

STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Naomi Feger)  
MEETING DATE: December 13, 2006

ITEM: 5H

SUBJECT: Resolution to Allow the Executive Officer to Make Minor, Non-Substantive Corrections, for Clarity or Consistency, to the Language of Resolution 01-064 and Resolution 01-065 Pertaining to the Long Term Management Strategy for the Disposal of Dredged Material in San Francisco Bay (LTMS) During the Approval Process by the State Board or the Office of Administrative Law – Adoption of Resolution

CHRONOLOGY: 2001 – Board adoption of resolutions amending the Basin Plan to implement the LTMS for dredged material disposal

DISCUSSION: A Tentative Resolution (Appendix A) has been prepared for the Board's consideration that would authorize the Executive Officer to make some minor, non-substantive corrections to the LTMS Basin Plan amendment that State Board staff has identified while reviewing the amendment. It is now common practice in resolutions adopting Basin Plan amendments to include language allowing the Executive Officer to make such minor corrections for clarity or consistency. As the resolutions adopting the LTMS Basin Plan amendment did not do this, the Tentative Resolution provides the mechanism for delegating this authority to the Executive Officer.

The Board adopted Resolution 01-064 (Appendix B) in June 2001, amending the Basin Plan to implement the LTMS, which combines decreasing the amount of in-Bay disposal of dredged material while increasing disposal at the deep ocean disposal site and use of dredged material as a resource for wetland habitat restoration such as the Hamilton Wetland Restoration Project and levee maintenance projects. At the same hearing, the Board also adopted Resolution 01-065 (Appendix C) which adopted the guidelines contained in the 1998 federal Inland Testing Manual, and the local implementation procedures developed through the Dredged Material Management Office (DMMO) as the appropriate framework for evaluating the suitability of dredged material for disposal at in-Bay disposal sites. In addition, Resolution 01-065 recognizes the success of the DMMO as a review body for dredging and disposal projects in the Bay and directs staff to continue to participate in this group. Board staff remain active in and supportive of both the LTMS and the DMMO.

After Resolutions 01-064 and 01-065 were adopted, there was a delay in transmitting the LTMS Basin Plan amendment administrative record to the State Board due to uncertainty regarding the necessity for scientific peer review. Recent communication between State Board and Board legal counsel has confirmed that peer review is not necessary for these policy-based amendments. State Board staff has now completed its review of the

administrative record and has identified some minor, non-substantive corrections to be made to the language in the amendment. Adoption of the Tentative Resolution will allow these corrections to be made without the need of a Board hearing.

RECOMMEN-  
DATION:                   Adoption of the Tentative Resolution

File No. 1535.05 (NLF)

Appendices:

A – Tentative Resolution

B – Resolution 01-064

C – Resolution 01-065

# APPENDIX A

## Resolution

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

TENTATIVE RESOLUTION R2-2006-00XX

To Allow the Executive Officer to Make Non-Substantive Corrections to Board Resolutions 01-064 and 01-065

**WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region (Water Board), finds that:**

1. On June 19, 2001, the Water Board adopted Resolution 01-064, amending the Basin Plan to implement the Long Term Management Strategy for the Disposal of Dredged Material in San Francisco Bay (LTMS), consistent with the LTMS final Policy EIS/Programmatic EIR certified by the State in November 1999.
2. On June 19, 2001, the Water Board also adopted Resolution 01-065, which 1) adopted the guidelines contained in the 1998 U.S. Army Corps of Engineers/U.S. Environmental Protection Agency Inland Testing Manual and the local implementation procedures developed through the Dredged Material Management Office (DMMO) as the appropriate framework for evaluating the suitability of dredged material for disposal at in-Bay disposal sites; and 2) rescinded outdated Resolution Nos. 80-10, 87-53, and 93-009.
3. State Board staff has completed its review of the LTMS Basin Plan amendment administrative record and has identified minor non-substantive corrections to the language in the amendment; however, resolutions 01-064 and 01-065 do not include language allowing such changes.
4. It has become common practice in resolutions adopting Basin Plan amendments to include language allowing the Executive Officer to make minor, non-substantive corrections that are necessary for clarity or consistency.
5. The Tentative Resolution (Appendix A) provides the mechanism for delegating authority to the Executive Officer to make these types of corrections.

**NOW, THEREFORE BE IT RESOLVED THAT:**

If, during the approval process of Resolutions 01-064 or 01-065, Water Board staff, the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Water Board of any such changes.

I, Bruce H. Wolfe, 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, San Francisco Bay Region, on December 13, 2006.

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BRUCE H. WOLFE  
Executive Officer

# APPENDIX B

Resolution 01-064

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

RESOLUTION NO. 01-064

Resolution amending the Water Quality Control Plan for the San Francisco Bay Basin to implement the Long Term Management Strategy for the Disposal of Dredged Sediments in the San Francisco Bay Region

WHEREAS, these amendments to the Water Quality Control Plan for the San Francisco Bay Region (Basin Plan) were developed in accordance with Water Code §13240 et seq.; California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Regional Board) finds that:

1. This amendment is the outcome of over ten years of work and study of dredge material disposal in San Francisco Bay;
2. Dredged material typically disposed of in the Bay and the impacts of this general practice on beneficial uses is difficult to fully evaluate, however, impacts at high disposal volumes are apparent;
3. Concerns about the impacts of in-Bay disposal of dredged material led to the creation of the Long Term Management Strategy for the Disposal of Dredged Material in the San Francisco Bay Region (LTMS) program in 1990, by the USACE, the USEPA, the San Francisco Bay Conservation and Development Commission, the San Francisco Bay Regional Water Quality Control Board, and the State Water Resources Control Board, along with representatives from the dredging, fishing, environmental, and scientific communities;
4. The LTMS agencies, developed an EIS/EIR which selected a preferred alternative of reduced disposal at the designated in-bay sites and the Federal LTMS partners certified the EIS in a Record of Decision in July 1999 and the State Board, as the lead State agency certified the EIR in November 1999;
5. The selected alternative proposes a reduction of in-Bay disposal to approximately 20% of recent in-bay disposal volumes;
6. The public process to implement the reduction of in-bay disposal included over 10 workshops in 1999 and 2000;
7. This amendment will not have direct economic impacts on any parties at this time. The long-term impacts on the cost of dredging projects is uncertain and controlled by factors beyond these amendments;
8. The amendments will impact the operation of the Federal agency responsible for maintenance of navigation channels in San Francisco Bay, the United States Army Corps of Engineers. However, those impacts are minimized by the phased implementation of the reduction in in-bay disposal volume;

9. To assure water quality and beneficial use protection it is appropriate to amend the Basin Plan to implement the LTMS selected alternative that will result in decreased in-Bay disposal;
10. These amendments would reduce the limit on disposal at the designated in-Bay disposal sites, establish a two-phase process of allocation of the reduced in-Bay disposal volumes, with an initial voluntary phase, followed by a second, mandatory phase after additional Board hearings and action, should the voluntary phase not provide progress toward the desired condition, revised permit conditions to reflect requirements of the resource agencies; and minor changes in definitions and updates to reflect current program status.
11. These changes would be in Chapter 4 (Implementation) and Chapter 5 (Plans and Policies) of the Basin Plan;
12. The Regional Board considered an earlier version of these amendments at their September 2000 hearing;
13. Regional Board staff prepared and distributed a staff report regarding adoption of the Basin Plan amendment in accordance with applicable state and federal environmental regulations (California Code of Regulations, §3775, Title 23 and 40 CFR Parts 25 and 131).
14. The process of basin planning has been certified by the Secretary for resources as exempt from the requirement of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) to prepare an Environmental Impact Report or Negative Declaration. The Basin Plan amendment package includes a staff report, an Environmental Checklist, and assessment of the potential environmental impacts of the Basin Plan amendment, and a discussion of alternatives. The Basin Plan amendment, Environmental Checklist, staff report, and supporting documentation are functionally equivalent to an Environmental Impact Report or Negative Declaration.
15. On June 20, 2001, the Regional Board held a Public Hearing to consider the Basin Plan amendment. Notice of the Public Hearing was given to all interested persons and was published in accordance with Water Code Section 13244.
16. The Basin Plan amendment must be submitted for review and approval by the SWRCB, OAL and EPA. Once approved by the SWRCB, the amendment is submitted to OAL and EPA. The Basin Plan amendment will become effective upon approval by OAL and EPA. A Notice of Decision will be filed.

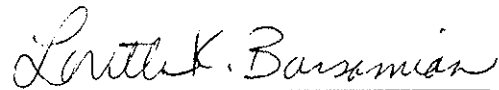
NOW, THEREFORE BE IT RESOLVED THAT:

1. The Regional Board adopts the amendments to implement the Long Term Management Strategy for the Disposal of Dredged Sediments in the San Francisco Bay Region to the Water Quality Control Plan for the San Francisco Bay Basin as set forth in the attachment.

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2. The Executive Officer is directed to forward copies of the Basin Plan Amendment to the SWRCB in accordance with the requirement of Section 13245 of the California Water Code.
3. The Regional Board requests that the SWRCB approve the Basin Plan amendment in accordance with the requirements of Sections 13245 and 13246 of the California Water Code and forward it to the OAL and EPA for approval.
4. Considering the record as a whole, this Basin Plan amendment will involve no potential for adverse effect, either individually or cumulatively on wildlife. Therefore, the Executive Officer is directed to sign a Certificate of Fee Exemption for a "De Minimis" Impact Finding.

I, Loretta K. Barsamian, 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, San Francisco Bay Region, on June 19, 2001.



LORETTA K. BARSAMIAN  
Executive Officer



# APPENDIX C

Resolution 01-065

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

RESOLUTION NO. 01-065

Resolution regarding guidelines for evaluation of dredged material proposed for disposal at in-Bay disposal sites, coordination of dredging permit review, and the issuance of waivers of water quality certification for small dredging projects.

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Regional Board) finds that WHEREAS:

1. Regional Board Resolution No. 80-10 acknowledged procedures promulgated by the U. S. Army Corps of Engineers (USACE) in 1978 to evaluate the suitability of dredged material for in-Bay disposal and delegated primary responsibility for administering the new procedures to the USACE, while reserving the right to act to protect water quality, if necessary; and
2. Regional Board Order No. 93-009 endorsed 1992 revisions of the USACE 1978 guidelines for evaluating the suitability of dredged material for in-Bay disposal and directed staff implement the new guidelines; and
3. Regional Board Order No. 93-003 also directed staff to work with USACE, U.S. Environmental Protection Agency (USEPA), and the San Francisco Bay Conservation and Development Commission (BCDC) to develop a coordinated agency permit process for maintenance dredging permit applications, involving the development of a single permit application form to be used by all agencies and routinely scheduled meetings of the agencies to review permit applications;
4. Since 1995, Regional Board staff has been participating in the Dredged Material Management Office (DMMO.) along with staff from USACE, USEPA, BCDC, and the California State Lands Commission (SLC); and
5. The DMMO has developed a single permit application form for dredging projects that is used by all the participating agencies, holds regularly scheduled meetings that are open to the public in which permit applications and sediment testing plans and results are reviewed, tracks dredging and disposal volumes, and is expected to play an important role in the implementation of the Long Term Management Strategy for Disposal of Dredged Material in the San Francisco Bay Region (LTMS); and
6. In 1998 the USACE and USEPA issued new guidance for evaluating the suitability of dredged material for disposal in aquatic environments such as the in-Bay disposal sites in the document *Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S. – Testing Manual, Inland Testing Manual*; and
7. The DMMO held two public workshops on the Inland Testing Manual and public workshop on Public Notice 99-3, describing how the Inland Testing Manual will be

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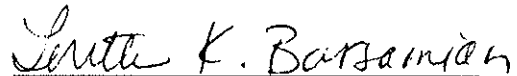
implemented in the San Francisco Bay Region, and is about to issue a follow-up to PN 99-3 containing revisions in response to public comments; and

8. Regional Board Resolution No. 87-53 delegated authority to the Executive Officer to waive water quality certification for dredging projects involving less than 50,000 cubic yards of dredging and disposal of dredged materials; and
9. New regulations in effect as of June 24, 2000, governing the issuance of water quality certifications by Regional Boards prohibit the issuance of waivers of water quality certification;

NOW, THEREFORE BE IT RESOLVED, that:

1. This Regional Board adopts the Inland Testing Manual and the local implementation procedures developed through the DMMO as the appropriate framework for evaluating the suitability of dredged material for disposal at in-Bay disposal sites in San Francisco Bay.
2. The Regional Board recognized the success of the DMMO as a review body for dredging and disposal projects in San Francisco Bay and as an important component in the implementation of the LTMS and directs staff to continue to participate in this group.
3. Resolution Nos. 80-10, 87-53, and 93-009 are hereby rescinded.

I, Loretta K. Barsamian, 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, San Francisco Bay Region, on June 19, 2001.



LORETTA K. BARSAMIAN  
Executive Officer