# STATE OF CALIFORNIA

# REGIONAL WATER QUALITY CONTROL BOARD SAN FRANCISCO BAY REGION

MEETING DATE: February 12, 2025

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**Executive Officer's Report** 

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# Martinez Refining Company Enforcement and Supplemental Environmental Projects (Bill Johnson, Brian Thompson, and Carina Cornejo)

On December 9, 2024, the Executive Officer signed <u>Order R2-2024-1041</u>, adopting the largest administrative civil liability the San Francisco Bay Regional Water Board has ever imposed. Through the settlement, the Martinez Refining Company agreed to pay \$4.482 million for three unauthorized discharges, 25 effluent limitation violations, and its failure to submit a report on climate change adaptation. Most of the penalty stemmed from the January 4, 2023, discharge of 11.2 million gallons of partially treated process wastewater and stormwater to a nearby marsh following the large storms in late December 2022 and early January 2023. This significant enforcement action sends a message that businesses need to proactively prevent unauthorized discharges and improve responses to increasingly severe weather. Dischargers need to anticipate how our climate is changing and better prepare for intense storms.

The settlement includes six Supplemental Environmental Projects. Supplemental Environmental Projects are environmentally beneficial projects that a party subject to an enforcement action voluntarily agrees to undertake to offset a portion of its civil penalty. In accordance with the State Water Resources Control Board's 2017 <u>Policy on</u> <u>Supplemental Environmental Projects</u>, Water Boards may suspend up to 50 percent of a penalty when those funds are instead spent on one or more Supplemental Environmental Projects. The remainder of the penalty must be paid to the Cleanup and Abatement Account, Waste Discharge Permit Fund, or Water Rights Fund in accordance with statutory requirements and stipulated terms. Penalty monies are not sent to the State's general fund.

In the Martinez Refining Company case, half of the penalty (\$2,241,000) will go to the Cleanup and Abatement Account and half will go to the following Supplemental Environmental Projects:

- The Peyton Slough Marshes Water Quality Improvements and Management Project (\$1,046,000) to improve water circulation and water quality within marshes adjacent to Carquinez Strait, including Peyton Channel and McNabney Marsh
- The Martinez Watershed Rangers Program (\$153,600) to coordinate and supervise watershed stewardship and trash-cleanup projects with local schools
- The Regional Monitoring Program for Water Quality in San Francisco Bay (RMP) to complete four high-priority studies to support management of water quality in San Francisco Bay:
  - PCBs in San Leandro Bay (\$664,700) to support development of a model for PCBs (polychlorinated biphenyls) in San Francisco Bay
  - Sediment Dynamics in a North Bay Fluvially Influenced Salt Marsh (\$121,500) to assess sediment fluxes in a mudflat–salt marsh environment

- Sediment Conceptual Models for San Pablo Bay and Suisun Bay (\$125,200) to compile and assess information to document dynamic bay processes (between marshes and mudflats) and evaluate local tributary sediment loads
- Microplastics in San Francisco Bay Sport Fish (\$130,000) to measure microplastics in typically consumed fish throughout the bay to determine the level of exposure to microplastics in the food web

A close look at the Martinez Refining Company Supplemental Environmental Project reveals the range of approaches we use to identify and develop Supplemental Environmental Projects for enforcement settlements.

The Peyton Slough Marshes Water Quality Improvements and Management Project was developed from the ground up through collaboration between program staff, enforcement staff, a group of McNabney Marsh stakeholders (East Bay Regional Park District, EcoServices, Mt. View Sanitary District, and TransMontaigne), and other interested parties (Contra Costa Resource Conservation District and Mount Diablo Audubon Society). Developing this type of Supplemental Environmental Project often involves many staff resources, and months to identify a project lead, align stakeholders, develop a scope of work in accordance with the *Policy on Supplemental Environmental Projects*, determine the project cost, and confirm that the project can be completed as proposed. In this case, the sizeable effort was worthwhile because so much money was available to fund this volume of work.

Administrative civil liability penalties involving smaller penalties often cannot justify the staff time and effort needed to develop a Supplemental Environmental Project from the ground up. Our experience is that "shovel-ready" projects are rarely available. While the San Francisco Estuary Partnership maintains a list of potential Supplemental Environmental Projects, the projects on the list are difficult to pair with settlement opportunities because certain criteria in the *Policy on Supplemental Environmental Projects* on the list may have been completed or their proponents may no longer be interested by the time an appropriate enforcement case comes along.

The Martinez Watershed Rangers Program illustrates one of two strategies we use to streamline the development of smaller Supplemental Environmental Projects. The first is using a Supplemental Environmental Project template our staff and <u>KIDS for the BAY</u> developed to create a Supplemental Environmental Project option that is adaptable and scalable to the amount of funding available and focused on serving low-income, urban schools in disadvantaged and environmental project is based on that "off-the-shelf" template.

The second strategy for streamlining Supplemental Environmental Project development is illustrated by the four RMP Supplemental Environmental Projects. Since the <u>RMP</u> identifies many more worthwhile projects than it can afford to undertake, the San Francisco Estuary Institute maintains a lengthy list of unfunded, yet fully vetted and ready-to-go, projects it can quickly propose, with work scopes and budgets that can be scaled for specific enforcement actions. The State Water Board facilitated RMP

Supplemental Environmental Projects in particular through <u>Resolution 2018-0015</u>. Working with the RMP is a tremendously efficient way to fund Supplemental Environmental Projects.

While we are pleased to support Supplemental Environmental Projects that benefit the San Francisco Bay Region, penalties not suspended and thus paid to a statewide fund are not lost or wasted. The State Water Board spends these funds on targeted projects throughout California that would not otherwise be funded, including some for disadvantaged communities. In recent years, the State Water Board has allocated roughly 40 percent of Cleanup and Abatement Account spending on emergency drinking water and other urgent water needs, roughly 20 percent on cleanup and abatement projects, roughly 10 percent on emergency wastewater projects (e.g., following wildfires), roughly 5 percent on restoration projects, and the remainder on monitoring, studies, and other Water Board work.

Our goal is always to encourage excellent compliance throughout the San Francisco Bay Region to obviate the need for any enforcement. However, when enforcement is warranted, we can take some solace in knowing that assessed penalties, with or without Supplemental Environmental Projects, are used to offset environmental harm by funding projects that benefit the people and natural resources of California.

# Resolution of Former Oakland Army Reserve Base Dispute (Nicole Fry and Yemia Hashimoto)

On January 15, a Statement of Resolution for the formal dispute at the former Oakland Army Reserve Base was signed by (1) our Executive Officer, (2) the Deputy Director of the Site Mitigation and Restoration Program for the Department of Toxic Substances Control (DTSC) (on delegated authority from the California Secretary for Environmental Protection), and (3) a delegated representative for the United States Army's Assistant Secretary for Installations, Energy and Environment. We, along with DTSC, have been in dispute with the Army since 2017 and formal dispute since July 19, 2021, regarding the cleanup of marine sediments at Parcel 1 of the former base, which is located on the east shore of the San Francisco Bay in West Oakland. Parcel 1 is located within the area outlined in yellow in the image below. The dispute has centered upon the Army's refusal to acknowledge the unacceptable health risks posed by polychlorinated biphenyl (PCB) contamination in sediment to people consuming fish caught in the Bay. We have insisted that the Army needs to cleanup PCB contaminated sediments so that the East Bay Regional Park District, who is the scheduled property recipient, can redevelop Parcel 1 into an urban park (with a fishing dock) that will serve the West Oakland community. As part of the dispute resolution, the Army agreed that the cleanup of Parcel 1 sediments should address fish consumption risks. It has also agreed to assess active remedial alternatives for the sediment contamination. PCB sediment cleanup at Parcel 1 will reduce health risks to the West Oakland Community, which has disproportionately been affected by environmental injustices. In addition, this PCB cleanup will aid in achieving our overall PCB Total Maximum Daily Load goals for the Bay.



Figure 1: Map Showing Former Oakland Army Reserve Base Outlined in Red and Parcel 1 Outlined in Yellow

# Case Closure – Former IBM Cleanup Site, San Jose, Santa Clara County (Emma Hoffman-Davies)

Last month we closed the International Business Machines (IBM) cleanup site, located at 5600 Cottle Road in southern San Jose (Site), which is one of the oldest in the Site Cleanup Program. IBM manufactured computer components at the Site from 1956 to 1995, during which the "flying head" disk drive was created allowing for real-time online transaction processing. Chlorinated volatile organic compounds (VOCs) contamination was discovered in soil and groundwater in 1981 due to a combination of leaking underground tanks and pipelines, and spillage from improper waste handling associated with the operations at the Site.

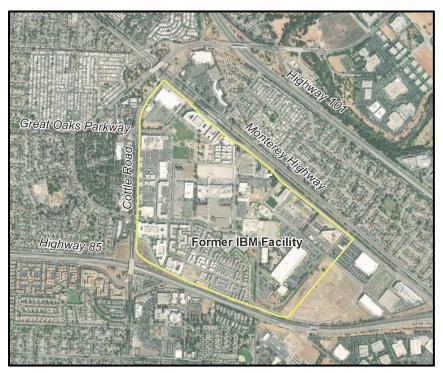


Figure 1: Map Showing IBM Cleanup Site

### Background

The Regional Water Board issued Order No. 88-157 in 1988, requiring investigation to delineate the extent of the groundwater contamination, and implementation of remedial actions including groundwater extraction in the A and B aquifer zones, and soil vapor extraction pilot tests. In 2002, the Regional Water Board issued Order No. R2-2002-0082 updating the 1988 order. Groundwater contamination was found to extend from the IBM property to other downgradient commercial and residential properties 2.5 miles northwest of the Site.

IBM sold 143 acres of land located outside the area of groundwater contamination to a land development company in 2003 for commercial and residential redevelopment under the oversight of the Department of Toxic Substances Control (DTSC). In 2015, the remainder of the Site was sold to Western Digital, which included the area where the groundwater contamination plume was located.

### **Remedial Actions**

IBM implemented remedial actions through the 1980's and 1990's including soil removal, soil vapor extraction, and groundwater extraction and treatment. The source property groundwater extraction and treatment system operated from 1983 to 2015, while the downgradient off-property system ceased operation in 2005. Additionally, insitu treatment of the contaminated groundwater through the injection of substrates to promote bioremediation occurred in 2006, 2008, 2010, and 2012.

### Case Closure

The Regional Water Board staff worked collaboratively with Valley Water to assess the adequacy of the remedial actions. Valley Water actively manages groundwater in the Santa Clara Valley to ensure that the deep aquifer system can be safely recharged and used to supplement its drinking water supply. Based on the results for post-remediation groundwater monitoring conducted from 2015 to 2024, Regional Water Board staff determined that the case meets our low-threat closure criteria. Residual concentrations of VOCs in groundwater are limited to fine-grained soil intervals approximately 25 feet below the ground surface (bgs) and one deeper zone well (50 to 60 feet bgs) at the former source area. Based on the post remediation groundwater monitoring data, the residual contamination is unlikely to migrate. Vapor intrusion is not occurring in the buildings at the Site based on the results of Site investigations. A 2004 land use covenant was recorded on the deed for the property to prohibit the use of shallow groundwater and sensitive uses on portions of the Site and includes protocols to notify the Regional Water Board prior to conducting intrusive soil or development activities.

### Executive Officer Hearings for Mandatory Minimum Penalties (Brian Thompson)

In 2021, the Board delegated to the Executive Officer the authority to hold evidentiary hearings and issue administrative civil liability orders for mandatory minimum penalties associated with Clean Water Act sections 13385(h) and (i) and Stormwater Protection Act section 13399.33. On October 9 and December 11, 2024, we held two such hearings.

While the Water Board's prosecution team typically seeks to settle mandatory minimum penalties with dischargers, some of these matters are contested and must go to a hearing. Executive Officer hearings are an efficient way to approach such cases. Minimum penalties for failing to submit an annual stormwater report, exceeding an NPDES permit effluent limit, and failing to obtain stormwater general permit coverage are \$1,000, \$3,000, and \$5,000. In contrast, discretionary penalties can be as high as \$10,000 per day for violation plus \$10 for every gallon of material discharged above 1,000 gallons.

The Executive Officer heard the evidence and imposed penalties of \$2,910 (\$1,000, plus \$1,910 to recoup some staff costs) on each of the dischargers. We plan to continue to hold such hearings when necessary.

The delegation of hearings for mandatory minimum penalty enforcement is consistent with the delegation of other Board authorities going back to 1970, when the Board concluded that "the delegation of certain of its powers and duties to its Executive Officer will strengthen its role in carrying out the objectives of the Porter-Cologne Act" (Resolution 70-11).

# West Oakland Environmental Indicators Project Memorandum of Understanding (Eileen M. White)

On January 15 we signed a Memorandum of Understanding (<u>WOEIP Collaborative</u> <u>Memorandum</u>) between the U.S. Environmental Protection Agency Region 9, the California Environmental Protection Agency, the California State Water Resources Control Board, the San Francisco Bay Regional Water Quality Control Board, the Bay Area Air Quality Management District, the California Department of Toxic Substances Control, the West Oakland Environmental Indicators Project (a resident led communitybased environmental justice organization) and Radius Recycling Inc. (formerly known as Schnitzer Steel) regarding metal recycling operations in West Oakland.

The parties to this Memorandum of Understanding seek continued and expanded collaboration with each other to address, to the extent feasible and within the scope of their respective authorities, impacts caused or posed by metal shredding operations in West Oakland. The parties will explore how these goals can be achieved. This Memorandum of Understanding has been established for a three-year period with an option to extend as warranted.

# Groundwater Resources Association Annual Regulatory Update (Alec Naugle, Angus Chan, Alyx Karpowicz, and Kimberlee West)

On January 15, 2025 staff from the San Francisco Bay Water Board presented a regulatory update to the Bay Area branch of the Groundwater Resources Association of California. The Groundwater Resources Association is a non-profit organization that promotes the protection and improvement of groundwater supply and quality in California. Our staff has been making this annual presentation for over 20 years. This meeting continues to be one of the best attended meetings for this Groundwater Resources Association branch and provides a useful forum for staff to inform and interact with the regulated community.

During this meeting we discussed several news items, program updates, and technical topics. This included an overview of our Strategic Workplan and our priorities for the Site Cleanup and Underground Storage Tank programs. We also discussed some of the performance metrics for the programs: controlling human health exposure and groundwater contaminant migration at cleanup sites; closing cleanup cases; and moving cleanup sites into active remediation.

We presented an update on our approach to managing cleanup sites with per- and polyfluoroalkyl substances (PFAS) contamination. Based on the questions that our PFAS technical team has received from the regulated community, we provided examples of when and how PFAS sampling should be conducted as well as examples of when we may require the delineation and cleanup of PFAS.

We also presented our approach to requiring sea level rise and groundwater rise vulnerability assessments at sites vulnerable to the impacts of climate change. We shared updated science and guidance on sea level and groundwater rise predictions, and how the updated predictions can be used to determine whether a cleanup site is vulnerable to sea level and groundwater rise. Finally, we provided a framework on how to prepare a vulnerability assessment based on site-specific characteristics, such as site location and contaminant type.

We were also able to share our plans to update the Environmental Screening Levels in 2025. The Regional Water Board originally developed the Environmental Screening Levels over 20 years ago and regularly updates them. The Environmental Screening Levels provide conservative screening levels for over 100 chemicals commonly detected at cleanup sites. The Environmental Screening Levels are intended to help expedite the identification and evaluation of potential environmental concerns at contaminated sites. They address a range of media (i.e., soil, groundwater, soil gas, and indoor air) and a range of concerns (e.g., impacts on drinking water, vapor intrusion, impacts on aquatic habitat). We continue to encourage the regulated community to interact with the Environmental Screening Levels team via our public Environmental Screening Levels email.

Finally, we provided a vapor intrusion update on statewide efforts by the State Water Board and Department of Toxic Substances Control to provide tools, such as an online database and mathematical models, for staff and the regulated community to evaluate vapor intrusion concerns at cleanup sites.

This year's Groundwater Resources Association Annual Regulatory Update was attended by over 90 people. During the question-and-answer period, this year's presentation team addressed many questions related to our cleanup programs. Feedback from participants has been very positive.

# Staff Presentations – CASQA "State of the Union" Seminar (Keith Lichten)

On January 23, 2025, the San Francisco Bay Regional Water Board's Executive Officer joined Ryan Lodge, the Region 3 Executive Officer, and Patrick Pulupa, the Region 5 Executive Officer, to present at the California Stormwater Quality Association's (CASQA's) annual January "State of the Union" seminar on regulatory and legal updates in the stormwater program. Amongst other highlights, we recognized the progress our Municipal Regional Stormwater NPDES Permit (MRP) permittees have made controlling trash while recognizing the challenges that remain, and we acknowledged the continued need for progress controlling impairing pollutants statewide and the evergreen need for resources to support municipalities as they control urban runoff pollutants. State Water Board Deputy Director Karen Mogus discussed State Board's new cost reporting expectations, which have been incorporated into the MRP, and State Board's work to support stormwater capture and use to improve water supply resilience. Joe Monical, an engineer in our Watershed Management Division, joined a panel of State and Regional Board staff discussing the Statewide Construction Stormwater NPDES General Permit.

# East Bay Leadership Council (Eileen M. White)

The San Francisco Bay Regional Water Board's Executive Officer provided a presentation on the Nutrients Watershed Permit (Permit) to the East Bay Leadership Council's Water and Energy Task Force on January 21, 2025. The presentation included the drivers for the Permit, an overview of the Permit, and the ongoing scientific studies to inform the next permit. Lorien Fono, Executive Director of the Bay Area Clean Water Agencies, provided a presentation about the actions the wastewater agencies are implementing to comply with the permit. The East Bay Leadership Council is a public policy advocacy organization on a mission to increase economic vitality and quality of life in the East Bay. They have a legacy of preserving natural space for beneficial use for the community at large and were interested in understanding the permit and how wastewater agencies in their area are responding. There were over 60 attendees at the meeting including representatives from several municipalities and cities interested in the permit which was approved last year. The East Bay Leadership Council engaged in a good discussion about the Nutrients Watershed Permit following the presentation.

# Staff Updates (Eileen M. White)



Alec Naugle, Chief of the Toxics Cleanup Division since 2019, has achieved 25 years of service with the Water Board. He earned a bachelor's degree in chemistry and geology from Marietta College in Ohio and a master's degree in groundwater hydrology from the University of California at Davis. For his thesis, he developed a conjunctive use model for the Tulare Basin in San Joaquin Valley.

Alec joined the Water Board in 1999 as an Engineering Geologist in the Groundwater Protection Division after about a decade in consulting and as a

regulator for San Diego and Solano Counties. He worked his way up to Senior Engineering Geologist where he directed staff in the oversight of cases in the Department of Defense and Site Cleanup Programs.

Alec principally-authored the region's 2009 Low-Threat Assessment Tool for Chlorinated Solvent Sites, which continues to guide the investigation, cleanup, and closure of our cleanup sites. He contributed regulatory perspective to Interstate Technical and Regulatory Council (ITRC) guidance and training on contaminant mass flux, dense nonaqueous phase liquid (DNAPL) site characterization and remedial strategies, and enhanced attenuation of chlorinated organics. During the last decade, he has advanced our thoughts on the regulatory strategy for cleanup as we negotiate new and evolving challenges such as vapor intrusion, PFAS, and climate change.

Alec has been a great mentor and coach to numerous staff and managers over these 25 years. We thank him for his many years of significant contributions and look forward to many more.



Robert Schlipf, NPDES Section Leader since 2016, has achieved 25 years of service with the Water Board. He earned a bachelor's degree in civil engineering from Purdue University and a master's degree in environmental science and management from U.C. Santa Barbara. In 1999, Robert joined the Central Valley Regional Water Board in Fresno as a Water Resource Control Engineer. He transferred to the San Francisco Bay Regional Water Board in 2002. His many accomplishments include permitting the South Bay

Salt Pond Restoration, implementing the PCBs TMDL for wastewater dischargers, contributing to the East Bay Communities Consent Decree, and preparing all the iterations of the Nutrients Watershed Permit. He has reissued too many other NPDES permits and undertaken too many facility inspections to count, but more importantly, he is a reliable source of wisdom and guidance for staff in and beyond the NPDES Wastewater Division. He sees the big picture, evaluates options, solves problems, and develops sensible paths forward. He has earned the trust and respect of staff, the regulated community, and the many stakeholders we work with.

And finally, on closing our staff updates we say goodbye to Zaven (Max) Shahbazian who retired from the Water Board on December 31, 2024. For 21 years, Max worked as an Engineering Geologist in the Toxics Cleanup Division and Groundwater Protection Division overseeing the investigation and cleanup of contaminated soil, groundwater,

and soil vapor sites in the Site Cleanup and Department of Defense programs. Max has managed many sites, including the Port of Oakland maritime and airport sites for about 18 years, and the former Concord Naval Weapons Air Station for about 10 years. Included are pictures of Max during an office celebration with his supervisor Celina Hernandez and with his past supervisors John Wolfenden and David Elias.





# Enforcement Actions (Brian Thompson and James Parrish)

Enforcement activity this month included the adoption and issuance of administrative civil liability orders through settlement and an Executive Officer hearing. Final orders were posted on the <u>Pending Enforcement Liabilities and Penalties</u> (for 30 days) and are accessible to the public through the <u>Adopted Orders</u> search engine on our website.

# **Settled Action**

A settlement agreement and proposed order was posted for public comment. No significant comments were received, and the order was adopted.

| Discharger                       | Violations  | Proposed<br>Penalty      | Adopted          |
|----------------------------------|---|--------------------------|------------------|
| Martinez Refining<br>Company LLC | Effluent limit violations,<br>unauthorized discharges, and<br>failure to submit required report | \$4,482,000 <sup>1</sup> | December 9, 2024 |

<sup>1</sup> Includes \$2,241,000 for Supplemental Environmental Projects, including \$1,046,000 to fund a water quality improvement and management project for Peyton Slough marshes, \$153,600 for the Martinez Watershed Rangers Program, and \$1,041,400 for four Regional Monitoring Program studies.

# **Executive Officer Hearing**

A hearing was held for a mandatory minimum penalty. An order was adopted based on the evidence and testimony provided.

| Discharger          | Violation                       | Proposed<br>Penalty | Adopted           |
|---------------------|---------------------------------|---------------------|-------------------|
| LP Acquisitions LLC | Failure to submit annual report | \$2,910             | December 11, 2024 |

# 401 Water Quality Certification Applications Received (Rebecca Nordenholt)

The table below lists those applications received for Clean Water Act section 401 water quality certification from December 13, 2024, through January 15, 2025. A check mark in the right-hand column indicates a project with work that may be in the San Francisco Bay Conservation and Development Commission (BCDC) jurisdiction.

| Project Name   | City/Location       | County        | May have BCDC<br>Jurisdiction |
|--|---------------------|---------------|-------------------------------|
| Arroyo Mocho Levee Repair Project  | Unincorporated      | Alameda       |                               |
| Crown Beach Emergency Shoreline<br>Protection  | Alameda             | Alameda       | $\checkmark$                  |
| Dublin Center Project  | Dublin              | Alameda       |                               |
| Bay Farm Island Southern Shoreline<br>Repairs  | Alameda             | Alameda       | $\checkmark$                  |
| Zone 6, Line F, Agua Caliente Creek<br>Restoration Between I-680 and<br>Curtner Road                                   | Fremont             | Alameda       |                               |
| Bay Area Ridge Trail Fremont to Garin<br>Project   | Fremont, Union City | Alameda       |                               |
| SFPP LS-72 Anomaly Repair at Dig 2022-1  | Martinez            | Contra Costa  |                               |
| Central Contra Costa Sanitary District<br>(Central San) Routine Outfall Pipeline<br>Maintenance and Monitoring Program | Martinez            | Contra Costa  | $\checkmark$                  |
| City of Martinez Breakwater<br>Replacement Project   | Martinez            | Contra Costa  | $\checkmark$                  |
| Sir Francis Drake Blvd Emergency<br>Culvert and Ditch Cleaning Inverness   | Inverness           | Marin         |                               |
| 35404769_NOVATO 1104_OH Pole &<br>Anchor Replacement_River Vista<br>Court_Novato                                       | Novato              | Marin         | $\checkmark$                  |
| 22055 CA-1 Emergency Stabilization   | Marshall            | Marin         |                               |
| Inverness Yacht Club Emergency<br>Repairs  | Inverness           | Marin         |                               |
| Happy Druids Boathouse   | Inverness           | Marin         |                               |
| Evans and Mariposa Combined Sewer<br>Discharge Improvement Project   | San Francisco       | San Francisco | $\checkmark$                  |
| Slip-Out Repair And Bank Stabilization<br>Near 1780 Higgins Canyon Road<br>Project                                     |                     | San Mateo     |                               |
| Little Butano Creek Fish Passage and Habitat Enhancement Project   | Unincorporated      | San Mateo     |                               |
| Sims Port of Redwood City Wharf 3<br>Sediment Remediation Project  | Redwood City        | San Mateo     | $\checkmark$                  |
| MOCR Pond Desedimentation and<br>Restoration   | Unincorporated      | Santa Clara   |                               |
| Vallejo Marina A Dock Removal  | Vallejo             | Solano        | $\checkmark$                  |