
Santa Ana Regional Water Quality Control Board

January 20, 2021

Governor's Office of Planning & Research

Jan 20 2021

Chris Miller
City of Newport Beach
Public Works Department
100 Civic Center Drive
Newport Beach, CA 92660

STATE CLEARINGHOUSE

cmiller@newportbeachca.gov

SUBJECT: COMMENTS ON THE CITY OF NEWPORT BEACH'S DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE LOWER NEWPORT BAY CONFINED AQUATIC DISPOSAL CONSTRUCTION PROJECT

Dear Mr. Miller:

This letter provides comments from Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) staff on the City of Newport Beach's (City) Draft Environmental Impact Report (DEIR) for the Lower Newport Bay Confined Aquatic Disposal (CAD) Construction Project. We are providing these comments by close of the comment period (January 20, 2021). The purpose of this letter is to outline staffs' main comments and concerns regarding the City's California Environmental Quality Act (CEQA) analysis contained in the DEIR for the proposed CAD. Given the large size of the DEIR (10,479 pages including all appendices) and the limited review time available to staff since the documents were released during the 2020 holiday season, Santa Ana Water Board staffs' comments are limited to a few main issues.

On January 15, 2020, Santa Ana Water Board staff recommended that the City of Newport Beach (City) organize and convene a Technical Advisory Committee or use the existing Southern California Dredged Material Management Team (SC-DMMT) to provide input into the proposed CAD project design, the proposed Sediment Management Plan (SMP), and the Operations Management and Monitoring Plan (OMP). This was also previously suggested in emails sent by Santa Ana Water Board staff to City staff in June and August of 2019.

A Technical Advisory Committee was not formed by the City. The City's proposed CAD project has never appeared as an agenda item in any SC-DMMT meeting. In addition, neither the SC-DMMT as a group, nor Santa Ana Water Board staff were allowed the

WILLIAM RUH, CHAIR | HOPE SMYTHE, EXECUTIVE OFFICER

opportunity to provide input on the contents of the SMP or the OMP and were not aware that the City was also having an engineering basis of design documents being prepared. Santa Ana Water Board staff only learned of the existence of the majority of these documents after the City's notification that the DEIR and supporting documents were available for review on December 4, 2020.

In our January 15, 2020 comment letter on the initial Notice of Preparation (NOP), Santa Ana Water Board staff notified the City that we did not approve of the ambiguity of the proposed timeline for the project, a period of "up to ten years" that the CAD would be open for residents to use to dispose of contaminated sediments from dock, pier and slip maintenance that may fail to meet the RGP-54 401 certification requirements. In addition, there were no details provided regarding coordinating logistics with residents that would need access to the CAD for disposal of contaminated dredge materials.

The December 4, 2020 DEIR indicates that "approximately 2 years" following completion of construction of the CAD there would be a second opportunity to place contaminated sediment in the facility. The Santa Ana Water Board was not previously informed of this operational plan, and therefore staff has not provided any input on its feasibility. In addition, there has been no environmental impact analysis of potential projects that may not meet conditions for coverage under the RGP-54 401 Certification. Many future dock and pier maintenance projects are expected to be excluded from RGP-54 401 Certification coverage due to failure to meet z-layer contaminant threshold requirements. This DEIR does not sufficiently address the magnitude and nature of potential impacts to the environment or water quality due to point-source discharges over the applicant's proposed project timeline.

In the DEIR section 3.8.3.1 "Baseline", the applicants claim that Bay waters met applicable standards in baseline conditions. This claim does not appear to be justified. The Lower Newport Bay is and will continue to be listed on the Clean Water Act section 303(d) priority list for chlordane, copper, DDT, indicator bacteria, nutrients, PCBs, and toxicity. The Santa Ana Water Board expects the applicants to substantiate any claim of the attainment of water quality objectives, which would be in contrast to the current USEPA-approved impairment listings. All lines of evidence used by the Santa Ana Water Board staff for evaluation for current 303(d) listing indicate that "applicable standards" are not being met.

Section 2.5 of the DEIR Proposed Project Construction indicates that "clean material excavated during construction of the CAD facility will be transported to, and disposed along, the nearshore ocean beaches or transported to LA-3 for open ocean disposal." There is no indication of what would be done with the dredge material removed during the construction of the CAD if it is contaminated. There is evidence that the area proposed as the physical footprint of the CAD falls in an area where there are high levels of DDT, and potentially other contaminants. There was no indication of where this unsuitable material would be placed, or whether there were any mitigation measures proposed to manage contamination associated with the dredging of material

during the construction of the CAD that could have potentially significant impacts to the environment.

Section 2.5 indicates that “CAD facility construction will *likely* occur using mechanical equipment and bottom-dump barges”. Since this has not been scoped sufficiently for the applicants to make a definitive declaration of the method planned for the CAD project dredging, the Santa Ana Water Board staff considers the CEQA analysis in the DEIR to be incomplete.

The aforementioned comments and concerns summarize key points that should be addressed before the Santa Ana Water Board staff considers the CEQA analysis presented in the DEIR to adequately address water quality-related concerns, which include beneficial uses, water quality objectives, and antidegradation. The DEIR must sufficiently address the magnitude and nature of potential impacts to water quality and the environment due to point-source discharges that may occur during the course of the applicant’s proposed project timeline.

If you require further assistance or have questions, please contact me at David.Woelfel@waterboards.ca.gov or Terri Reeder, Chief of the Coastal TMDL Section at Terri.Reeder@waterboards.ca.gov.

Sincerely,

David Woelfel
Chief of the Regional Planning Programs Section
Santa Ana Water Regional Water Quality Control Board

cc: City of Newport Beach, Dave Webb – dawebb@newportbeachca.gov
U.S. Fish and Wildlife Service, Carol Roberts
– carol_a_roberts@fws.gov
U.S. Environmental Protection Agency,
Melissa Scianni – Scianni.melissa@epa.gov
U.S. Army Corps of Engineers, Larry Smith –
Lawrence.j.smith@usace.army.mil
California Coastal Commission, John Weber
john.weber@coastal.ca.gov
Anchor QEA LLC, Adam Gale
agale@anchorqea.com

