointly applying for the CAA funds from this settlement to be used to establish an annuity account to be used for water quality improvement and cleanup projects in Newport Bay. The City of Newport Beach will use the money to start up the annuity fund, and the City will provide the long-term management of the annuity fund. Other stakeholders and the City will be contributing to this account. It is also important to note the watershed stakeholders are implementing other projects throughout the watershed to comply with the TMDLs and to provide long-term protection of the beneficial uses of Newport Bay.

Attachment 1 is an Application for Cleanup and Abatement Account Funds, to establish, startup, and manage the Newport Bay Maintenance Dredging and Total Maximum Daily Load Compliance Fund with \$3,800,000 from the settlement of the American Trader oil spill case. The watershed stakeholders are securing funding from a variety of sources to add their contributions to fund these very important water quality projects needed to clean up, enhance and protect Newport Bay water quality. The funds generated by the annuity will be used to provide for the long-term maintenance dredging of Upper and Lower Newport Bay and to ensure long-term compliance with the TMDLs for sediment, fecal coliform bacteria, nutrients, and toxic substances in Newport Bay. The Regional Board will consider a resolution in support of this request at its April 26, 2002 meeting in Corona, California.

The TMDL for sediment specifies that the elevations and habitat areas of Newport Bay be maintained, and the previously described restoration project and long-term maintenance will provide for compliance with these requirements. These projects will also provide the most significant improvement to water quality in the Bay. The watershed stakeholders have identified the dredging and maintenance dredging as the highest priority projects.

Instead of entering into a contract with the City of Newport Beach, staff proposes that the Regional Board enter into a Memorandum of Agreement (MOA) with the City to establish and manage the annuity fund. Staff proposes to complete the MOA by May 31, 2002, and will then request the transfer of CAA funds to the annuity account. It has been estimated by the Corps of Engineers that the first maintenance dredging will be required by approximately 2017, if the dredging restoration project is started in 2004 and completed in 2007, as currently scheduled. The need for maintenance dredging may occur before 2017, due to the inherent variability in sediment transport and deposition in the watershed. The annuity fund will have to accumulate approximately \$30 million for the maintenance dredging that will be required in 2017. The MOA will specify that the principal in the fund will not be spent, but will be used to generate the necessary funding for maintenance dredging in Newport Bay. The maintenance dredging may be needed in perpetuity, but the MOA will include provisions for the principal to be returned to the CAA, in the event maintenance dredging is no longer needed in the Bay, or that the principal may be used for other TMDL compliance projects in Newport Bay, if both the City and the Regional Board agree to an amendment to the MOA. The MOA will also allow for the allocation of income from the fund to other TMDL compliance projects in the Bay, if agreed to by both parties under the MOA. The MOA will be modeled after the MOA between the Coastal Conservancy and the San Elijo Lagoon Conservancy, which was established for similar maintenance dredging, in perpetuity, in San Elijo Lagoon in San Diego County.

Attachment 2 is Tentative Resolution No. R8-2002-0047, supporting this request for CAA funds.

Attachment 1: Joint Application for CAA Funds from the City of Newport Beach/Regional Board to the State Board

Attachment 2: Tentative Resolution No. R8-2002-0047

## ATTACHMENT 1

APPLICATION FOR CLEANUP AND ABATEMENT ACCOUNT FUNDS

**1. Name and Address of Agency Requesting Funds:**

City of Newport Beach Dave Kiff, Assistant City Manager 3300 Newport Blvd. Newport Beach, CA 92658	California Regional Water Quality Control Board, Santa Ana Region
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**2. Name(s) of Person(s) Responsible for the Discharge of Waste:**

Most of the discharges entering Newport Bay are from non-point sources or urban runoff, including urban storm water runoff. The Newport Bay Watershed stakeholders have formed an Executive Committee (NBWEC). This Committee is comprised of the County of Orange, the Regional Board, the State Department of Fish and Game, the Cities of Newport Beach, Tustin, Irvine, Lake Forest, Santa Ana, Costa Mesa, and the Irvine Company. The NBWEC has developed and implemented a plan to comply with the Total Maximum Daily Load for sediment in the Newport Bay Watershed that includes the dredging and maintenance of two sediment basins within the Upper Newport Bay Ecological Reserve. The TMDL for sediment requires minimum depths and habitat areas within Newport Bay, in order to protect and maintain beneficial uses of REC-1, REC-2, marine aquatic and estuarine habitat, rare and endangered species habitat, navigation, and salt marsh habitat. This project, and many other projects being implemented throughout the Newport Bay watershed by the NBWEC and other partner agencies, are based on a watershed management plan under development by the NBWEC. Since these projects address the non-point sources of pollution in the watershed, the entire watershed is the source of the pollution and the discharge of waste.

**3. Location of the Discharge of Waste:**

Newport Bay.

**4. A Description of the Type of Discharge which Occurred:**

Approximately 150,000 tons per year of sediment is being discharged into Newport Bay from the surrounding watershed. It has been estimated that the Bay will fill in and become an upland within 50 to 100 years. This is occurring due to the diversion in the 1920's of the Santa Ana River from

discharging through the Bay and the channelization of San Diego Creek in the 1960's. The most significant discharge occurred in 1969, when over 500,000 tons of sediment was discharged into the Bay, resulting in the destruction of the salt works and filling in major portions of the Bay. The Newport Bay Watershed Management and Executive Committee has developed, and is implementing, a restoration plan for the Bay and a sediment control plan for the watershed. This sediment control plan was originally developed in the 1980's and was reaffirmed during the adoption of the TMDL for sediment in Newport Bay in 1999. The sediment control plan includes upstream sediment controls, as well as using two areas in the Upper Newport Bay to trap fine-grained sediment. This sediment contains almost 50% of the annual load of phosphorous discharged to Newport Bay, and also contains the majority of the DDT (and related isomers) and other pollutants that are discharged to the Bay. Therefore, the control of sediment discharging to the Bay is a very significant water quality control strategy that provides the most water quality benefits to Newport Bay.

In addition to the ongoing discharge of almost 150,000 tons per year of sediment into the Bay, there are numerous sources of fecal coliform being discharged into many areas of the Bay, some of which do not have good circulation due to sedimentation. Many of these areas of the Bay are used for body contact recreation, and beach closures due to exceedances of water quality objectives at these areas account for the largest number of beach closures per year in the Region. Newport Bay beaches also account for the highest amount of beach-mile-days of recreational use lost due to closure in the Region.

**5. A Description of the Waste Discharged:**

As discussed above, 150,000 tons per year of sediment is discharged to the Bay, that accounts for half the annual phosphorous load, the majority of the DDT load, and a significant discharge of other pollutants like pesticides and metals associated with the sediment. There are also numerous sources of fecal coliform, including the sediment, that contribute to the exceedances of the water quality objectives for fecal coliform. Some portions of the Bay, such as the Rhine Channel, have been identified as having toxic pollutants in the sediment.



**6. A Description of the Water Body Affected**

The Upper and Lower Newport Bay. The Upper Newport Bay is a preserve of over 700 acres of salt marsh and open water habitat and represents one of the most significant remaining coastal salt marshes in Southern California. The lower portion of the Upper Bay and Lower Newport Bay are also used extensively for body-contact, and non-contact, recreation.

**7. A Description of the Threat to Water and Public Health**

Newport Bay has been listed on the Clean Water Act Section 303(d) list of impaired water bodies for sediment, fecal coliform bacteria, nutrients, and toxic substances. There are at least 5 areas of the bay with chronic exceedances of water quality objectives for fecal coliform. The Orange County Health Care Agency routinely posts these areas so the public avoids body contact recreation, due to the threat to public health. TMDLs for sediment, fecal coliform bacteria, and nutrients have been established in the Basin Plan, with implementation plans. These TMDLs require maintenance dredging, and a number of other projects to maintain and protect the beneficial uses of Newport Bay.

**8. A Description of why the Responsible Party for the Discharge Cannot or Will Not Cleanup the Waste or Abate its Effects:**

The amount requested from the CAA Funds represents only a small portion of the cleanup costs. The remaining amount will be contributed by the stakeholders.

**9. A List of Actions Which Have Been Previously Taken to Cleanup or Abate the Effects of the Waste:**

The Regional Board has adopted TMDLs for sediment, nutrients, and fecal coliform, together with implementation plans for these TMDLs. Newport Beach will use this funds for maintenance dredging, and other TMDL compliance projects, within Newport Bay. The funds will be used to continue ongoing watershed stakeholder efforts to restore, protect, and maintain the beneficial uses of Newport Bay.

**10. A List of Actions Taken to Identify Other Sources of Funding:**

The watershed stakeholders are pursuing funding from a number of other sources to complete this and other related projects in the watershed. The dredging project will cost between \$32-38 million, and it is estimated that \$3 million per year, on average, will be needed to maintain the sediment basins. The Corps of Engineers, the California Coastal Conservancy, and many other agencies have secured funding for the dredging/restoration project and are exploring other funding sources for the long-term maintenance fund.

**11. A Description of How the Proposed Cleanup and Abatement is to be Accomplished**

The funds, along with funds from the stakeholders will be deposited into an annuity account by the City and invested in low risk annuities to generate funding for maintenance dredging in Newport Bay, in perpetuity. The stakeholders will fund approximately \$32 million for the initial restoration of the sediment basins. Following the initial restoration activities, approximately \$3 million per year will be needed for maintenance dredging till the watershed is built out and sediment transport reaches an equilibrium. It may take 50 to 200 years for the watershed to stabilize. The funds generated by the annuity will be used for maintenance dredging. Based on past experience, there is also a need for more maintenance dredging after El Nino years and major storm events, which cannot be predicted. Therefore, the City will need to manage the maintenance-dredging fund on an as-needed basis.

**12. A Cost Estimate of the Proposed Cleanup and Abatement**

The initial restoration-dredging project will cost between \$32-38 million and it is estimated that \$3 million per year, on average, will be needed for maintenance dredging of the sediment basins.

**13. A Description of the Results if Funding should be Denied**

In the absence of this funding, the stakeholders will have to explore other funding options. It is likely that the projects will be delayed or postponed indefinitely for lack of funds. If the projects are delayed or postponed, water quality in Newport Bay will continue to be impaired. The beneficial uses of the waters will not be attained and the threat to public health will continue.