

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

TENTATIVE RESOLUTION NO. R9-2011-0072

CERTIFICATION, PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY
ACT (Pub. Resources Code § 21000 et seq.; CEQA), OF THE FINAL
ENVIRONMENTAL IMPACT REPORT FOR THE SHIPYARD SEDIMENT
REMEDIATION PROJECT
SAN DIEGO BAY, CALIFORNIA

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

1. On September 15, 2010, the San Diego Water Board released Tentative Cleanup and Abatement Order No. R9-2011-0001 (CAO) to National Steel and Shipbuilding Company, BAE Systems San Diego Ship Repair, Inc., the City of San Diego, Star & Crescent Boat Company, Campbell Industries, San Diego Gas & Electric, the United States Navy, and the San Diego Unified Port District (hereafter dischargers). The CAO requires the remediation of accumulated waste in marine sediments adjacent to existing shipyard facilities in San Diego Bay (the Project).
2. The purpose of the Project is to implement the CAO, which includes the dredging of sediment adjacent to shipyards in San Diego Bay; the dewatering and solidification of this dredged material; the potential treatment and disposal of decanted water from dredging; and the transport of the dredged sediment to an appropriate landfill for disposal.
3. In Resolution No. R9-2010-0115 adopted on September 8, 2010, the San Diego Water Board found that the Project presents unusual circumstances and there is a reasonable possibility of a significant effect on the environment. Therefore, the Project is not exempt from analysis under CEQA, and an Environmental Impact Report (EIR) analyzing the potential environmental effects of the CAO should be prepared.
4. The San Diego Water Board is functioning as the lead agency under CEQA, which has the principal responsibility for preparing environmental documents, engaging the public and responsible agencies and exercising its discretion to approve or disapprove the proposed Project.

5. The San Diego Water Board prepared an Initial Study/Environmental Checklist for the Project in accordance with the CEQA and the State CEQA guidelines (14 Cal. Code Regs. § 15000, et seq.) on December 22, 2009.
6. On January 21, 2010, the San Diego Water Board held a CEQA scoping meeting to obtain comments concerning potential Project alternatives, significant environmental impacts, and mitigation measures for the Project.
7. On June 16, 2011, the San Diego Water Board distributed a Draft Program EIR for public review and comment. A Notice of Availability was sent to the State Clearinghouse, Responsible Agencies, and interested parties. The Draft Program EIR was circulated for a 45 day public review period, from June 16 to August 1, 2011. Copies of the Draft Program EIR were distributed to all Responsible Agencies and to the State Clearinghouse in addition to various public agencies and interested organizations. Copies of the Draft Program EIR were also made available for public review at Logan Heights Public Library, at the San Diego Water Board office, and on the internet at the San Diego Water Board website www.waterboards.ca.gov/sandiego. Comments were accepted for a period of 45 days as required by CEQA. A Notice of Availability was also filed with the County Clerk on September 20, 2011.
8. On September 15, 2011, the San Diego Water Board prepared, and distributed for public review, a proposed Final Program EIR consisting of the Draft Program EIR, comments received on the Draft Program EIR, responses to comments received during the public comment period, and minor revisions to the Draft Program EIR. A CEQA Mitigation Monitoring and Reporting Program is contained within the proposed Final Program EIR. Together, these documents constitute the required environmental documentation under CEQA. (14 Cal. Code Regs. §15132.)
9. As required by Public Resources Code section 21159 and Title 14 California Code of Regulations section 15187, the San Diego Water Board has evaluated the potentially significant adverse environmental impacts of reasonably foreseeable methods of compliance with the CAO. As described in the proposed Final Program EIR, the adoption of the CAO and implementation of the Project is anticipated to result in direct impacts from the dredging and the disposal of sediment. The CAO does not prescribe the location of staging areas for the dredged sediment, nor does it prescribe the scheduling of the dredging in relation to sensitive species. Predicting the number or location of staging areas for the dredged sediment selected by the dischargers during remediation is overly speculative at this time. The selection of a staging area(s) for dewatering, and scheduling Project activities will be determined by the dischargers, and the selected staging area(s) and scheduling Project activities could have potentially significant adverse environmental impacts. Accordingly, the proposed Final Program EIR evaluates environmental impacts at a programmatic level.

10. When an agency decides to approve a project that will cause one or more significant adverse environmental effects identified in an EIR, CEQA requires that the lead agency prepare a statement of overriding considerations which reflects the ultimate balancing of competing public objectives (including environmental, legal, technical, social, and economic factors) that the agency is required by law to carry out or approve. (Pub. Resources Code, §§ 21002.1, 21081; 14 Cal. Code Regs § 15093.) The proposed Final Program EIR for the CAO finds that the implementation of the CAO could result in potentially significant environmental impacts. The San Diego Water Board, under CEQA, is required to adopt all feasible mitigation measures or feasible project alternatives that can substantially lessen or avoid any potentially significant project-related impacts. Other public agencies that approve individual actions taken in response to the CAO that are subject to CEQA can and should incorporate feasible mitigation measures into any projects or project approvals that they undertake.
11. As demonstrated by the CEQA Findings of Fact (attached hereto as Exhibit A and incorporated by this reference as if set forth in full herein), most of the Project's potentially significant adverse environmental impacts can be lessened to less than significant levels or avoided through the adoption of feasible mitigation measures. However, some adverse environmental impacts will remain significant and unavoidable despite the adoption and implementation of all feasible mitigation measures.
12. Under CEQA, the San Diego Water Board must consider the feasibility of a reasonable range of alternatives that would reduce or eliminate significant unavoidable effects associated with the Project while still attaining the Project's goals and objectives. The San Diego Water Board has determined, for reasons set forth in Exhibit A and the proposed Final Program EIR, that the proposed alternatives to the Project are not environmentally preferable (e.g. they cause additional impacts), fail to fully meet the project objectives, and/or are wholly infeasible.
13. The San Diego Water Board has determined, as prescribed in Exhibit A and in the proposed Final Program EIR, that the preferred Project is feasible and fully meets the Project objectives in accordance with CEQA.
14. The San Diego Water Board is required under CEQA to adopt a Mitigation Monitoring and Reporting Plan in order to ensure the proper implementation of mitigation measures adopted by the San Diego Water Board. A Mitigation Monitoring and Reporting Plan has been prepared within the proposed Final Program EIR, is attached hereto as Exhibit B, and is incorporated by this reference as if set forth in full herein.
15. As some environmental impacts will remain significant and unavoidable despite the adoption and implementation of all feasible mitigation measures, CEQA requires the San Diego Water Board to adopt a Statement of Overriding Considerations,

which is attached hereto as Exhibit A and incorporated by this reference as if set forth in full herein.

16. It is appropriate to certify the proposed Final Program EIR and to adopt the Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Plan as incorporated within this Resolution.

THEREFORE BE IT RESOLVED THAT:

1. Certification of the Final Program EIR

The San Diego Water Board hereby certifies that the proposed Final Program EIR has been completed in compliance with CEQA. The San Diego Water Board has reviewed and considered the information contained in these documents, which reflect the San Diego Water Board's independent judgment and analysis; and has reviewed and considered the information in the Final Program EIR, as well as other information in the record, prior to approving the proposed Project.

2. Adoption of Findings

As the decision-making body for the proposed Shipyard Sediment Remediation Project, the San Diego Water Board has reviewed and considered the information contained in the Final Program EIR and the Findings of Fact attached hereto as Exhibit A and supporting documentation. The San Diego Water Board determines that the Findings of Fact contain a complete and accurate reporting of the environmental impacts and mitigation measures/strategies associated with the proposed Shipyard Sediment Remediation Project, addresses the infeasibility of certain mitigation measures, and includes the reasons why certain impacts cannot be mitigated to a less than significant level. The San Diego Water Board further finds that the Findings of Fact have been completed in compliance with CEQA and the State CEQA Guidelines. The San Diego Water Board hereby adopts the Findings of Fact attached hereto as Exhibit A.

3. Approval of the Statement of Overriding Considerations

In accordance with Public Resources Code section 21081 and State CEQA Guidelines Section 15093, subdivision (a), which state that CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve a project, the Statement of Overriding Considerations attached hereto as Exhibit A sets forth those significant effects on the environment that are found to be unavoidable, but are acceptable due to specific overriding concerns and benefits expected to result from implementing the proposed Shipyard Sediment

Remediation Project. The San Diego Water Board hereby approves and adopts the Statement of Overriding Considerations attached hereto as Exhibit A.

4. Mitigation Monitoring and Reporting Program

Pursuant to Public Resources Code section 21081.6 and CEQA Guidelines Section 15092, subdivision (d), the San Diego Board hereby adopts the Mitigation Monitoring and Reporting Program attached hereto as Exhibit B. The mitigation measures as set forth in the findings and in the MMRP are hereby incorporated into the proposed Shipyard Sediment Remediation Project.

5. Custodian of Documents

David Barker, Supervising WRC Engineer of the San Diego Water Board, is designated as the custodian of the documents and records of proceedings on which this decision is based. The San Diego Water Board's office is located at 9174 Sky Park Court, Suite 100, San Diego, CA 92123-4340, and the telephone number is (858) 467-2965.

Certification

I, David W. Gibson, Executive Officer, do hereby certify that this Resolution with all attachments is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on November 16, 2011.

David W. Gibson
Executive Officer