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

STAFF SUMMARY REPORT: Elizabeth Morrison and Agnes Farres
MEETING DATE: March 13, 2024

ITEM: 6

Informational Item – Supporting Bay Area Creek and Wetland Restoration: Implementation Update on the Statewide Restoration General Order (SRGO) and the Bay Restoration Regulatory Integration Team (BRRIT)

DISCUSSION

This item covers:

- Implementation of the Statewide Restoration General Order (SRGO) in the San Francisco Bay Region and
- A Bay Restoration Regulatory Integration Team (BRRIT) update

San Francisco Bay wetlands and waters have been significantly impacted from their pre-European settlement condition. The Bay was filled for farming, salt-making, and development, and Bay Area rivers and creeks were filled, channelized, and disconnected from their floodplains. By the time filling of the Bay was stopped or slowed, about 80 percent of the Bay's tidal marshes had been lost. The loss of Bay and watershed habitats has impacted many species of plants, fish, and wildlife, leading some to become threatened or endangered.

Restoration projects play an important role in rectifying these historical impacts by restoring natural processes, habitats, and species. In addition, they can provide resilience in the face of anticipated climate change. For example, restored tidal marsh can keep pace with rising tides through sedimentation, helping to provide flood protection for adjacent more-upland property and reducing the need for harder, more expensive, less habitat-friendly interventions like levees or seawalls.

To support restoration, we need to both efficiently review and authorize restoration projects and ensure that the projects fit within a broader set of landscape-scale goals for restoration, are well designed, and will function as intended. Efficient permitting and interagency collaboration can expedite authorization while helping to ensure that projects are well-designed and implemented to maximize their success.

In 2012, the State Water Board adopted a programmatic authorization for "small" restoration projects—that is, restoration projects less than 5 acres or a cumulative total of 500 linear feet of stream bank or coastline, and that qualify under the California Environmental Quality Act (CEQA) categorical exemption for "Small Habitat Restoration Projects" (14 CCR 15333; Small Habitat Restoration General Certification). We typically

authorize seven or eight projects under the Small Habitat Restoration General Certification every year.

Statewide Restoration General Order

Staff presented an Information Item at the February 8, 2023, Board meeting on the Statewide Restoration General Order (SRGO), adopted by the State Water Board on August 16, 2022, to cover restoration projects that were larger than the limits in the Small Habitat Restoration General Certification. The SRGO is intended to expedite review and authorization of restoration projects, helping the State to achieve its climate change adaptation, habitat restoration, species recovery, and water quality improvement goals. To be eligible for SRGO coverage, projects must meet the SRGO's definition of a restoration project and be consistent with the approving Regional Water Board's Basin Plan. A "restoration project" is one that will result in a net increase in aquatic or riparian resource area, functions, and/or services through implementation of the SRGO's eligible project types, design guidelines, and relevant protection measures. The State Water Board also adopted a CEQA Programmatic Environmental Impact Report (EIR) for the SRGO.

The SRGO is a permitting tool for large-scale restoration projects with the goal of making the permitting process more predictable, consistent, and timely. It contains categories of project types, relevant general protection measures, and design guidelines that have been developed to facilitate restoration project design. Projects must be designed to protect water quality and beneficial uses in accordance with regional or statewide water quality control plans. A pre-application consultation is required prior to the submittal of a Notice of Intent (application) that requests project authorization under the SRGO. The approving Regional Water Board determines if a proposed project is eligible. If eligible, the Water Board issues a Notice of Applicability authorization (authorization), conditioning it, as appropriate, to ensure the project will comply with State water quality standards.

Water Board staff meet monthly with staff of the State Water Board, other Regional Water Boards, and the California Department of Fish and Wildlife to discuss SRGO implementation and to review and discuss specific projects. In addition, we participated in the December 2023 Advancing Restoration Interagency Summit, where State Water Board, Regional Water Board, and California Department of Fish and Wildlife staff discussed advancing restoration projects, and shared lessons on ways to be efficient while maintaining oversight responsibilities and improving communication.

We have authorized six projects under the SRGO. The project types include tidal marsh restoration, restoration of stream floodplains and wetlands, pier pile removal, and stream work to increase fish habitat and remove barriers to fish passage. The required pre-application consultation has resulted in applications that are mostly complete when submitted. Overall, the time from receipt of a complete application to issuance of the Notice of Applicability is under 30 days, with most projects taking less than 2 weeks to receive an authorization. For several projects, delayed payment of the application fee delayed the issuance of an otherwise-final authorization.

The pre-application consultation has also resulted in some projects being identified as not qualified for the SRGO; in those cases, we either authorized the projects under the Small Habitat Restoration General Certification or reviewed them via our routine 401 water quality certification process.

CEQA compliance can be a significant hurdle for any project, including restoration projects. While the State Water Board adopted a Programmatic EIR with the SRGO, it has not increased review efficiency because CEQA requires additional analysis specific to the restoration projects being authorized. As a result, we have not yet used the Programmatic EIR for CEQA compliance when issuing an authorization under the SRGO. Rather, we have relied on California Department of Fish and Wildlife's Statutory Exemption for Restoration Projects (SERP), a project specific CEQA document (i.e., EIR or Mitigated Negative Declaration) when one is available, or a CEQA categorical exemption. We have also encountered that CEQA Lead Agencies are not utilizing the Programmatic EIR to satisfy CEQA review due to their conclusion that the Programmatic EIR does not adequately address all potential project impacts. It is likely that California Department of Fish and Wildlife's Statutory Exemption for Restoration Projects and other CEQA actions will continue to be effective approaches to accomplishing CEQA review for restoration projects.

Bay Restoration Regulatory Integration Team (BRRIT)

The BRRIT was formed in August 2019 with the primary goal of improving the permitting process for multi-benefit habitat restoration projects and associated flood management and public access infrastructure in San Francisco Bay, including along the shoreline of the nine Bay Area counties. It is made up of dedicated staff from the six state and federal regulatory agencies with jurisdiction over habitat restoration projects in the Bay: the Water Board, California Department of Fish and Wildlife, U.S. Army Corps of Engineers, NOAA's National Marine Fisheries Service, U.S. Fish and Wildlife Service, and San Francisco Bay Conservation and Development Commission. U.S. EPA also participates as an ad hoc member. The key to successful permitting through the BRRIT is engaging in the pre-application process, where project proponents receive early review and guidance.

Project proponents are encouraged to coordinate with the BRRIT as early and as often as needed. This pre-application process helps to identify potential issues early in the project's design and planning process and identify additional information the agencies will need before project proponents submit permit applications. Based on the BRRIT's experience so far, projects that have gone through the pre-application process are submitting more-complete applications, which helps the agencies issue permits in a more-timely manner. Participating in the BRRIT's pre-application process is the most important thing project proponents can do to improve permitting timelines and outcomes.

The BRRIT has reviewed a total of 31 projects, with nine projects fully permitted by all agencies, four projects in the permit application phase, and 18 projects in the pre-

application phase. Of the nine projects permitted, seven projects have completed construction. Over the coming year, we expect about eight projects to submit permit applications, ten projects to start construction, and two projects to complete construction. To date, the BRRIT agencies have issued a total of 63 permits and other authorizations since the BRRIT was formed in 2019. Of the BRRIT-reviewed projects authorized by the San Francisco Bay Water Board, we have authorized three projects under the Small Habitat Restoration General Certification and one project under the SRGO.

The BRRIT was established via a multi-agency memorandum of understanding that includes agency performance criteria. The BRRIT is meeting its performance criteria, with all agencies responding to permit applications within 30 days and meeting their agency-specific permitting timelines. The BRRIT regularly coordinates with project proponents to ensure it can authorize projects in time to meet project construction schedules and that it is meeting the goal of improving the permitting process. Overall, the BRRIT is also receiving positive feedback from online surveys.

We will continue to work to support restoration projects, including by identifying additional efficiencies in the project design, review, and authorization process, communicating with restoration project proponents about their needs, and reviewing our ongoing work for opportunities for improvement.