

California Regional Water Quality Control Board
San Francisco Bay Region
EXECUTIVE OFFICER'S REPORT

A Monthly Report to the Board and Public

July 2009

The next regular scheduled Board meeting is July 8, 2009.

See <http://www.waterboards.ca.gov/sanfranciscobay/> for latest details and agenda

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Update on Suspended Bond-funded Grants (Susan Gladstone)

Two bond-funded grants previously suspended in December under a Department of Finance statewide directive are poised to restart under federal economic stimulus funding supplied by the American Recovery and Reinvestment Act (ARRA). In early June, new agreements were executed for the Tomales Bay Watershed Council to complete wetlands restoration and monitoring, and for the Conservation Corps of the North Bay to complete a sediment reduction project on Olema Creek. Both projects are in the Tomales Bay watershed. They had been underway since mid-2007 and nearly completed when the spending for the State's bond programs was frozen. New ARRA agreements for an additional six grants (listed below) are in progress.

General Obligation Bond Programs were put on hold in mid-December, due to the State's fiscal crisis. This program suspension affected twenty-one grants in our Region funded by Propositions 13, 40 and 50. In April, the State Board announced the availability of federal economic stimulus funds to support water quality projects that were halted. Key criteria for projects to be funded under ARRA were that the projects must include construction activities that would be underway or ready to proceed by mid-May. Eight grant projects in this Region fit those criteria.

Bond-funded grants in our Region slated for ARRA Funding:

- Tomales Bay Wetlands Restoration & Monitoring Plan (agreement executed)
- Olema Creek Sediment Reduction Project (agreement executed)
- Rutherford-Napa Restoration Plan
- Napa River Sediment Reduction/Habitat Enhancement Plan
- Creek Watershed Program
- Coastal San Mateo County Watersheds
- Taking Action for Clean Water
- Conserving Our Watersheds

Regarding those grants not being covered by ARRA, such as grants for planning and assessment, funding efforts are slowly moving forward. The suspension of the bond program also stopped payments on December 17, 2008, for work that had already been completed by the grantees. Invoices totaling nearly \$500,000 in this Region had been submitted by that time and were stalled for payment during this crisis.

A budget letter issued by the Department of Finance on May 6 announced that previously suspended projects could restart. The proceeds from bond sales in the spring of this year were intended to satisfy obligations made for projects already started or grants already committed. By June 23, the State Board's Division of Financial Assistance announced approval of all of our grantees' back invoices, with the expectation that payments should be received within a month.

Despite the May 6 budget letter, Board staff are uncertain about whether there are sufficient funds for all of the remaining Board bond-funded projects to go to completion. Nine projects have been advised to proceed at their own risk as to whether or when they will be paid for completing the projects. However, four projects are completed or are nearing close-out and are expected to be paid in full.

Enforcement – Complaints and Settlements (Brian Thompson)

In the past month, the Assistant Executive Officers issued two administrative civil liability (ACL) complaints. An ACL with a proposed fine of \$332,000 was issued to the Sausalito-Marín Sanitary District in Sausalito (Marin County) for unauthorized discharges of partially treated wastewater and a sanitary sewer overflow. An ACL with a proposed amount of \$44,900 was issued to East Bay Regional Park District for a 22,260 gallon spill of raw sewage to Lake Del Valle. Copies of the complaints can be found on our web site: http://www.waterboards.ca.gov/sanfranciscobay/pending_en.shtml.

I also issued one ACL order in May which directs the Rodeo Sanitary District, Water Pollution Control Facility in Rodeo (Contra Costa County) to pay a fine of \$30,225 to the State's Cleanup and Abatement Account and, in lieu of a further fine of \$20,775, complete a Supplemental Environmental Project to reduce potable water use at its wastewater treatment plant. I issued this Order after the Board's Prosecution Team staff reached a

settlement with the Rodeo Sanitary District and after circulation of a draft ACL Order for 30 days which did not generate opposition to this action.

PCBs TMDL Status (Naomi Ferger)

Last month, the State Board circulated the San Francisco Bay PCBs TMDL for public comment. The public comment period ended on June 4. We anticipate that the TMDL will be on the State Board's agenda for consideration sometime in August.

In addition, when you approved the TMDL and Implementation Plan for PCBs in February 2008, the resolution adopting the Basin Plan amendment stated that I would inform you of any minor, non-substantive corrections to the language of the amendment that the State Board or Office of Administrative Law (OAL) should deem necessary. The State Board has requested that we make a minor clarification to the proposed Basin Plan amendment to satisfy OAL's requirements. Specifically, they requested we identify the effective date of a federal regulation in the amendment language. We have made this change via an Executive Officer Correction Memo to the State Board.

Guadalupe River Watershed Mercury TMDL Implementation (Carrie Austin)

Last month I issued several Water Code §13267 orders directing property owners of former mine sites in the upper Guadalupe River watershed to report on the erosion potential and threat to water quality of mercury mining wastes on their property. This requirement is the first of two initial regulatory actions in accordance with the Implementation Plan for the Guadalupe River watershed mercury TMDL project you adopted last October. Information reported to the Board under these orders will be used to inform future cleanup and abatement orders and prioritize site-specific stormwater runoff and erosion control measures for erosion prone, mine waste sites. The goal of this first phase of TMDL implementation is effective source control of mining wastes.

A forthcoming, second series of § 13267 orders will direct monitoring of mercury loading to the watershed and San Francisco Bay, and of fish bioaccumulation of mercury in waters downstream of the former mine sites. Because mercury loading to the Bay is integrated from a combination of sources, we plan to encourage a coordinated approach to monitoring and may consider reducing some monitoring requirements based on participation in a cooperative (group) watershed monitoring program. In the meantime, in May you approved a revised monitoring program for the downtown Guadalupe River flood control project that includes monitoring mercury loads to the Bay beginning this wet season¹.

¹ This action was part of amending Waste Discharge Requirements for Santa Clara Valley Water District, U.S. Army Corps of Engineers, and City of San Jose, Guadalupe River Flood Control Project

Implementing the Tomales Bay TMDL (Carmen Fewless)

Last November, as a first step toward the implementation of the Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed (Grazing Waiver adopted by the Board in July 2008), staff mailed packages to the landowners of 425 agricultural parcels in the Tomales Bay Watershed. The packages contained a copy of the Waiver and Grazing Checklist, the Notice of Intent form to comply with the Waiver, along with a Notice of Non-Applicability form created to address potential errors in the mailing database and/or parcels without grazing activities. The deadline for the submittal of the Notice of Intent or Notice of Non-Applicability was January 31, 2009. In response, staff received 168 signed Notices of Intent to comply with the Grazing Waiver, and 106 signed Notices of Non-Applicability. In April 2009, the Marin County Resource Conservation District (RCD) revised our mailing database, and identified 46 additional parcels that did not have grazing activities onsite, or were located outside of the Tomales Bay Watershed.

On June 19, Board staff mailed 110 Notices of Overdue Submittal to those landowners that had not submitted a Notice of Intent or a Notice of Non-Applicability form for their parcel. In this letter, Board staff reminds landowners of their responsibility to comply with the requirements of the Grazing Waiver, and sets July 31, 2009, as the final deadline for the submittal of a Notice of Intent or Notice of Non-Applicability. The letter also states that failure to submit the appropriate documentation by the July 31, 2009, deadline may lead to enforcement action.

Board staff continues to be available to address any questions or concerns raised by landowners or the public regarding the Grazing Waiver.

Other activities related to implementation of the Waiver include:

- Board staff finalized a \$30,000 TMDL-funded contract with ABAG and Marin RCD to provide outreach to ranchers on the Waiver requirements for the part of the Walker Creek watershed that drains to Tomales Bay, and to prepare a template Ranch Plan for the ranches in the Walker Creek Watershed.
- Marin RCD was awarded a 2008 federal grant in the amount of \$800,000 to work with ranchers on development of ranch water quality plans and to implement BMPs, as required by the Waiver. However, it is not known when the contract will be executed.
- Board staff have begun outreach with stakeholders in Napa and Sonoma counties with the goal of developing a similar grazing waiver, as part of implementing TMDLs in those watersheds.

San Antonio Reservoir (Xavier Fernandez)

On June 19, the Executive Officer issued a 401 Certification for the San Francisco Public Utilities Commission's (SFPUC's) San Antonio Reservoir Hypolimnetic Oxygenation System Project (Project). The Project involves installing a system to add oxygen to the SFPUC's San Antonio Reservoir in Alameda County. The Project will reduce the use of copper-based herbicides to control blue green algae and improve fresh water fish habitat.

The oxygenation system will be installed at an estimated cost of \$1.4 million. The underwater diffusers will release gaseous oxygen into the deeper layer of the reservoir (the hypolimnion).

Currently, the oxygen concentration in the hypolimnion becomes depleted during summer months due to limited mixing. This causes nutrients to build up, which contributes to blue-green algae blooms. Blue-green algae contain toxins; therefore, blue-green algae blooms are a public health concern and are controlled using herbicides or other means. The addition of oxygen into the hypolimnion will reduce nutrient availability thereby preventing blue green algae blooms. This in turn will reduce the SFPUC's use of copper-based herbicides.

In addition, increasing oxygen concentrations at lower reservoir depths will benefit cold water fish, because these fish will be able to migrate to oxygen-rich cooler water in the hypolimnion during the summer when temperature increases reduce oxygen levels in the upper layers of the reservoir.

Redwood Creek Restoration Project (Marla Lafer)

Board staff are currently reviewing the National Park Service (NPS)'s application for water quality certification for the *Wetland and Creek Restoration at Big Lagoon* Project. The restoration is a joint project of the NPS and the County of Marin. The project, located at Muir Beach in the Redwood Creek Watershed, includes approximately 40 coastal acres encompassing the entire wetland, creek, and riparian area – extending from just downstream of Highway 1 to the beach, including a small intermittent tidal lagoon at the beach. Redwood Creek is a relatively protected watershed (95% of the land is owned by public agencies) and is extremely important in recovery efforts for salmonid species – the Creek is one of the southernmost streams in California with a viable population of endangered coho salmon, and it also has a run of steelhead (a threatened species). However, lower Redwood Creek has been significantly altered by sedimentation, channelization, levee construction, and other adverse channel modifications.

The goal of the project is to restore a functional, self-sustaining ecosystem. Subject to funding availability, the project will be completed in about three years. Specific actions include:

- Realignment of more than 2,500 linear feet of Redwood Creek and creation of backwater habitat for salmonid refuge and rearing. Relocating the Creek to the low point in the watershed will result in a significant expansion of floodplain and riparian habitat and greatly improve the Creek's natural functions of sediment transport and channel stability.
- Replacement of the existing 40-foot Pacific Way Bridge with a 250-foot bridge. The existing narrow bridge collects debris and sediment and contributes to flooding along Pacific Way. The new bridge – the longest feasible bridge, spanning the entire floodplain – will allow for channel migration, floodplain connectivity, and fish passage and is also expected to reduce the flooding along Pacific Way.

- Removal of an existing 1,300 linear-foot levee between NPS land and San Francisco Zen Center property. The levee currently confines the Redwood Creek floodplain and obstructs fish passage.
- Relocation and reconfiguration of the Muir Beach parking lot. The existing 500 foot-long parking lot extends across the floodplain, constricting the active floodplain to a width of about 50 feet. The improved 175-car parking lot will be relocated outside the floodplain and will include bioswales for treatment of runoff.

Additional actions include installing about 34 large woody debris structures for fish habitat enhancement, creation of emergent wetland habitat for the endangered California red-legged frog, expansion and enhancement of the tidal lagoon, realignment and restoration of two channels in Green Gulch pasture on the Zen Center property, and public access and trail improvements.

Board staff (Leslie Ferguson, Dale Hopkins, and Marla Lafer) have been participants in a Technical Advisory Group (TAG), along with other regulatory and resource agency representatives and scientific experts over the past several years. The NPS convened the TAG to provide ongoing input and informed discussion on the numerous planning, design, and construction issues associated with this complex restoration effort. The current project proposal is the result of this collaborative effort.

Peyton Slough Tide Gate Opened (Lindsay Whalin)

After being restricted for more than a century, tidal waters from the Carquinez Strait passed through a new tide gate structure and rushed into Rhodia and McNabney marshes in Martinez on June 16, transforming over 100 acres of struggling freshwater wetland into more valuable salt marsh habitat. The event marked the last major milestone in an over ten-year project, overseen by this Board, to cleanup and restore the Peyton Slough wetlands.

The tide gate opening, hosted by Rhodia, Inc. (property owner) and Contra Costa Mosquito and Vector Control (tide gate operator), was attended by neighbors, and State and local agencies, including Board representatives Bruce Wolfe, Terry Seward, and Lindsay Whalin. Many other Board staff historically involved in the project (including Tina Low, Priya Ganguli, and Yuri Won) unfortunately could not attend.

Over the past ten years, Board staff has reviewed many milestones for this significant cleanup and restoration project including the cleanup and relocation of approximately one-mile of slough contaminated by copper and zinc, a legacy of the copper ore processing facility that operated before Rhodia purchased the facility and transformed it into a sulfuric acid regeneration plant.

The tide gate was historically operated in one-direction, which would allow drainage of the south marshes (Rhodia and McNabney marshes) of freshwater, but was not opened to allow tidal waters from the Carquinez Strait and the North Marsh to flow into the marsh complex south of the tide gate (see Figure 1).



Figure 1. Peyton Slough and Marshes

The lack of tidal flow into the marsh area south of the tide gate resulted in a marsh complex consisting of limited-value freshwater wetlands. The operation of the new tide gate allows saline water to be reintroduced to the south marsh area on an incoming tide, which will begin the transformation of this marsh complex into valuable salt marsh habitat that will support several endangered species. The concept is that in a few years the dry, brown Rhodia Marsh will be similar to the North Marsh; green, well vegetated, and a supportive habitat. Over thirty individuals gathered excitedly to view the water rushing from the Carquinez Strait toward the South Marsh areas for the first time in over a century. (See Figure 2). Rhodia deserves special acknowledgement for its efforts in restoring a legacy cleanup site that they inherited and helping to restore valuable wetland habitat around its facility.



Figure 2. Attendees rejoice as the tide gate is opened.

San Ramon-Dublin Gasoline Spill (Mary Rose Cassa and Cleet Carlton)

Board staff is taking the lead for oversight of additional cleanup actions following a gasoline spill in San Ramon-Dublin on Friday, May 29. The spill resulted from a collision between a passenger vehicle and a gasoline tanker truck operated by Redwood Coast Petroleum and resulted in the release of about 2,300 gallons of gasoline. Most of the gasoline flowed into a storm drain at Alcosta Boulevard and San Ramon Valley Boulevard in San Ramon (Contra Costa County), "daylighting" about 1.3 miles south in Dublin into a stormwater drainage and flood control channel owned by Zone 7 Water Agency (Alameda County).

Various public agencies were involved in the initial response and subsequent actions: San Ramon Valley Fire Protection District, City of San Ramon Police and Public Works Departments, Contra Costa Hazmat, City of Dublin Police and Public Works Departments, Alameda County Fire Department, Alameda County Environmental Health Department, California Department of Fish and Game, and our office.

Emergency responders temporarily closed several streets, flushed the storm drain with water to avoid an explosion hazard, and evacuated residents of 30 downstream homes. At the request of the Fire Department, and with the concurrence of Fish and Game, the Dublin Public Works Department constructed a temporary earthen dam across the channel, approximately 1,100 feet south of the "daylighting" point and 200 feet north of Tamarack Drive. The dam was successful in controlling further downstream migration of the spill. A significant amount of the gasoline was recovered by pumping from the channel. Fish and Game staff evaluated impacts to wildlife and habitat and noted several dead animals, including a duck, a small fish, a vole, and a snake.

Various cleanup actions took place over the next several days:

- The storm sewer was cleaned by jetting the pipe and pumping the gasoline-water mixture out of the channel.
- Sorbent pads were used to recover floating free product that accumulated in the channel.
- Obviously-impacted vegetation and soil was removed from the channel.
- Temporary diversion structures were placed in the channel to divert dry-weather stormdrain flows (believed to be typical urban runoff combined with groundwater) around the impacted segment of the channel.

The City of Dublin has sent several updates to residents in the neighborhoods impacted by the spill, and has requested that the City continue to be involved in our discussions regarding further cleanup work so that residents can be kept up to date. Board staff attended a meeting on June 16 to clarify roles and responsibilities of the various agencies and ensure the concerns of the City and nearby residents are addressed. We agreed to oversee additional cleanup activities going forward. We are currently developing a fact sheet to distribute to residents near the site. We will require appropriate investigation and cleanup work following consultation with relevant agencies and interested parties.

Toxics Cleanup Division Accomplishments (Stephen Hill)

For last fiscal year (July 2008 thru June 2009), the Toxics Cleanup Division made significant progress on site cleanup:

- Took on 44 new sites consistent with Cal/EPA's interagency memorandum of agreement for Brownfields
- Issued 9 site cleanup requirements (most following Board hearing and order adoption), as well as several hundred directives pursuant to Water Code section 13267
- Required dischargers to address potential vapor-intrusion concerns at VOC-impacted sites, pursuant to new and evolving Cal/EPA guidance
- Prepared enforcement materials resulting in the imposition of administrative civil liability against one recalcitrant discharger (Pete's Stop in San Jose)
- Encouraged restoration of Brownfield sites by entering into one prospective purchaser agreement, issuing 3 comfort letters, and providing rapid oversight for various Brownfield sites (including three mentioned in recent EO reports – Arcadia Park in Oakland, Del Monte plant in San Jose, and Morrison Park in San Jose)
- Closed 93 low-risk sites (fuels and non-fuels sites), signifying the completion of cleanup and allowing staff to shift attention to more significant cleanup sites
- Substantially improved the completeness of site information on Geotracker, an online tool for the public and for regulators (the upgrade will also enable us to track our progress on attaining various performance measures for the site cleanup programs).

Vapor Intrusion Workshops (Elizabeth Allen)

On June 3-4 in Sacramento, and June 8-9 in Los Angeles, Elizabeth Allen participated in workshops sponsored jointly by the State Board and Department of Toxic Substances Control (DTSC). The workshops focused on Cal/EPA guidance and advisories regarding vapor intrusion. The workshops were well received by stakeholders, who expressed appreciation of Cal/EPA's efforts to provide a forum to discuss upcoming revisions to the *Advisory - Active Soil Gas Investigations*, the *DTSC Vapor Intrusion Guidance*, and the recently issued *Vapor Intrusion Mitigation Advisory*. Combined, the workshops were attended by approximately 500 professionals, including representatives of consulting firms, laboratories, local agencies, school districts, and State and federal agencies. Elizabeth is a member of the working groups that are revising both the *Advisory - Active Soil Gas Investigations* and the *DTSC Vapor Intrusion Guidance*, and provided internal peer-review of the *Vapor Intrusion Mitigation Advisory* before its release to the public in April.

On a related point, several staff from this region attended a June 22-23 training on vapor intrusion issues in Sacramento. The training was organized by the Interstate Technology and Regulatory Council (a national consortium of public agencies with an interest in site cleanup) and was co-hosted by the State Board's Training Academy and DTSC. A similar

training was held in Long Beach later in the week. The training provided an excellent overview of the vapor intrusion issue, and discussed tools for assessing and mitigating vapor intrusion problems. The session was well attended. We were particularly pleased to see representatives from several local oversight agencies in attendance, since this issue crops up at local-lead sites too.

Dry Cleaner Workshop on Finding the Money (John Wolfenden)

On June 24, site-cleanup staff from the Water Boards and our sister agency, DTSC, held an internal workshop on funding sources for investigation and cleanup of discharges of perchlorethylene (PCE) from dry cleaners. In summary, finding such funding is likely to remain very challenging in the foreseeable future.

This was the third workshop put on by the recently created dry cleaner workgroup. PCE is a highly toxic chlorinated solvent that has been the main cleaning agent used by dry cleaning facilities for the last several decades. PCE is a highly mobile chemical that moves rapidly through groundwater, so it is important to identify these release sites and require investigation and cleanup. The workshop allowed the agencies to share information about available alternatives for funding investigation and cleanup of dry cleaners. The main sources of funding are from the responsible party, insurance, or grants. We have summarized the main points below:

Responsible party funding: The responsible party is required to pay for the investigation and cleanup of the site. However, because the responsible parties for dry cleaners are often mom-and-pop small businesses, their sources of funding are often quite limited. In certain cases, cities have been named as responsible parties and required to complete cleanup of PCE that leaked from city sewer lines. But in order for a city to be named as a responsible party, one of two things usually needs to be demonstrated: 1) a lack of city maintenance on the sewer line, or 2) a city well has acted as a conduit for pollution to migrate to deeper aquifers.

Insurance funding: If a dry cleaner had an insurance policy before 1972, then the insurance company will usually pay for the investigation and cleanup. Between 1972 and 1985, insurance policies had a "partial exclusion" for coverage on discharges to the environment, so receiving funding from the insurance company to pay for investigation and cleanup is harder for policies written during this time. After 1985, insurance policies had an "absolute exclusion" for coverage on discharges to the environment, so insurance companies will not pay for investigation and cleanup based on a policy written after 1985.

Grant funding: U.S. EPA has a small amount of grant money available to state agencies to initiate the investigation of dry cleaners. DTSC has used some of this grant money in its investigation of dry cleaners. U.S. EPA also has Brownfield grants available to public agencies to cleanup and restore properties that are planned for redevelopment, and this includes former dry cleaner sites. Neither source is capable of addressing the entirety of the dry cleaner release problem.

Dry cleaner fund: 13 other states have dry cleaner funds to assist dry cleaners with investigation and cleanup. The funds are funded through some variation of an annual fee on active dry cleaners and wholesale PCE distributors. The funds are relatively small in size, usually generating in the in the range of \$5 million per year. In contrast, California's petroleum underground storage tank fund collects over \$200 million per year. There have been two attempts to establish a dry cleaner fund in California in the last ten years. The most recent attempt, in 2003, was sponsored by the Santa Clara Valley Water District and relied on a dry cleaner study funded by the Board. Both attempts failed. It is inherently difficult to create a dry cleaner fund that can generate sufficient revenue to address the full magnitude of the cleanup needs. Nonetheless, we anticipate being part of future efforts to create such a fund.

The next dry cleaner workshop will focus on technical issues: tools available to investigate and clean up solvent contamination at dry cleaner sites.

3rd Annual Dr. Teng-Chung Wu Pollution Prevention Award (Heather Ottaway)

On June 5, we released the application package for the third annual Dr. Teng-Chung Wu Pollution Prevention Award. We established the award in 2007 in memory of Dr. Wu to honor his dedication to water quality and pollution prevention during his 35 years of service with the Board. The award recognizes excellence and collaboration in pollution prevention. In line with Dr. Wu's legacy, it acknowledges agencies that work together on regional pollution prevention projects or have conducted specific projects that benefit the entire region. The evaluation criteria include leadership and innovation, commitment, measurable results, and benefits to the environment, the community, or workers.

We will announce the winner(s) on August 28 and present the award(s) at the September Board meeting, which coincides closely with Pollution Prevention Week, the third week of September. The application is available on the Board's web site at www.waterboards.ca.gov/sanfranciscobay/dr_teng_chung_wu_award.shtml.

In-house Training

We had no training in June and have none planned for July or August.