

**CONTRA COSTA COUNTY FLOOD CONTROL  
2013 Status of Flood Protection Infrastructure**



# Contra Costa County Flood Control

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& Water Conservation District

## 2013 Status of Flood Protection Infrastructure

### First Annual Report: History, Condition, and Future Needs



CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

November 5, 2013

Prepared by: Tim Jensen

## 2013 STATUS OF FLOOD PROTECTION INFRASTRUCTURE

### FIRST ANNUAL REPORT: HISTORY, CONDITION, AND FUTURE NEEDS

#### Message from Julie Bueren, Chief Engineer

Since its formation in 1951, the Flood Control District has worked with our partners to construct over \$1 billion in regional flood protection infrastructure which protects over \$25 billion assessed property value throughout the County, or about 17% of the total property valuation. This infrastructure currently consists of 79 miles of flood protection channels and 29 dams and detention basins. These provide the regional backbone of flood protection for most watersheds in our County. In addition to providing flood protection, we are working hard to improve our creek environments and water quality.

In April of 2013, the State Department of Water Resources completed an assessment of flood protection infrastructure statewide. Their analysis indicated that for Contra Costa County, 40,000 residents still live in a floodplain, \$48 million worth of agricultural crops are located in a floodplain, and \$4.9 billion in structures are located in a floodplain and susceptible to flood damage. Floodplains are the low lying areas adjacent to our creeks where historic flood waters deposited nutrient rich sediment leading the first settlers to establish their farms and orchards there. As our communities developed these floodplains often became the heart of a vibrant downtown which became subject to frequent flooding up until the Flood Control District began constructing flood protection facilities. Since then flooding has been virtually eliminated in the communities protected by our regional flood protection facilities.

While our flood protection infrastructure provides a vital service to our communities, it is getting old. By the end of this decade 40% of the Flood Control District's facilities will be more than 50 years old. We must begin to plan for the replacement of these aging facilities. At the same time, the trend in the local, state, and federal government budget process is to reduce spending on flood protection facilities. This is not only a countywide issue, but a national one. Collectively, we must lobby the state and federal government to reverse this trend and increase funding for this key infrastructure need.

In conjunction with 2013 California Flood Preparedness Week, we are providing this report to outline the status of our flood protection infrastructure, its value to our communities, and the resources needed to pro-actively continue providing adequate flood protection. Flood protection infrastructure is often forgotten because it is utilized, and noticed, only during large storm events. However, if we do not plan for maintaining and replacing this key infrastructure now, the future impact to our communities will be devastating. We need to only look back at the flood damage from the 1950's to see how devastating that impact would be. It is time to work with our partners to provide the flood protection needed for the next generation.

## 1.0 EXECUTIVE SUMMARY

The Contra Costa County Flood Control and Water Conservation District's (FC District) ability to adequately maintain our flood protection system and our ability to keep pace with community needs for acceptable levels of flood protection has been sharply curtailed, and in some watersheds virtually eliminated, by passage of Proposition 13 in 1978 and Proposition 218 in 1996. The FC District has not been able to collect the necessary funds to complete the County's planned flood protection system or adequately operate and maintain our existing flood protection system. There are also capital replacement needs and other projected future issues on the horizon. Some progress has been made on some of these issues. Below are current and proposed action plans which need to be developed and implemented to address all the issues we are aware of:

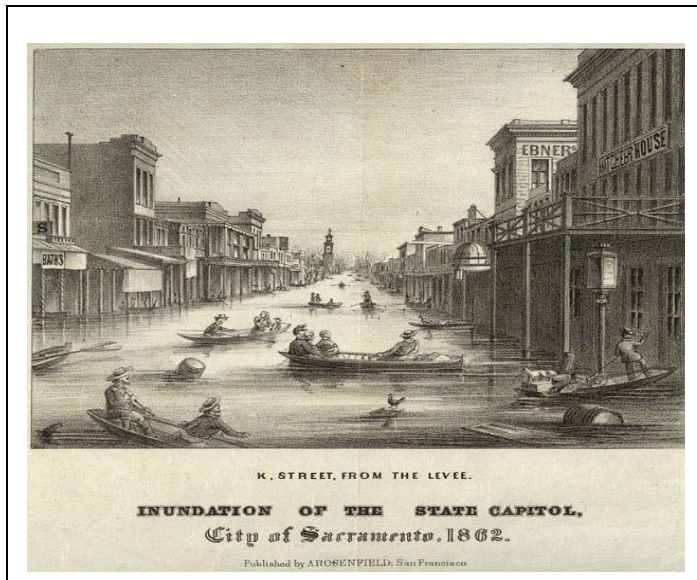
Item	Action Plan Description	Cost Estimate	Time (years)	Start
1	Sediment Studies at Channel Mouths	\$250,000	8	February 2008
2	Study Level of Flood Protection	\$2,000,000	15	December 2008
3	Review and Report on Financial Status	\$100,000	2	June 2012
4	Develop Financing Plan	\$100,000	2	June 2012
5	Develop Communication and Outreach Plan	\$150,000	2	February 2013
6	Improve Flood Forecasting and Warning Systems	\$350,000	3	April 2013
7	Conditions Assessment of Critical Infrastructure	\$5,500,000	7 - 10	October 2013
8	Seismic Study of 5 Dams	\$1,250,000	5	2014
	<b>Assessments Total:</b>	<b>\$9,700,000</b>	<b>15</b>	
9	Corps Improvement Projects	\$20,000,000	30	1998
10	Levee Improvements to Corps and FEMA Standards	\$2,000,000	6	October 2011
11	Capital Improvement Program	\$154,000,000	?	2014
12	Maintenance Backlog Catch-up Process	\$24,000,000	?	2014
13	Capital Replacement Program	\$2,400,000,000	?	2029
14	New Flood Protection Standards	?	?	?
15	Climate Change Impact Studies	?	?	?
<b>Total Financial Need:</b>		<b>\$2,619,400,000</b>		
Financial Need without Capital Replacement Program:		<b>\$219,400,000</b>		

Several factors contribute to the difficulty of developing the above action plans. The FC District's major flood protection facilities were constructed by the federal government, and retain federal oversight. Federal flood protection requirements have increased since these facilities were constructed, whereas federal funding has decreased. The need for habitat preservation has also increased, which causes more areas to be protected and curtails the use of less-expensive traditional flood protection structures. In some cases these two requirements conflict, causing long and expensive negotiations or no project. Community expectations and involvement have increased, which can create better projects, but adds another layer of complexity. The FC District does not have the funds necessary to respond to these increased requirements and currently has no mechanism to increase its revenue. This report recommends moving forward with the above action plans to provide sustainable flood protection infrastructure into the future.

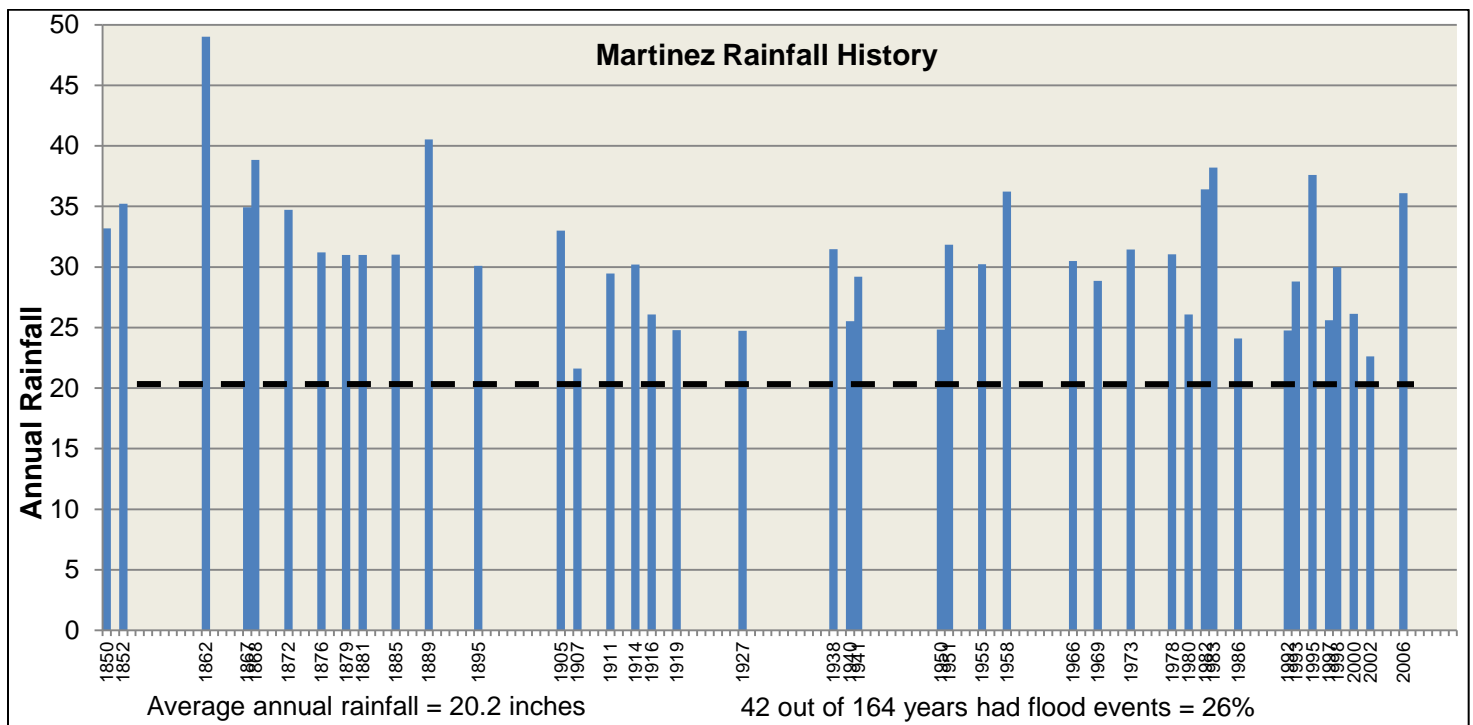


## 2.0 HISTORICAL CONTEXT

Contra Costa County was organized in 1850. Flooding was a constant companion of communities struggling to establish and develop within the County. There were 11 floods in Contra Costa County between 1849 and 1939 the worst being the flood of 1862. Over 15 inches of rain fell in Martinez during the first week in January 1862. The flood waters in the central valley created a lake 250 to 300 miles long and 20 to 60 miles wide. Telegraph poles along roads and rail lines in the lower parts of the valley were under water.



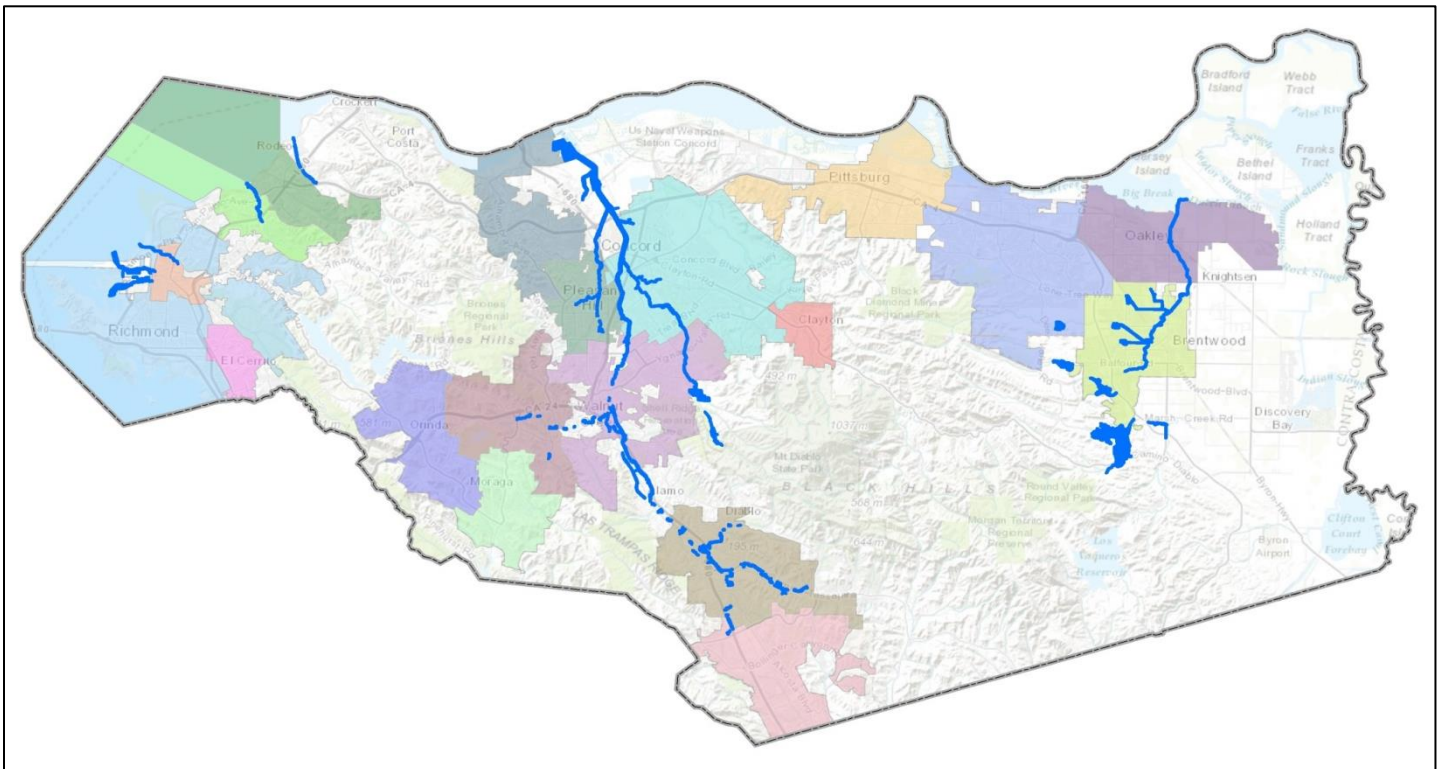
On January 10, 1862, newly elected governor Leland Stanford traveled to his inauguration ceremony in a rowboat. The State Capitol was moved to San Francisco for a few months until Sacramento could recover. In Contra Costa County, flood waters washed so much silt down Ygnacio Valley that Pacheco Slough was filled with sediment, eliminating Pacheco as a viable seafaring port town. This flood left the State bankrupt. Figure 1 below shows the rainfall for above average rain years in Martinez since 1849, with 1862 being the most prominent. Storms that resulted in flooding occurred regularly, along with the expensive recovery from flood damages.



**Figure 1. Historic Above Average Rain Years Where Flooding was Recorded**

The Contra Costa County Flood Control and Water Conservation District was formed as an independent special district of the State in 1951 at the request of the residents of the County, and soon after began to build flood protection infrastructure. As Figure 1 indicates, the storms that historically impacted the County have not become less frequent over the years. We have seen that since the construction of flood protection facilities the historical flooding has been virtually eliminated in those watersheds protected by FC District facilities.

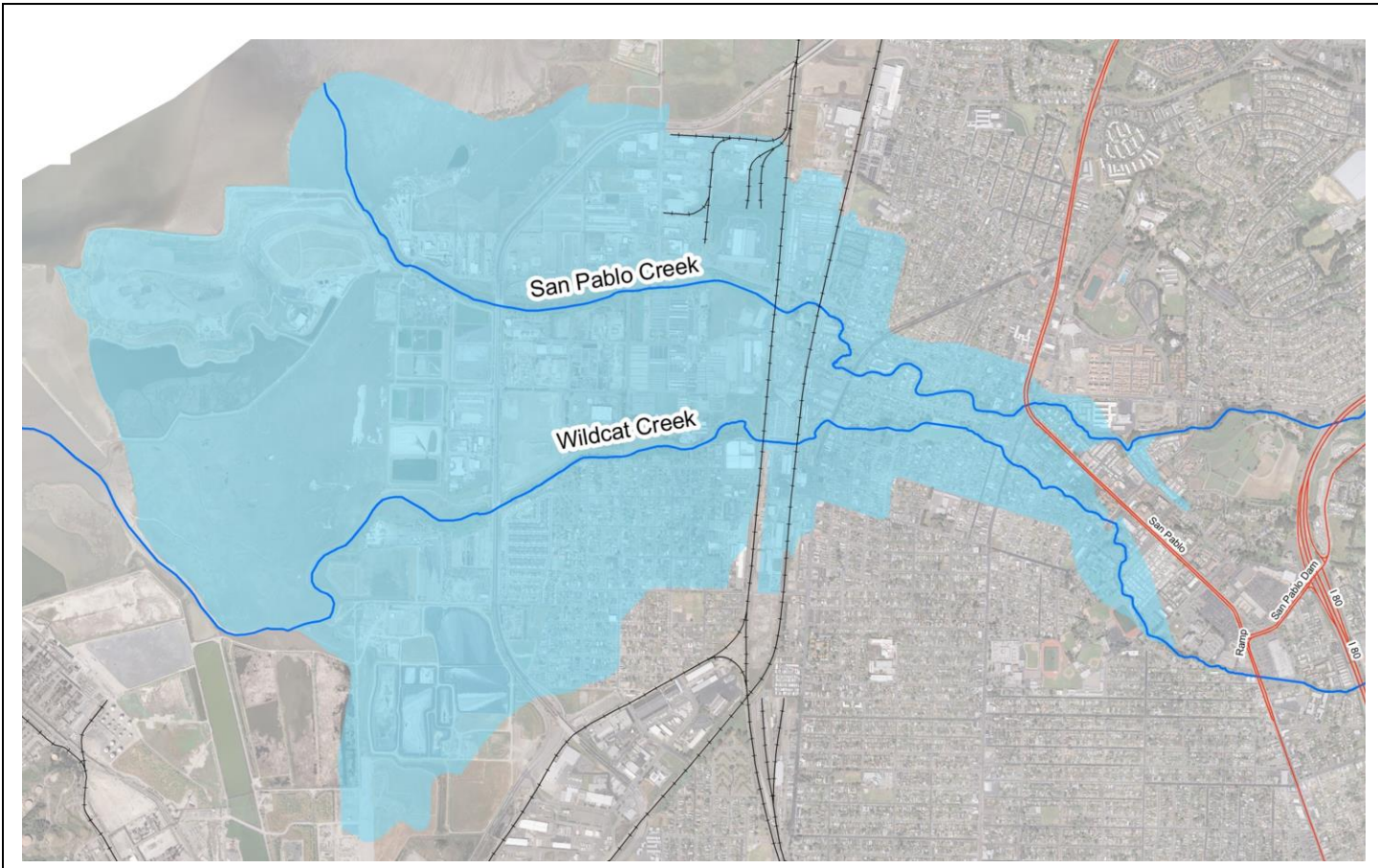
Figure 2 (below) shows the flood protection infrastructure owned and operated by the FC District. The heavy blue lines indicate where the 79 miles of flood control channels are located, and the District's 5 dams and 24 detention basins are scattered throughout those areas.



**Figure 2. Flood Control District Infrastructure**

Floodplains (literally the plain that floods) are low lying areas adjacent to the creeks and rivers that, on average, are inundated with storm flows every other year. Community leaders realized that flooding would need to be controlled by large dams, or by providing adequate channels or levees to keep water out of the communities in the flood plain, so they developed a standard based on the rainfall history at that time. The standard for flood protection facilities became a “100 year” level of protection. This provides protection from a 100 year storm (statistically a 1% chance of occurrence within a one year period) and is the basis for FEMA’s flood insurance requirements. Figure 3 (below) shows the historic floodplain in one of our communities. If a home is built in a floodplain it is always in a floodplain, even though it is protected by FC District facilities. And statistically, there is always the chance that a storm larger than the 100-yr design standard level occurs which would exceed the capacity of our flood protection channels and

flood the historic floodplain. This recently happened in Colorado where many areas were flooded due to “1,000 year” storms much greater than the standard “100 year” storm. The highest level flood that FEMA normally evaluates is the “500 year” flood. The State has already called for 200 year level of flood protection in urban areas. And experts predict that as climate change progresses, extreme storm events will become more likely, which will lead to increased standards for flood protection.



**Figure 3. Historic Floodplain in North Richmond Prior to Flood Control Project**

### 3.0 INTRODUCTION

In January 2005 the California State Department of Water Resources (DWR) released a report entitled “Flood Warnings: Responding to California’s Flood Crisis”. The report identified the following challenges, which are valid for our flood control district as well as for other flood control agencies throughout the State.

- Our flood protection system is comprised of aging infrastructure built in the 1950’s to 1970’s, which has been further weakened by deferred maintenance.



- State and local funding for effective flood protection and management programs has steadily been reduced since the passage of Proposition 13 in 1978.
- Several court decisions have resulted in greater flood damage liability to State and local government.
- Continuing to allow development in floodplains continues to increase the potential for flood damage to homes, businesses, and communities.

Building on their 2005 report, DWR has for the last several years been conducting an assessment of flood protection infrastructure throughout the state. Their report, “California’s Flood Future: Recommendations for Managing the State’s Flood Risk,” released April 3, 2013 has identified the following:

- There is more than \$50 billion in capital investment needs for currently identified flood protection projects in the state.
- More than \$100 billion is the estimated additional investment needed for projects not yet formally developed but necessary to provide adequate flood protection in urban areas across the State.
- One in five Californian’s live in a floodplain, and over one million of those are in the Bay Area.
- \$575 billion in structures are at risk of flooding, with \$130 billion in the Bay Area.



**Alhambra Creek Flooding  
Downtown Martinez 1997**

In addition to statewide and regional statistics and conclusions, the report includes the following statistics for Contra Costa County regarding a standard 100-yr flood event:

- 40,000 residents are currently in a floodplain and would be exposed to flooding.
- There would be up to \$4.9 billion in structure and contents damage.
- Agricultural damages could reach \$48 million.

The report concludes that flood protection infrastructure throughout the state does not meet current and future needs. In conducting research for the report, DWR interviewed over 140 public agencies in all 58 counties, as well as state and federal agencies, that provide flood

protection services. These agencies identified over 900 flood management projects in different stages of planning and implementation. Spending \$50 billion on these projects would not bring all regions of the state to a minimum 100 year level of protection, whereas 200 year level of protection is now mandated by SB 5 in many parts of the state. Many flood control districts, including Contra Costa County's, need to conduct a conditions assessment of their facilities to identify their true infrastructure needs. After these additional assessments are completed, it is estimated the State will need an additional \$100 billion investment in flood protection projects and improvements for \$150 billion total. In addition to recommending regional flood risk assessments, the report also recommends establishing sufficient and stable funding mechanisms to reduce flood risks.

Flood control districts are often a victim of their own success. When we complete a flood protection project, the surrounding area no longer floods and the floodwaters are out of sight and out of mind. As a result, there is little support for funding ongoing maintenance of flood protection facilities even though each home removed from a FEMA-designated floodplain saves the homeowner approximately \$1,000 each year in avoided flood insurance premiums. DWR's

Flood Future report indicates there are 40,000 residents in the county that are in FEMA's Special Flood Hazard Area and pay flood insurance. County data indicates that about \$5.4 million in flood insurance premiums are paid each year. The primary goal of the FC District is reducing flood risk, which works toward eliminating the need for residents to pay flood insurance. Flood insurance premiums reflect only a portion of the cost savings when all the flood protection provided by the FC District is considered. Since its formation in 1951, the FC District has worked with our partners to construct over \$1 billion in flood protection infrastructure which protects over \$25 billion assessed property value throughout the County.

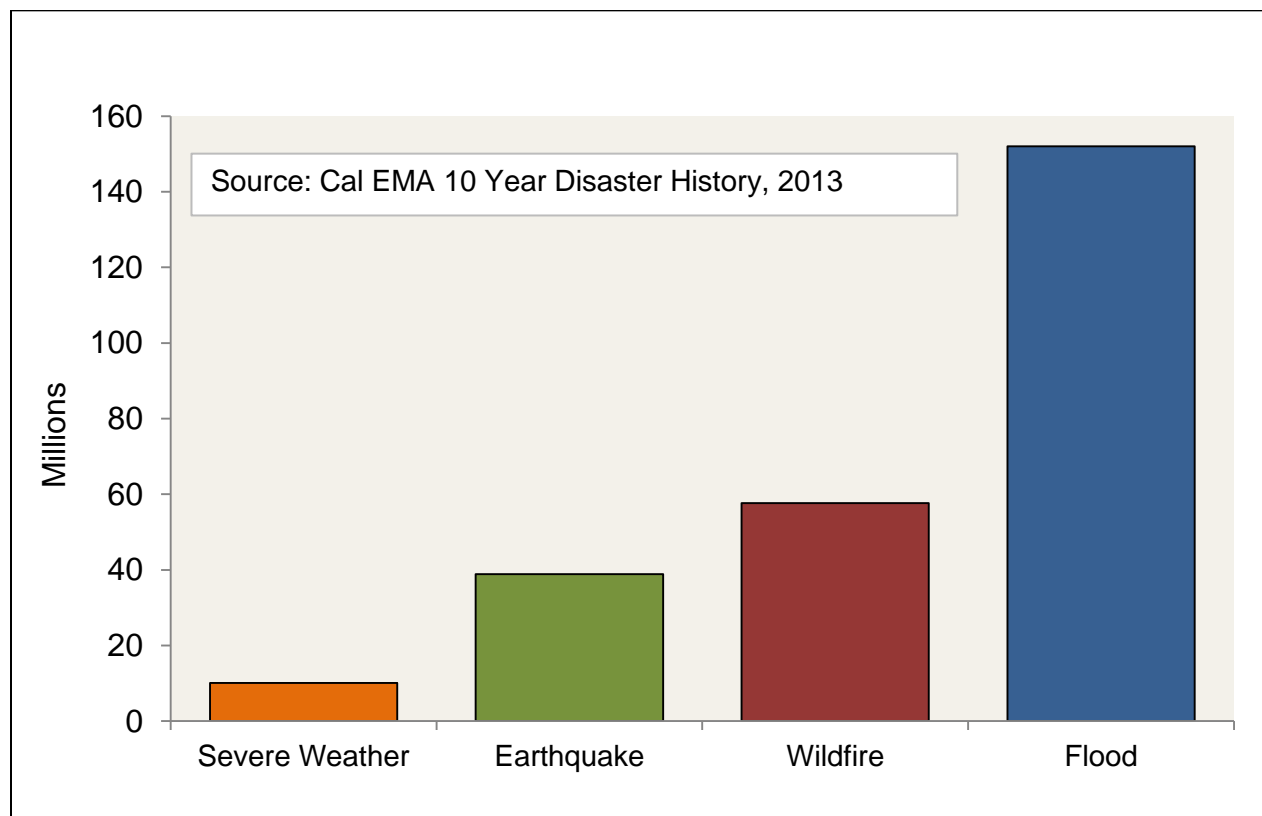


**Pine Creek Flooding, Market at Belmont, Concord 1958**

FEMA indicates that flood insurance premiums are increasing substantially nationwide over the next several years as the rates become more actuary-based and federal subsidies are reduced. In California, during a typical 30-year mortgage period for a home not protected by a flood control facility, there is about a one in four chance (26%) that the homeowner will experience a



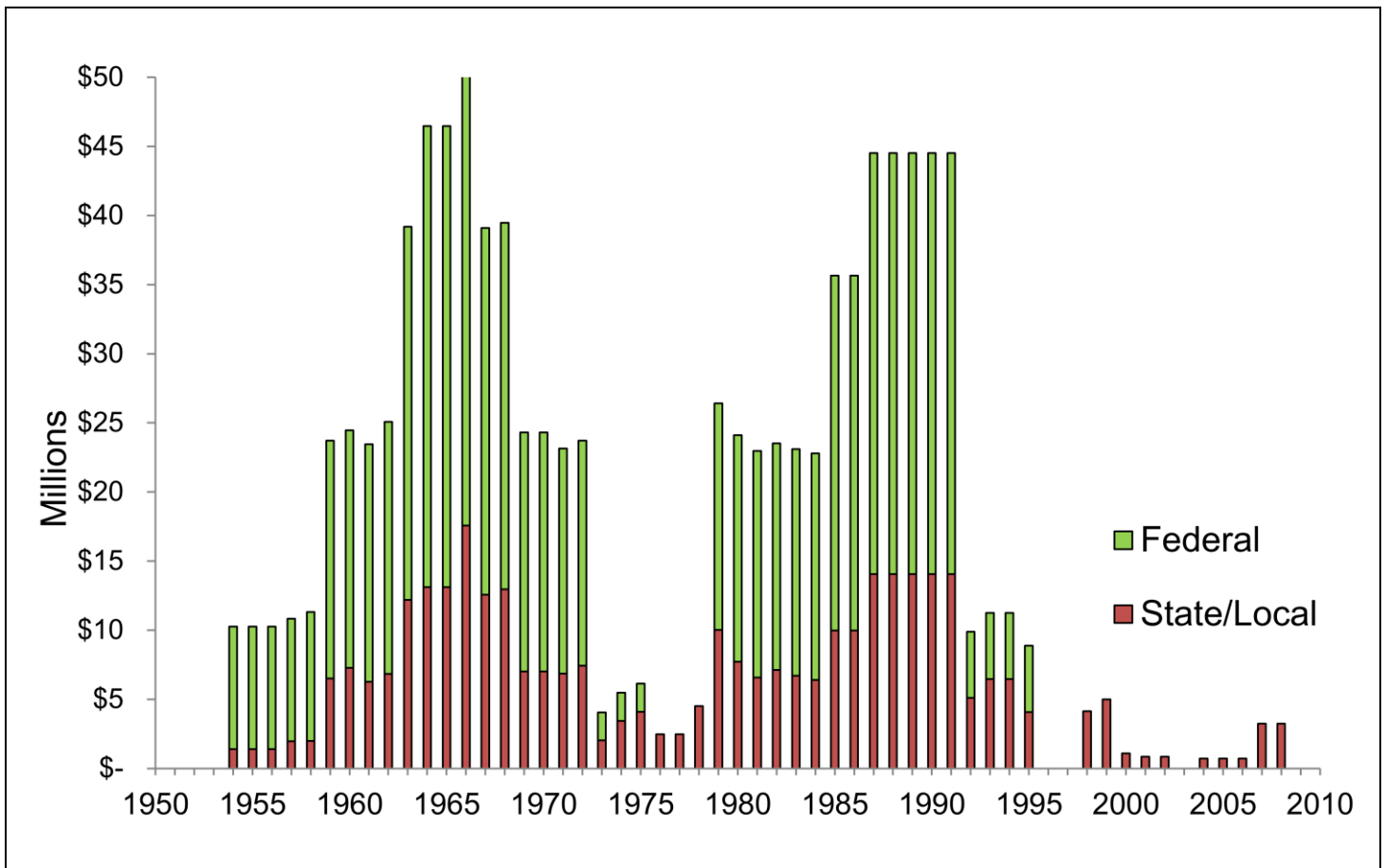
100-year flood. This risk is many times greater than the risk of a major home fire during that same 30-year period, and the flood risk will increase with time due to climate change impacts. As Figure 4 (below) shows, flooding is by far the most costly of the natural disasters we experience statewide.



**Figure 4. California Natural Disasters 10-yr Damage Totals**

About 80% of the County's current flood protection infrastructure cost was funded by generous federal and state programs. Those funding program formulas have become less generous over time. For example, the Corps of Engineers cost share in the 1950s and 1960s was 95% to 100%, which was subsequently reduced to 75%. In 1996, Congress reduced the maximum federal cost share on Corps flood control projects to 65% of the total project cost and then in 2007 reduced it further to 50% for new projects. State funding has also been reduced. The State's Subvention Program, which assisted local flood control districts with the local match for federally funded projects, experienced a severe drop in funding starting in 1992 and has been unfunded for the last several years.

Figure 5 (below) shows the proportion of federal and local dollars that were invested in the FC District's flood protection system each year from the first project until 2010.



**Figure 5. Federal and State/Local Share of Flood Protection Infrastructure Cost**

#### 4.0 INFRASTRUCTURE CONDITION

The future conditions of various types of FC District infrastructure are impacted by sediment, storm water runoff, financing, community interest, forecasting, age, and earthquake resiliency. Specific assessment studies of each of these categories should be performed to provide data on the scale of their impacts and how best to respond to those issues to provide sustainable flood protection infrastructure.

#### 4.1 SEDIMENT IMPACT STUDIES

In the past, large quantities of sediment would inundate creeks and channels each winter

because no sediment controls were placed on construction and agricultural uses. Due to sediment control regulations, as well as less exposed soil due to urbanization, sediment loads and their impacts have reduced significantly. However, sediment buildup in the very lower reaches of our flood control channels continues to be an issue because the Corps of Engineers constructed them flat. This condition causes sediment from the upper watershed to slow down and deposit, and it also allows sediment from the bay to travel into the channel during tide stages and deposit sediment. Today, reduced capacity has developed in some channels with a resultant reduction in the level of flood protection. The impacted facilities are Pinole Creek, Rheem Creek, Rodeo Creek, and Walnut Creek. The cost to study the lower reaches of our channels to accurately determine the scope and cost of sediment removal is estimated at \$250,000. This effort was partially begun in 2008, and we anticipate it taking several more years to complete.

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#### 4.2 LEVEL OF PROTECTION PROVIDED

The FC District's major flood control channels, such as Rodeo Creek, Pinole Creek, Grayson Creek, Marsh Creek, and Walnut Creek, are engineered channels that are made in the earth or made of concrete in a u-shape. They were designed to carry floodwaters quickly through the community and out to the Bay. Some of these channels also contain levees for a portion of their length.

There are generally two types of levees, wet levees and dry levees. Wet levees are typically those levees that hold back major rivers with a water surface that is continuously higher than the adjacent protected land surface. Dry levees are usually just elevated creek banks that intermittently contain flood waters that exceed the capacity of the creek channel. When most people think of levees they are thinking of wet levees, such as those in the Delta, holding back the Sacramento River. The only wet levee the Flood Control District maintains is at the mouth of the Marsh Creek Flood Control Channel where it holds back the waters of the Sacramento River at Big Break. This levee protects farmland which recently was purchased for a wetlands restoration project known as the Department of Water Resources Dutch Slough Restoration Project. The project proponents plan to breach this levee in a few years to allow waters to flow into the property for wetlands restoration. That levee will be turned over to another agency such as a reclamation district and the FC District will no longer be responsible for it.

Many of our flood control channels, such as Wildcat Creek, San Pablo Creek, Pinole Creek, Grayson Creek, Pine Creek and Walnut Creek have dry levees. These levees are generally at the lower reach; usually support maintenance access roads; and are in fairly good structural condition. Each year the Army Corps of Engineers inspects the channels and dry levees. In July of 2009 FEMA decertified several miles of the Wildcat Creek and San Pablo Creek levees, which could affect future flood insurance requirements for the surrounding communities.

Most wet levees in Contra Costa County are maintained by a variety of Reclamation Districts. Attached as Exhibit 1 is a map of the County showing the various Reclamation Districts and the tracts of land the Reclamation District levees are protecting. Bethel Island has a separate Municipal Improvement District to maintain its levee system.

In response to a local proposal to restore one of our flood control channels, the FC District did a detailed analysis of the upstream hydrology and channel hydraulics. We discovered that changes in land use, subsequent to the channel construction in the 1960's, resulted in storm runoff flows that exceed the original design capacity by over 40%. This resulted in reduced flood protection for the community and a false sense of security for residents thinking they have a higher level of protection than they really do. The original design capacity provided 100 year flood protection for the entire community, and all properties were removed from the FEMA floodplain maps. When FEMA revises their floodplain maps with this new information, many properties will be 'mapped into the floodplain' and thus have to acquire flood insurance.

This situation exists in other communities as well. The FC District needs to conduct studies to determine which communities are affected. FEMA is performing flood capacity studies of the Marsh Creek and Kellogg Creek watersheds. The FC District is working with the Corps on the Grayson Creek and Walnut Creek watersheds to provide some of this information. The detailed studies to determine the level of protection provided by all FC District facilities is estimated to be \$2 million. This effort was started in 2008 and will take at least 10 more years to complete.

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#### 4.3 FINANCIAL STATUS

The Flood Control District financial status has changed significantly over the years due to reductions in federal, state, and local funding as mentioned above. As seen in Figure 5 (above), the FC District's first infrastructure boom was winding down just when Proposition 13 was enacted. This reduction in construction caused the FC District to lower the tax rates in watersheds where local funding was no longer needed for capital costs, and only the minimal maintenance was required for a new facility. In some areas, the tax rate was set to zero due to a funding surplus. Proposition 13 locked in those low or zero tax rates, and the FC District has not been able to raise them since. The only increases in revenue are due to increased property values, which go up and down and do not keep pace with construction costs, increasing regulations, and new standards. Thus, during the second peak of building infrastructure seen in Figure 5, some of the FC District funding zones incurred debt, and some of that debt is still on the books.

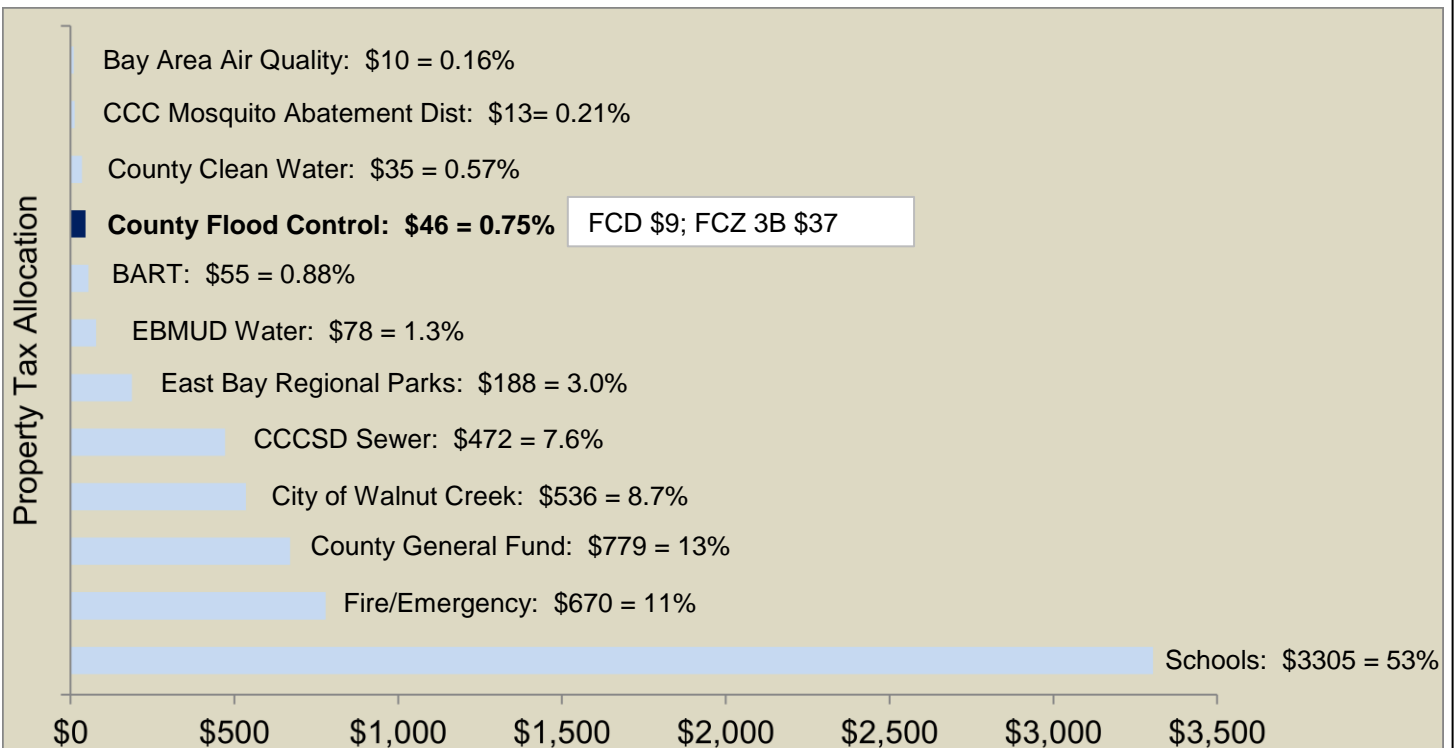
During the 1980's the FC District formed Drainage Areas to provide developer-funded capital improvement programs to install drainage infrastructure in several cities and the unincorporated County. During the 1990's the FC District formed Drainage Benefit Assessment Districts to provide maintenance funding for major drainage facilities that were associated with large coordinated developments. Also in the 1990's the FC District became the fiduciary agent for the Contra Costa Clean Water Program's Stormwater Utility Fees which require collection from each taxable parcel in the County and distribution to each city and the unincorporated County for implementing the National Pollution Discharge Elimination Program.

The FC District has insufficient funding to adequately operate and maintain our current flood protection infrastructure. To compensate, we limit spending to approximately \$3 million per year on facilities maintenance, which is only 0.3% of our asset value, much lower than the industry standard.

Today, the FC District manages 71 separate funds, all of which are restricted return to source funds. The table below provides the past three fiscal year's average expenditures for the FC District's programs.

FCD Program Categories	Averages	
	Past 3 years	Percent
Maintenance	\$3,549,310	36%
Capital	\$3,790,207	39%
Public Assistance	\$1,261,903	13%
Administration	\$1,240,890	13%
<b>Total</b>	<b>\$9,842,310</b>	<b>100%</b>

To put the FC District's share of property tax revenue into perspective vs. other taxing entities in the County, we calculated the annual amount collected from a \$500,000 home in Walnut Creek (see Figure 6 below). This was determined by totaling the 1% ad valorem tax portions, special assessments, and bond measure payments shown on the tax bill. Some of the agencies on the list to receive property tax also charge use fees or receive revenue from monthly utility bills.



**Figure 6. Annual Property Tax Comparisons - \$500,000 Home in Walnut Creek**



The FC District should perform a comprehensive review of its financial status at an estimated cost of \$100,000. A preliminary look at our financial status was performed in 2012 and it will take about one more year to complete it.

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#### 4.4 FINANCIAL PLAN

The ability of the FC District to carry out its mission to provide ongoing flood protection for the County relies on having adequate funding. When we look at FC District revenue received vs. other community services and that is compared with the statewide damages caused by flooding from Figure 4, we see there is an inequality. The argument can be made that flood protection needs more funding. As in the past, the local community should not and can not support the entire financial burden for flood protection infrastructure needs. Government programs will need to be put in place to assist with financing. The FC District should investigate other funding mechanisms in place for flood control agencies and utilities throughout the State. Potential new funding sources and mechanisms need to be developed. Since funding is needed nationwide to deal with ongoing maintenance and replacement of aging infrastructure, we anticipate that state and federal legislation will need to be enacted. The cost to study this issue and provide recommendations is estimated at \$100,000. A preliminary study of our financial plan options for some funding entities was held in 2012 and it will take about one more year to complete this for the remaining funding entities.

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#### 4.5 COMMUNICATION AND OUTREACH PLAN

In the past, the community had recent reminders of the need for flood protection when flooding occurred at or nearby their community on a regular basis. Today, with the success of our flood protection infrastructure, and the long time since the historic large floods occurred, we have seen a diminished perception of the need for flood protection. In order to engage the communities protected by FC District infrastructure, the FC District needs to develop a communication and outreach plan. To be successful, this plan will need to engage a variety of stakeholder groups in various communities throughout the County. We have already started working with two major stakeholders, the Contra Costa Taxpayer's Association and the East Bay Leadership Council, on this issue. The cost to develop a communication plan is estimated at \$150,000. Preliminary discussions regarding communication planning was begun earlier this year and our goal is to have our plan in place by 2015.

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#### 4.6 FLOOD FORECASTING AND WARNING SYSTEMS

The success of flood control facility planning depends on the accurate prediction of storm water volumes generated in a watershed. Over the years the FC District has developed an extensive system of rain gauges that provides excellent information on the amount of rain falling in the watersheds throughout the County. To assure the adequacy of regional flood protection facilities, however, stream gauges are required to measure the actual runoff volumes in a watershed. The FC District currently receives information from four stream gauges operated by others.

Comprehensive coverage of the County would require the installation of additional gauges. To assure the availability of adequate long range planning and forecasting information, additional stream gauges should be installed and arrangements made for long term operation of the existing gauges operated by others. The cost to install nine additional stream gauges at various locations throughout the county is estimated to be \$200,000. The FC District just received a grant to install these gauges which would cover all installation costs. The annual cost of maintaining these gauges, developing flow rating curves, and collecting stage data is estimated at \$50,000 per year.

The FC District has just applied for a \$100,000 grant to install new stream gages in East County and improve our flood prediction and warning systems. We will continue to plan for flood forecasting and flood warning improvements and apply for grants to implement those plans. The total estimated cost to provide adequate flood forecasting and flood warning systems throughout the county is \$350,000. This effort was started earlier this year and should take about three years to complete.

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#### 4.7 CONDITIONS ASSESSMENT OF CRITICAL INFRASTRUCTURE

Our current facility assessment practice is to visually inspect our structures every year for signs of distress, such as spalling concrete, rust spots, cracks, etc. This type of superficial inspection is only adequate for fairly new infrastructure and for observing potential failure points.

Most of our channels appear to be in fairly good condition. However, some of the concrete lined channels and most of the concrete grade control/drop structures are reaching the end of their design life. The facilities subject to tidal influence are especially vulnerable due to the saltwater interaction. When our concrete facilities were built they were designed for a 50 year “design life”. We anticipate getting a 75 to 100 year “service life” from our facilities, but we will not really know our facilities’ service life unless assessments are completed. For more detailed information on design life and service life see attached Exhibit 2. The cost to assess the

structural integrity of all FC District facilities is estimated at \$5.4 million and anticipated to take seven to ten years as presented below in Figure 7. This effort is just getting underway and will require placing some existing efforts on hold so as to not overspend our funds.

Watershed Name	Abbreviation	Annual Budget	Total Cost	Years
Marsh Creek	FCZ 1	\$200,000	\$1,130,000	5.7
Kellogg, San Pablo, Wildcat, Rodeo, Pinole, Rheem	FCZ 2, 6, 7, 8, 9, DA 127	\$100,000	\$380,000	3.8
Walnut Creek	FCZ 3B	\$400,000	\$2,800,000	7.0
Rossmoor Basin	DABA 67A	\$25,000	\$85,000	3.4
Canyon Lakes Facilities	DABA 75A	\$100,000	\$255,000	2.6
Bogue Ranch Basins	DABA 76A	\$40,000	\$255,000	6.4
Rassier Ranch Basin	DABA 910	\$25,000	\$85,000	3.4
West Alamo Creek	DABA 1010	\$30,000	\$100,000	3.3
Shadow Creek Basin	DABA 1010A	\$30,000	\$85,000	2.8
Blackhawk Facilities	CSA M-23	\$50,000	\$255,000	5.1
<b>Totals:</b>		<b>\$1,000,000</b>	<b>\$5,430,000</b>	

**Figure 7. Preliminary Conditions Assessment Action Plan**

#### 4.8 SEISMIC STUDY OF DAMS

The Flood Control District is responsible for five dam structures that are large enough to be regulated by the California Department of Water Resources, Division of Safety of Dams. The Deer Creek, Marsh Creek, and Dry Creek Dams are in East County and the Kubicek Basin and Upper Pine Creek Dam are in Central County. The Marsh Creek reservoir is the only dam that has water impounded behind it year round, although the water depth and volume stored during dry weather is quite low. Only during heavy storms does the water depth and volume in the Marsh Creek reservoir increase to significant levels, but this recedes quickly after the storm passes. The other four dams only have water behind them during heavy storms.

Each year the Division of Safety of Dams does a field review of the dams for functional safety. However, the dams have not been analyzed with respect to seismic stability. A local earthquake would impact the structure and/or outlet works, reducing the flood detention capacity of the facilities resulting in increased flood risk. The failure of any of these dams would result in inundation of many downstream properties. A structural analysis of the seismic stability of the FC District's dams needs to be performed and will cost an estimated \$1,250,000 and take about 5 years to complete.

## 5.0 CAPITAL PROGRAMS

The FC District is already engaged in several capital improvement programs described below, however, several long-range capital programs have not been evaluated or begun.

### 5.1 US ARMY CORPS OF ENGINEERS IMPROVEMENT PROJECTS

The FC District has been working with the US Army Corps of Engineers to modify three of our channels. These projects include the following:

- Habitat enhancements and flood protection restoration to Pinole Creek in Pinole.
- Modifications to Wildcat Creek in North Richmond to improve habitat and fish passage, as well as reduce sediment removal costs.
- Modification of the Lower Walnut Creek Channel in Pacheco to establish habitat and restore original flood protection.

These projects have been progressing very slowly due to the lack of Corps funding. The estimated cost to complete these projects is \$20,000,000. It is difficult to estimate the schedule to complete these projects because of the long Corps planning process and lack of funding.

### 5.2 LEVEE IMPROVEMENTS

Several of the FC District's levees have already been found to be deficient against Corps and or FEMA flood protection standards, so improvement projects have been identified. These projects have been progressing very slowly due to the lack of FC District funding, but we have been able to receive State grant funds enabling us to move forward with improvements to the Wildcat Creek levees. The estimated cost to complete these projects is \$2,000,000 and should take about four more years to complete.

### 5.3 CAPITAL IMPROVEMENT PROGRAM

The FC District is developing a comprehensive Capital Improvement Program which includes completing the originally planned infrastructure to provide regional flood protection for the communities that need it. The preliminary reports indicate that the cost to complete these projects is \$154,000,000. It is difficult to estimate the timeframe for this work because all of the projects and funding have yet to be identified.

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## 5.4 MAINTENANCE BACKLOG

There currently is insufficient funding to adequately maintain all of the FC District's flood protection system, thus a backlog of work has developed. The bulk of this backlog is due to anticipated sediment removal costs in the lower reaches of our flood control channels. Generally, sediment removal is a periodic maintenance requirement performed at intervals of 5 or more years, however, some facilities such as Wildcat Creek require sediment removal on average every two years. To complicate matters, sediment removal is often not the solution because lower reaches of channels are often quickly filled with sediment due to tidal influence, and anticipated sea level rise will move the sediment problem further upstream. In addition, regulatory agencies are developing policies to require mitigation for short term impacts of maintenance activities. Other categories of maintenance backlog include safety fence replacement, sub-drain rehabilitation, access restoration, and vegetation management. Thus, significant funding must be identified in perpetuity for sediment removal (or alternative solutions) and ongoing maintenance needs. The estimated cost of this maintenance backlog is \$24,000,000. It is difficult to estimate the timeframe for performing this work because the funding has not been identified, and this type of work is actually an ongoing need instead of a one-time project.

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## 5.5 CAPITAL REPLACEMENT PROGRAM

The current estimated asset value of the Flood Control District's 79 miles of channels and 29 detention basins and dams is approximately \$1 billion. This estimate was based on researching the original construction cost for each of the FC District facilities and converting that cost to a present value in 2010 dollars as shown in Figure 5 (above). Today we are asking, how much is our capital replacement liability? When will it be needed? It would cost approximately \$2.4 billion to replace our existing infrastructure assuming it is replaced in kind. This estimate is based on future dollar value when the infrastructure is replaced using a 75 year service life, and assuming we need to begin replacement work as soon as 2029 when the first flood protection facility reaches the age of 75 years.

There are many other factors that go into estimating the replacement costs of our infrastructure rather than just converting the original construction cost to future value. There were no or minimal environmental regulations when most of our infrastructure was built. For today's projects the environmental permitting and mitigation costs can be a significant portion of the project cost. There are also different community design and expectations today that favor a more natural project with habitat value that costs more than a traditional concrete channel. The FC District developed its "50 year Plan" specifically to address that issue. Replacement costs will also be more than the original cost due to restricted access. Development has occurred around many of our channels and structures making replacement more difficult. The federal and state programs which provided the majority of the original construction costs are no longer available.



The assessments of our existing flood protection infrastructure will provide the data needed to estimate the cost and schedule for capital replacement. We will then need to identify funding and community priorities. For this initial estimate, we are using \$2.4 billion dollars over a period of 75 years starting in 2029.

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## 5.6 NEW FLOOD PROTECTION STANDARDS

With the passage of Senate Bill 5, we will soon have to study and implement 200 year level of protection for urban areas of the County. The US Army Corps of Engineers and FEMA have increased their flood protection requirements and will continue to do so. The cost to study and implement these new requirements is unknown at this time.

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## 5.7 CLIMATE CHANGE

With the reports coming out regarding climate change, there is a need to evaluate the impacts to FC District facilities and prepare to address them. From a flood protection perspective it is anticipated that storms will be of a shorter duration and more intense, increasing the frequency of flooding and demand for flood protection services.

Another element of increasing temperatures worldwide due to climate change is the increase in sea level. The Bay Conservation and Development Commission has adopted a standard of 16 inch sea level rise by 2050, and a 55 inch rise in water levels by 2100. Increased sea level means an increase in the elevation of San Francisco Bay and the Delta that our flood control channels drain in to, raising the flood waters ever higher in the lower reaches of our flood control channels. Sea level rise will slowly reduce the current level of flood protection in our coastal communities.

The cost to evaluate the impacts of these issues on FC District facilities and prepare plans to mitigate those impacts is unknown at this time.

## 6.0 ADDITIONAL ISSUES

Additional requirements by agencies that regulate our flood protection facilities increase the costs to maintain, construct, and replace them. The FC District does not have funding programmed to adequately respond to these additional requirements:

- Corps and FEMA requirements for structural integrity, safety factors, access, and inspections have increased.

- Local communities require recreation amenities and environmental features in new flood protection facilities.
- New stormwater permit (NPDES) requirements restrict herbicide use, require extensive trash cleanup, and have added monitoring for pollutants.
- Federal and state environmental protection laws greatly restrict the use of concrete in channels.
- Local communities and advocacy groups are requiring fish passage be provided at drop structures and dams or that the facilities be eliminated altogether.
- Project mitigation often cannot be accommodated on site, requiring the need to purchase land offsite and maintain the mitigation in perpetuity.
- The issues listed above increase the need for project rights of way, which is normally not available in urban areas, and points to the difficult and controversial purchase of private property next to flood protection channels.
- The FC District partnered with federal agencies to construct our current flood protection system, most notably with the Army Corps of Engineers. Recently, however, several of our authorized projects are going through extensive and expensive feasibility studies that have no end in sight. Confrontational directives such as the Corps requirement to remove all vegetation from our levees, also strains our relationship. At some point we may have to reanalyze our long-standing partnership with federal agencies and reauthorize some projects to include more realistic requirements.
- Sediment from the upper watersheds deposits into our flood control channels, which the Army Corps of Engineers requires us to remove to maintain flood capacity. The Regional Water Quality Control Board considers sediment a pollutant and requires us to manage the sediment supply, which is typically on park lands. The Regional Board also restricts our ability to reuse sediment and where it can be disposed, impacting disposal costs. At the same time there is emerging evidence that there will be an increased need for sediment supply in the Bay for wetlands to adjust to sea level rise. The FC District could be caught in the middle between conflicting regulations resulting in increased cost and inefficiencies.

## 7.0 RECENT AND CURRENT INITIATIVES

Even with limited funding, the FC District has made significant strides over the last several years improving flood protection services, increasing our knowledge of the hydraulic integrity of our

facilities, and improving data collection capabilities. The following is a description of some of these achievements:

- Upper Sand Creek Basin – The FC District received a \$2 million grant to help fund this \$17 million regional detention basin on Sand Creek providing flood protection to the communities of Antioch, Brentwood, and Oakley.
- Pinole Creek Restoration Project – The FC District partnered with the City of Pinole who received a \$2.65 million grant to enable restoration of the lower portion of Pinole Creek and dramatically increase flood protection capacity.
- Wildcat Creek – The FC District received a \$560,000 grant to fund the engineering analysis on two miles of levees to determine what improvements are needed to meet FEMA standards. In addition, the FC District was recently awarded a \$1,515,000 grant to construct the necessary improvements.
- 50-Year Plan – In 2009 the Board adopted the “50-Year Plan” as a concept policy to replace aging concrete infrastructure with natural creek systems. This constitutes the approach for the FC District’s capital replacement program.
- Bay Area Flood Protection Agencies Association – The FC District played a leadership role in forming this association.
- Levee Vegetation – The FC District has played a leadership role in communicating the difficulties placed on local flood control agencies due to the recent change in Corps policy requiring that all trees be removed from levees.
- Creek and Channel Safety Program – In 2011 the FC District developed a Creek and Channel Safety Program that is effective and sustainable and has since been emulated by other flood control districts.
- Geographic Information System Resources – The FC District developed a right-of-way GIS layer which shows all of the FC District’s fee ownership and easement parcels throughout the County and is available on the County’s mapping website. The FC District is currently working on a maintenance layer which will show all of the maintenance activities conducted within each of the FC District maintained facilities.
- Rainfall Website – The FC District displays rainfall data in real time on its website with updates on fifteen minute intervals. This allows people throughout the County to view rainfall data and use the information to predict flooding in their community. The FC District works with the National Weather Service to share and coordinate rainfall data, which assists them in their forecasting models.
- Integrated Regional Water Management Plan – Participation in the Bay Area IRWMP provides the opportunity to develop joint flood protection projects with other water resource services.

## 8.0 SUMMARY

The total estimated cost for the above-described assessment studies (items 1 – 8 in Figure 8 below) is \$9,700,000 and this work will take approximately 15 years to accomplish. This work is in addition to the current flood protection improvement projects already underway represented under items 9 – 11. The planning and studies needed for items 12 – 15 will be performed at a later date.

Item	Action Plan Description	Cost Estimate	Time (years)	Start
1	Sediment Studies at Channel Mouths	\$250,000	8	February 2008
2	Study Level of Flood Protection	\$2,000,000	15	December 2008
3	Review and Report on Financial Status	\$100,000	2	June 2012
4	Develop Financing Plan	\$100,000	2	June 2012
5	Develop Communication and Outreach Plan	\$150,000	2	February 2013
6	Improve Flood Forecasting and Warning Systems	\$350,000	3	April 2013
7	Conditions Assessment of Critical Infrastructure	\$5,500,000	7 - 10	October 2013
8	Seismic Study of 5 Dams	\$1,250,000	5	2014
<b>Assessments Total:</b>		<b>\$9,700,000</b>	<b>15</b>	
9	Corps Improvement Projects	\$20,000,000	30	1998
10	Levee Improvements to Corps and FEMA Standards	\$2,000,000	6	October 2011
11	Capital Improvement Program	\$154,000,000	?	2014
12	Maintenance Backlog Catch-up Process	\$24,000,000	?	2014
13	Capital Replacement Program	\$2,400,000,000	?	2029
14	New Flood Protection Standards	?	?	?
15	Climate Change Impact Studies	?	?	?
<b>Total Financial Need:</b>		<b>\$2,619,400,000</b>		
Financial Need without Capital Replacement Program:		<b>\$219,400,000</b>		

**Figure 8. Overall FC District Action Plans Cost and Schedule**

## 9.0 CONCLUSIONS

On April 3, 2013, the State Department of Water Resources (DWR) released their report entitled, "California's Flood Future: Recommendations for Managing the State's Flood Risk." This preliminary report is DWR's effort to assess the state of flood protection, flood risk, and infrastructure needs throughout California. This report is also part of a Statewide flood protection education and awareness campaign culminating with the State's media rollout the week of November 4 – 9, 2013, which has been declared, "Flood Preparedness Week."

The risk of not adequately assessing flood protection infrastructure for the purpose of planning for all future maintenance and capital needs is great. Several years ago the State of California paid \$484 million in damages from the failure of one flood control facility, in this case a levee on the Yuba River. This levee failure was due to lack of adequate maintenance and understanding of the structural integrity of the facility. The State's top recommendation in their April report is to conduct flood risk assessments to better understand flood risk in the state.

Staff recommends that this report be referred to the Board, to coincide with DWR's media rollout in November, for direction to move forward with development of the above action plans for needed assessment studies and flood risk analysis, and to develop strategies for addressing the long range flood protection needs in the County. Staff also recommends that the Board be updated annually on the progress of our efforts both to develop plans and implement them, in the form of a Flood Control District Annual Report.





### **Service Life for Concrete Channels and Structures**

A concrete flood control channel is a reinforced concrete structure and determination of its service life is the same as for other concrete structures. Bridge design specifications developed by the American Association of State Highway and Transportation Officials (AASHTO), define service life as the period of time that a structure is expected to be in operation. Design life is defined as the period of time that the structure can withstand the various and repetitive loading anticipated with a given set of design specifications. The AASHTO specifications require a design life of 75 years. In the 1950's and 1960's when the bulk of our flood control facilities were being planned, designed and built, the focus was on structure design life, which in those days was 50 years.

A structure's ability to meet its expected service life can be compromised in several ways. If the loading is increased over time during the service period, the expected design and service life will be decreased and structural failure will occur sooner than anticipated. Another problem is environmental conditions the structure is exposed to, such as chemical reaction with the concrete, extreme temperatures, freeze thaw cycles or excessive bed load. Certain chemicals, for example, can invade the concrete's pore structure and initiate physical or chemical reactions causing expansive byproducts. These in turn cause cracks and access to the reinforcing steel, ultimately causing corrosion and spalling concrete. At that point if major maintenance and repairs aren't performed the structure will proceed towards failure.

AASHTO specifications require earth retaining structures to be designed for a 75 year service life considering the potential long-term effects of materials deterioration, seepage and other potentially harmful

environmental factors on each of the structure's material components. Although bridges, retaining walls and concrete channels are all reinforced concrete structures, more research could be done specifically on the service life expectations associated with flood control channels.



San Ramon Creek Drop Structure 5, Alamo

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10/22/13

**City of Antioch**  
**Response to Grand Jury Report No. 1305**





February 5, 2014

Via US Mail and Email: [clope2@contracosta.courts.ca.gov](mailto:clope2@contracosta.courts.ca.gov)

Steven Conlin, Foreperson  
Contra Costa County Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553

**SUBJECT: CITY OF ANTIOCH RESPONSE TO GRAND JURY REPORT NO. 1305,  
"GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY – WHAT'S  
THE PLAN AND WHERE'S THE MONEY?"**

Dear Jury Foreperson Conlin:

In accordance with your request and Section 933.05(a) of the California Penal Code, the City of Antioch (City) is submitting responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

## **BACKGROUND**

The Contra Costa Clean Water Program (CCCWP) consists of Contra Costa County, its 19 incorporated cities/towns, and the Contra Costa County Flood Control and Water Conservation District (District), hereinafter referred to collectively as "Permittees."

In November 1990, the United States Environmental Protection Agency (USEPA) published final stormwater rules implementing the 1987 Federal Clean Water Act (CWA) amendments, which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) permit program. The rules prohibit the discharge of pollutants in stormwater unless the discharge is in compliance with a NPDES permit. In response, the Permittees jointly established the CCCWP in 1991 through a Program Agreement, and applied for, and were subsequently issued, joint municipal NPDES permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards (Water Boards). The municipal NPDES permits are reissued approximately every five years.

The permits mandate Permittees to implement stormwater pollution prevention and control programs designed to reduce or eliminate the discharge of pollutants into and from municipal separate storm sewers (MS4s). Permittees conduct many of these mandated activities collectively (referred to as "Group Activities"). Costs for Group Activities are shared among the Permittees in accordance with a cost payment agreement between the District and each individual Permittee. The CCCWP is not itself a legal entity. The District provides staffing to the CCCWP and serves as the fiduciary agent and legal entity of the CCCWP. The roles and responsibilities of the CCCWP and Permittees are outlined in the Program Agreement, which was last updated and adopted by all Permittees in June 2010. In accordance with the Program

## **OFFICE OF THE MAYOR**

Mayor Wade Harper • Mayor Pro Tem Mary Rocha • Council Members Monica E. Wilson, Tony Tiscareno, Gary S. Agopian  
P.O. Box 5007, Antioch, California 94531-5007 • Telephone: 925-779-7011 • Fax: 925-779-7003 • [www.ci.antioch.ca.us](http://www.ci.antioch.ca.us)

Agreement, each City/Town/County/District manager designates one representative to participate on a Management Committee, which is the CCCWP's decision-making body. The following responses are provided on behalf of the CCCWP.

## **CCCWP'S RESPONSES TO GRAND JURY FINDINGS 1-11**

### **GRAND JURY FINDING #1**

"In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program."

**RESPONSE:** Agree. However, it is the City's understanding that the violation is for a specific element/provision within the unincorporated County's storm water program, not with the City, and was not a violation of overall compliance of all Permittees or the CCCWP.

### **GRAND JURY FINDING #2**

"Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

**RESPONSE:** Agree. Some municipalities supplement their stormwater programs with funding from sources other than, or in addition to, the general fund. The City currently does not supplement its stormwater program with contributions from its General Fund or other sources. With dedicated funding estimated to run out within 2 – 3 years and given the City's already strained General Fund, it is difficult to determine where additional funding will come from to maintain compliance activities.

### **GRAND JURY FINDING #3**

"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

**RESPONSE:** Agree. The 9<sup>th</sup> Circuit Court of Appeal decision in NRDC v. County of LA (9<sup>th</sup> Cir., July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit to existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require Federal and State

assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

**GRAND JURY FINDING #4**

"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

**RESPONSE:** Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with State law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

**GRAND JURY FINDING #5**

"Permittees disagree on what reasonable/practical program requirements should entail."

**RESPONSE:** Agree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

**GRAND JURY FINDING #6**

"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

**RESPONSE:** Agree. Given the City's \$13M decrease in its annual General Fund since 2007 and critical public safety needs, it is difficult to determine from where the additional funding will come.

**GRAND JURY FINDING #7**

"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

**RESPONSE:** Agree.

**GRAND JURY FINDING #8**

"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."



**RESPONSE:** Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process.

**GRAND JURY FINDING #9**

"It is unclear what the impact of non-compliance status will be for a Permittee."

**RESPONSE:** Agree. Note that the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to \$27,500 per violation per day, and costs of litigation, including reasonable attorney's fees. Thus, the Permittees face regulatory actions and private lawsuits in the event of even relatively minor noncompliance. These private lawsuits brought by aggressive plaintiffs' attorneys are a reality. This double level of enforcement is unnecessary and costly and needs to be remedied by Federal and State legislators.

**GRAND JURY FINDING #10**

"The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."

**RESPONSE:** Disagree. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines and/or third-party lawsuits. However, if local, State, and Federal legislators and agencies don't appreciate these serious issues, then better communication on all ends is needed.

**GRAND JURY FINDING #11**

"Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."

**RESPONSE:** Agree. Following the failure of the funding initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences.

**CCCWP'S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6**

**GRAND JURY RECOMMENDATION #1:**

"The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff.

**GRAND JURY RECOMMENDATION #2:**

"The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently



exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

**GRAND JURY RECOMMENDATION #3:**

"Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

**RESPONSE:** Future expenditure requirements were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative. Funding plans are being developed (see response to Finding #11).

**GRAND JURY RECOMMENDATION #4:**

"Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

**RESPONSE:** CCCWP will consider preparing a "fact sheet" addressing these issues, which would be posted on the CCCWP's website. State and Federal legislators also need to be aware of the permitting and funding issues and work with all stakeholders to address impacts of noncompliance with the laws they draft. If the issue is not the laws, but how the regulating agencies are expanding those laws, then the administrations of the Governor and President need to be held accountable.

**GRAND JURY RECOMMENDATION #5:**

"The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs."

**RESPONSE:** CCCWP activities are: (a) aligned to facilitate the Permittees' compliance with permit requirements, including foresight of potential future permit requirements; (b) implemented efficiently with the available budget, and (c) responsive to the direction of the CCCWP's Management Committee, which is comprised of Permittee representatives.

**GRAND JURY RECOMMENDATION #6:**

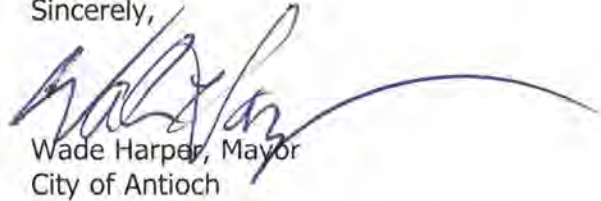
"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

**RESPONSE:** It is not within the Permittees' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable

provisions of the California Water Code. Again, State and Federal legislators need to be conscious of the funding issues facing Permittees in obtaining compliance with the Provisions they set, especially given these are all unfunded mandates, while remaining cognizant of the ability to get voters to accept additional revenue measures.

The City thanks the Contra Costa County Grand Jury for the opportunity to respond to its concerns. Please feel free to contact Phil Hoffmeister, NPDES Compliance Manager at (925) 779-6169 should you need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Wade Harper', with a long, sweeping horizontal line extending to the right.

Wade Harper, Mayor  
City of Antioch

cc: Tom Dalziel, CCCWP Manager  
Rinta Perkins, CCCWP Management Committee Chair

BOARD OF SUPERVISORS RESPONSE TO CONTRA COSTA COUNTY GRAND JURY  
REPORT 1305:

GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY – WHAT’S THE PLAN  
AND WHERE’S THE MONEY?

Responding for Contra Costa County and the Contra Costa County Flood Control and  
Water Conservation District (for the District and on behalf of the Contra Costa Clean  
Water Program)

**I. FINDINGS:**

1. "In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program."

**RESPONSE:** Agree.

2. "Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

**RESPONSE:** Agree. Some municipalities supplement their stormwater programs with funding from sources other than, or in addition to, the general fund.

3. "Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

**RESPONSE:** Agree. The 9<sup>th</sup> Circuit Court of Appeal decision in NRDC v. County of LA (9<sup>th</sup> Circuit, July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their National Pollutant Discharge Elimination System (NPDES) permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

4. "The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

**RESPONSE:** Agree. San Francisco Bay and Central Valley Regional Water Quality Control Boards (Water Boards) staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), Contra Costa Clean Water Program (CCCWP)

Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

5. "Permittees disagree on what reasonable/practical program requirements should entail."

**RESPONSE:** Partially disagree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee (the CCCWP's decision making body), continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

6. "All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

**RESPONSE:** Agree.

7. "The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

**RESPONSE:** Agree.

8. "As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."

**RESPONSE:** Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators, each month Water Board staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the San Francisco Bay Water Board attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

9. "It is unclear what the impact of non-compliance status will be for a Permittee."

**RESPONSE:** Agree. Civil penalties of up to \$10,000 per day plus \$10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to \$25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to \$27,500 per violation per day, and costs of litigation, including reasonable attorney's fees. Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc...), which may require additional water quality monitoring and/or pollution



prevention and control measure implementation further impacting funding for stormwater compliance activities.

10. "The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."

**RESPONSE:** Disagree. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees' efforts to improve water quality and comply with federal and state mandates; and, that non-compliance with current and future permits, may result in significant fines, costly remediation, and/or third-party lawsuits.

11. "Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."

**RESPONSE:** Agree. Following the failure of the funding initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences.

## **II. RECOMMENDATIONS:**

1. "The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

2. "The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

3. "Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

**RESPONSE:** The recommendation will not be implemented because it is not reasonable. Future expenditure requirements under the current permit were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11); Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of the issues surrounding the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the fluctuating and unpredictable nature of the

regulatory permit process. The CCCWP does not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time.

4. "Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

**RESPONSE:** This recommendation requires further analysis. The CCCWP's Management Committee will consider preparing a "fact sheet" addressing these issues, which would be posted on the CCCWP's website. This action will be considered in August and, if approved, implemented in October 2013.

5. "The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs.

**RESPONSE:** This recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the CCCWP's response to Recommendation #3 above. In response to items (b) and (c), the CCCWP continually evaluates its activities and operating costs based on projected available funding and constituent needs.

6. "Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

**RESPONSE:** This recommendation will not be implemented because it is not reasonable. It is not within the Permittees' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.





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**Engineering Division**  
150 City Park Way  
Phone: 925-516-5420  
Fax: 925-516-5421

August 16, 2013

Via US Mail and Email: [clope2@contracosta.courts.ca.gov](mailto:clope2@contracosta.courts.ca.gov)

Marc Hamaji, Foreperson  
Contra Costa County Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553

**SUBJECT: CONTRA COSTA CLEAN WATER PROGRAM'S RESPONSE  
TO GRAND JURY REPORT NO. 1305, "GETTING TO CLEAN WATER IN  
CONTRA COSTA COUNTY – WHAT'S THE PLAN AND WHERE'S THE  
MONEY?"**

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the City of Brentwood ("City") is submitting responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

**BACKGROUND**

The Contra Costa Clean Water Program ("CCCWP") consists of Contra Costa County, its 19 incorporated cities/towns, and the Contra Costa Flood Control and Water Conservation District ("District"), hereinafter referred to collectively as "Permittees."

In November 1990, the United States Environmental Protection Agency ("USEPA") published final stormwater rules implementing the 1987 federal Clean Water Act ("CWA") amendments, which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System ("NPDES") permit program. The rules prohibit the discharge of pollutants in stormwater unless the discharge is in compliance with a NPDES permit. In response, the Permittees jointly established the CCCWP in 1991 through a Program Agreement, and applied for, and were subsequently issued, joint municipal NPDES permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards ("Water Boards"). The municipal NPDES permits are reissued approximately every five years.

The permits mandate Permittees to implement stormwater pollution prevention and control programs designed to reduce or eliminate the discharge of pollutants into and from municipal separate storm sewers ("MS4s"). Permittees conduct many of these mandated activities collectively (referred to as "Group Activities"). Costs for Group Activities are shared among the Permittees in accordance with a cost payment agreement between the District and each individual Permittee.

The CCCWP is not itself a legal entity. The District provides staffing to the CCCWP and serves as the fiduciary agent and legal entity of the CCCWP. The roles and responsibilities of the CCCWP and Permittees are outlined in the Program Agreement, which was last updated and adopted by all Permittees in June 2010. In accordance with the Program Agreement, each City/Town/County/District manager designates one representative to participate on a Management Committee, which is the CCCWP's decision-making body. The following responses are provided by the City.

**City of Brentwood's Responses to Grand Jury Findings 1-11**

**Grand Jury Finding #1**

"In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program."

**Response:** Agree.

**Grand Jury Finding #2**

"Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

**Response:** Agree. Some municipalities supplement their stormwater programs with funding from sources other than, or in addition to, the general fund.

**Grand Jury Finding #3**

"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

**Response:** Agree. The 9<sup>th</sup> Circuit Court of Appeal decision in NRDC v. County of LA (9<sup>th</sup> Circuit, July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects.



Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

**Grand Jury Finding #4**

"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

**Response:** Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association ("BASMAA"), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit ("MRP") to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

**Grand Jury Finding #5**

"Permittees disagree on what reasonable/practical program requirements should entail."

**Response:** Partially disagree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

**Grand Jury Finding #6**

"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

**Response:** Agree.

**Grand Jury Finding #7**

"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

**Response:** Agree.

**Grand Jury Finding #8**

"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."

**Response:** Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators, each month Water Board staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the San Francisco Bay Water Board attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

**Grand Jury Finding #9**

"It is unclear what the impact of non-compliance status will be for a Permittee."

**Response:** Agree.

**Grand Jury Finding #10**

"The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."

**Response:** Disagree. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees' efforts to improve water quality and comply with federal and state mandates and that non-compliance with current and future permits may result in significant fines, costly remediation, and/or third-party lawsuits.

**Grand Jury Finding #11**

"Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."

**Response:** Agree. Following the failure of the funding initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences.

**City of Brentwood's Responses to Grand Jury Recommendations 1-6**

**Grand Jury Recommendation #1:**

"The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

**Response:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

**Grand Jury Recommendation #2:**

"The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."



**Response:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

**Grand Jury Recommendation #3:**

"Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

**Response:** The recommendation will not be implemented because it is not reasonable. Future expenditure requirements under the current permit were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11). Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of the issues surrounding the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the fluctuating and unpredictable nature of the regulatory permit process. The CCCWP does not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time.

**Grand Jury Recommendation #4:**

"Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

**Response:** This recommendation requires further analysis. The CCCWP's Management Committee will consider preparing a "fact sheet" addressing these issues, which would be posted on the CCCWP's website. This action will be considered in August and, if approved, implemented in October 2013.

**Grand Jury Recommendation #5:**

"The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs."

**Response:** This recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the CCCWP's response to Recommendation #3 above. In response to items (b) and (c), the CCCWP continually evaluates its activities and operating costs based on projected available funding and constituent needs.

**Grand Jury Recommendation #6:**


"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

Mr. Marc Hamaji  
Page 6 of 6  
August 16, 2013

**Response:** This recommendation will not be implemented because it is not reasonable. It is not within the Permittees' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The City thanks the Contra Costa County Civil Grand Jury for the opportunity to respond to its concerns. Please feel free to contact Miki Tsubota, Assistant Public Works Director, at (925) 516-5173 should you need additional information.

Sincerely,

  
Paul R. Eldredge, City Manager  
City of Brentwood

cc: Honorable Mayor and City Council of the City of Brentwood  
Damien Brower, City Attorney

kd







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City Council  
JULIE K. PIERCE, MAYOR  
HANK STRATFORD, VICE MAYOR  
JIM DIAZ  
HOWARD GELLER  
DAVID T. SHUEY

July 31, 2013

Contra Costa Civil Grand Jury, 2012-2013  
Attn: Marc Hamaji, Foreperson  
725 Court Street  
P O Box 431  
Martinez, CA 94553-0091

**Re: Contra Costa County Civil Grand Jury Report No. 1305, FY 2012-13**  
**"Getting to Clean Water in Contra Costa County"**

Dear Mr. Hamaji:

In behalf of the Clayton City Council, this letter responds to the Contra Costa Civil Grand Jury's Report No. 1305 regarding its impressions of the Contra Costa Clean Water Program, the 2012 Community Clean Water Initiative, and matters related to the municipal National Pollutant Discharge Elimination System (NPDES) permit program. The Clayton City Council met in a noticed special public meeting on July 30, 2013 to consider Report No. 1305 and therein authorized this written response.

Pursuant to California Government Code section 933.5(a), the City of Clayton does hereby respond to the Civil Grand Jury's required Findings (Nos. 1 thru 11) and Recommendations No. 1 through 6, as contained within Report No. 1305:

**FINDINGS**

Finding # 1: *In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program.*

The City agrees with this finding.

Finding # 2: *Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments, etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.*

The City partially disagrees with this finding. The City of Clayton is not currently expending more than the total amounts collected from fees and assessments designated and restricted for purposes related to the City's Clean Water programs. Further, the City of Clayton has not supplemented its Clean Water unfunded-mandate programs with General Fund monies (yet).



Finding # 3: *Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.*

The City partially disagrees with this finding. The 9<sup>th</sup> Circuit Court of Appeal decision in NRDC v. County of LA (9<sup>th</sup> Cir., July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with its NPDES permit if monitoring data show an exceedance, and exposes each to considerable liability, including fines and costly remediation.

Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will compel substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas.

Due to these compulsory actions, current dedicated funding in Clayton is insufficient to meet all existing and future NPDES-compliant permit requirements. New revenue sources dedicated to these public policy unfunded mandates will be necessary for the City of Clayton to adequately design, construct, operate and maintain stormwater drainage infrastructure improvements in the future.

Finding # 4: *The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.*

The City agrees with this finding. Regional Water Quality Control Board staff determines the process for negotiating the terms and conditions of the next municipal permit in accordance with state law and public policy. Recently through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Regional Water Quality Control Board staff regarding cost-benefit terms and scope of conditions in the next permit. As one of the smallest public agencies in the Bay Area, the Clayton City Council is increasingly concerned about the local financial burdens of this well-intended yet unfunded state mandate.



Finding # 5: Permittees disagree on what reasonable/practical program requirements should entail.

The City partially disagrees with this finding. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of restricted funds. Despite these local differences, Permittees, through representation on the Contra Costa County Clean Water Program's (CCCWP's) Management Committee, rarely disagree as to reasonable/practical programs and continue to maintain consensus regarding permit negotiating positions and the successful implementation of unfunded mandated program requirements.

Finding # 6: All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.

The City agrees with this finding.

Finding # 7: The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.

The City agrees with this finding. As the smallest city in Contra Costa County, Clayton expressly values the benefits of working collectively with other municipalities in sharing ideas, successful programs, and realizing taxpayer savings through economies of scale.

Finding # 8: As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.

The City disagrees with this finding. Clayton can only imagine in a frightening way what its setting would be like if faced alone with stormwater regulators. There are indeed significant disparities between the expectations and views of the regulators and those of the Permittees; however, this friction is typical of most regulatory processes. It must be noted that non-governmental organizations (NGOs) and other interest groups inject critical influence into the NPDES decision-making process.



Finding # 9: *It is unclear what the impact of non-compliance status will be for a Permittee.*

The City partially disagrees with this finding. Permittees and this City have been advised repeatedly by regulators that civil penalties of up to \$10,000 per day plus \$10 per gallon of polluted discharge for each violation may be imposed administratively by Regional Water Quality Control Boards; fines of up to \$25,000 per day for each violation may also be assessed if imposed by a Superior Court. Further, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to \$27,500 per violation per day, and costs of litigation, including reasonable attorney's fees. Within these guidelines Regional Water Quality Control Boards have discretion on their own enforcement actions yet Clayton and Permittees would not know what action the Board would engage until it actually acts on a violation.

Finding # 10: *The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.*

The City disagrees with this finding. The CCCWP and the City of Clayton have consistently communicated and broadcast that funding deficits for mandated stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines, costly remediation and/or third party lawsuits. The more definitive Finding would have been: "is anyone listening?"

Finding # 11: *Following failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.*

The City agrees with this finding. It is an unfathomable challenge to plan for the unfunded programmatic mandates of a state regulator which relies on an open check book of a local Permittee.

## **RECOMMENDATIONS**

Recommendation # 1: *The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.*

The recommendation has been implemented. The permit negotiation process is dynamic and must adapt to the exchange between the state regulator and the Permittees. This is an on-going process performed in cooperation between BASMAA and the Regional Water Quality Control Board staff. BASMAA committees, Water Board staff, and Permittee



representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

Recommendation # 2: *The CCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.*

The recommendation has been implemented. BASMAA and the Regional Water Quality Control Board staff have agreed to a permit negotiation process that includes Permittee representatives. Further, Permittee representatives and Water Board staff continue to meet regularly to discuss permit issues in BASMAA committees.

Recommendation # 3: *Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.*

The recommendation will not be implemented because it is not reasonable. Future expenditure requirements under the current permit were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative [ballot measure], and funding plans are difficult to develop (ref. response to Finding # 11.) Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of issues surrounding the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the fluctuating and unpredictable nature of this regulatory permit process. The City of Clayton does not have the resources or magic crystal ball to provide a meaningful prediction of the outcomes of future negotiations in order to generate future funding plans at this time.

Recommendation # 4: *Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including the discussion of potential, but realistic, impacts of non-compliance.*

The recommendation requires further analysis. As a member of CCWP, the CCWP acts as the City's agent in matters related to NPDES permit requirements. The CCWP's Management Committee will consider preparing a "fact sheet" addressing these issues, which would be posted on the CCWP's website. This action will be considered in August 2013, and if approved, implemented in the last quarter of calendar year 2013.



Recommendation # 5: *The CCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs.*

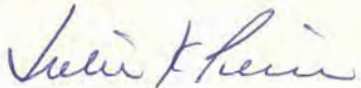
This recommendation has been partially implemented. In response to Item (a) of this recommendation, please refer to the City's response to Recommendation # 3 above. In response to Item (b) and Item (c), through the CCWP our City continually evaluates its activities and operating costs based on projected available funding and constituent needs.

Recommendation # 6: *Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.*

This recommendation will not be implemented as it is not within this Permittee's power or authority to ensure that the objectives, timelines, or provisions of its NPDES unfunded mandated permit are reasonable. Tests of reasonableness, if used, are applied by the Regional Water Quality Control Board pursuant to the applicable provisions of the California Water Code. Again, state and federal legislators need to be more conscious of the forced funding mandates facing Permittees in obtaining compliance with the unfunded provisions and requirements they set while remaining cognizant of the fact Permittees are constrained in ability and capacity to get voters to accept additional revenue measures for state and federal unfunded mandates.

We appreciate the time and effort the Civil Grand Jury spent researching and considering these matters, and we trust this response will be helpful in its endeavors.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julie K. Pierce".

Julie K. Pierce  
Mayor



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CITY COUNCIL  
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Timothy S. Grayson, Vice Mayor  
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Laura M. Hoffmeister  
Ronald E. Leone

Thomas J. Wentling, City Treasurer  
Valerie J. Barone, City Manager

July 24, 2013

Mr. Marc Hamaji, Foreperson  
Contra Costa County Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553

Re: Response to Grand Jury Report No. 1305 entitled *Getting to Clean Water in Contra Costa County*

Dear Mr. Hamaji,

Thank you for the opportunity to respond to the findings and recommendations of the Contra Costa County Civil Grand Jury with regard to outsourcing municipal services for the City of Concord. The Concord City Council reviewed this letter of response at its July 23, 2013 City Council meeting.

For ease of reading, I have incorporated into this letter the language from your report for each finding and recommendation that the City has been asked to address. The City's response is directly below each finding and recommendation. Please also note that in each case this response reflects only the information as it reflects to the City of Concord. The City does not have knowledge of the financial information of the other responding organizations.

## Findings

1. In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program.

Response: The City of Concord agrees with the finding.

2. Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.

Response: The City of Concord agrees with the finding.

Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments. The respondent is unaware of how other Permittees cover funding shortfalls.

3. Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.

Response: The City of Concord partially agrees with the finding.

The City of Concord will maintain compliance with future permit requirements as long as the permit is compliant with Federal and State law. However, future compliance requirements are unknown at this time.

Additionally, the 9th Circuit Court of Appeals decision in NRDC v. County of LA (9th Cir., July 13, 2011, no. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation.

Permittees, regulators and watershed stakeholders agree that compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit to existing Municipal Separate Storm Sewer Systems (MS4s). Currently, stormwater treatment and flow control measures are required on many development projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas.

Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary to construct, operate and maintain stormwater drainage infrastructure improvements.

4. The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.

Response: The City of Concord agrees with the finding.

The San Francisco Regional Water Quality Control Board (SFRWQCB) staff determines the process by negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with SFRWQCB staff regarding the terms and conditions of the next permit.

5. Permittees disagree on what reasonable/practical program requirements should entail.

Response: The City of Concord partially disagrees with the finding.

Each municipality has different water-quality issues, pollutant sources, drainage system characteristics, availability of funds, and priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

6. All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.

Response: The City of Concord agrees with the finding.

7. The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.

Response: The City of Concord agrees with the finding.

8. As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.

Response: The City of Concord disagrees with the finding.

There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators, each month SFRWQCB staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the SFRWQCB attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

9. It is unclear what the impact of non-compliance status will be for a Permittee.

Response: The City of Concord agrees with the finding.

Civil penalties of up to \$10,000 per day plus \$10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to \$25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to \$27,500 per violation per day, and costs of litigation, including reasonable attorney's fees.

Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc.), which may require additional water quality monitoring and/or pollution prevention and control measure implementation further impacting funding for stormwater compliance activities.

10. The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.

Response: The City of Concord disagrees with the finding.

The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees' efforts to improve water quality and comply with federal and state mandates, and that non-compliance with current and future permits may result in significant fines, costly remediation, and/or third-party lawsuits.

11. Following failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.

Response: The City of Concord agrees with the finding.

Following the failure of the 2012 Community Clean Water Initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences.

## **Recommendations**

1. The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.

Response: This recommendation is being implemented in cooperation with BASMAA and SFRWQCB staff. BASMAA committees, SFRWQCB staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

2. The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.

Response: This recommendation is being implemented in cooperation with BASMAA and SFRWQCB staff. Specifically, BASMAA and SFRWQCB staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and SFRWQCB staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.



3. Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.

Response: This recommendation has not yet been implemented, but will be implemented in the future. Future expenditure requirements under the current permit were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11). However, estimating future expenditure requirements at this time for the yet to be negotiated reissued permit is premature as current permit mandated pilot studies and projects designed to inform future negotiated permit mandates are not yet complete.

Additionally, permit reissuance negotiations are just getting underway and there is currently no draft permit available for review. Given the complexity and scope of municipal NPDES permits, and the inherent unpredictability of the reissuance process, quantifying a range of future expenditure requirements at this time would be highly speculative and subject to significant debate. A time frame for implementation of this recommendation is dependent on the permit reissuance process, which is dictated by the SFRWQCB pursuant to applicable provisions of the California Water Code.

4. Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.

Response: This recommendation requires further analysis. The CCCWP's Management Committee will consider preparing a "fact sheet" addressing these issues, which would be posted on the City of Concord's website. This action will be considered in August and, if approved, implemented in October 2013.

5. The CCCWP consider immediately beginning to re-align its activities and operating costs with: (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs.

Response: This recommendation has been implemented. CCCWP activities are: (a) aligned to facilitate the Permittees' compliance with permit requirements, including foresight of potential future permit requirements; (b) implemented efficiently with the available budget, and (c) responsive to the direction of the CCCWP's Management Committee, which is comprised of Permittee representatives.

Mr. Marc Hamaji, Foreperson  
Grand Jury Report No. 1305 – Response  
July 24, 2013  
Page 7 of 7

6. Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.

Response: This recommendation will not be implemented because it is not reasonable. It is not within the Permittees' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the SFRWQCB pursuant to the applicable provisions of the California Water Code.

Thank you for your work with regard to this very important issue in municipal governance and for the opportunity to respond.

Respectfully,

A handwritten signature in black ink, appearing to read "Valerie J. Barone", with a stylized, flowing script.

Valerie J. Barone  
City Manager, City of Concord

cc: Mayor and City Council Members  
City Clerk  
City Attorney



*"Small Town Atmosphere  
Outstanding Quality of Life"*

July 17, 2013

Honorable John T. Laettner  
Judge of the Superior Court  
Contra Costa County Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553-0091

Re: Contra Costa County Grand Jury Report No. 1305, "Getting to Clean Water in Contra Costa County - What's the Plan and Where's the Money."

Dear Judge Laettner:

Pursuant to California Penal Code Section 933.05, this letter responds to Contra Costa County Grand Jury Report No. 1305, "Getting to Clean Water in Contra Costa County - What's the Plan and Where's the Money." This response was reviewed and authorized by the Town Council at a duly noticed Town Council meeting on July 16, 2013.

The Town of Danville is a co-permittee under the Contra Costa Clean Water Program (CCCWP). As requested in the Grand Jury report, Danville will respond to each Finding and Recommendation separately.

### **Grand Jury Findings**

Finding #1: In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program.

Response: Danville agrees with Finding #1.

Finding #2: Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.

Response: Danville partially disagrees with Finding #2. Danville is not currently spending more than the total amounts collected from fees and assessments designated to

510 LA GONDA WAY, DANVILLE, CALIFORNIA 94526

Administration  
(925) 314-3388

Building  
(925) 314-3330

Engineering & Planning  
(925) 314-3310

Transportation  
(925) 314-3320

Maintenance  
(925) 314-3450

Police  
(925) 314-3700

Parks and Recreation  
(925) 314-3400



fund the Town's Clean Water program and has not supplemented the Clean Water Program with General Fund monies.

Finding #3: "Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

Response: Danville partially disagrees with Finding #3. The 9th Circuit Court of Appeal decision in NRDC v. County of LA (9th Cir., July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its National Pollutant Discharge Elimination System (NPDES) permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit to existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Currently Danville's dedicated funding is sufficient to meet the regulatory requirements contained in the current Municipal Regional Permit (MRP). However the ability to meet future regulations to be contained in the upcoming MRP to be issued in 2014 is uncertain. New revenue sources will be necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements in the future.

Finding #4: The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.

Response: Danville agrees with Finding #4. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Recently, through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

Finding #5: Permittees disagree on what reasonable/practical program requirements should entail.



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Response: Danville partially disagrees with Finding #5. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Despite these differences, Permittees, through the Contra Costa Clean Water Program (CCCWP)'s Management Committee rarely disagree and continue to maintain consensus regarding permit negotiating positions and the successful implementation of program requirements.

Finding #6: All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.

Response: Danville agrees with Finding #6.

Finding #7: The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.

Response: Danville agrees with finding #7. Furthermore, Danville recognizes the benefits of working collectively with other municipalities and realizing cost savings through economies of scale.

Finding #8: As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.

Response: Danville disagrees with Finding #8. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. Non-governmental organizations also play a critical role in the decision-making process.

Finding #9: It is unclear what the impact of non-compliance status will be for a Permittee.

Response: Danville partially disagrees with Finding #9. Danville has been advised that civil penalties of up to \$10,000 per day plus \$10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards (RWQCBs); fines of up to \$25,000 per day for each violation may be assessed if imposed by the Superior Court. However, the Clean Water Act also provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation



regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to \$27,500 per violation per day, and costs of litigation, including reasonable attorney's fees. Within these guidelines the RWQCB has leeway on their enforcement actions, the Town would not know what action the RWQCB would take until they actually act on a violation.

Finding #10: The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.

Response: Danville disagrees with Finding #10. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines, costly remediation and/or third-party lawsuits.

Finding #11: Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.

Response: Danville agrees with Finding #11.

### **Grand Jury Recommendations**

Recommendation #1: The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.

Response: The recommendation has been implemented. Danville is a co-permittee under the CCCWP. The CCCWP is implementing this recommendation in cooperation with Bay Area Stormwater Management Agencies Association (BASMAA) and Water Board staff.

Recommendation #2: The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.

Response: The recommendation has been partially implemented. In Danville, this recommendation has been implemented through the CCCWP in cooperation with BASMAA and Water Board staff. Specifically, most recently BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.



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Recommendation #3: Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.

Response: The recommendation has partially been implemented. The Town has identified expenditure requirements associated with the current MRP. Estimating future expenditure requirements for the reissued 2014 permit is premature at this time as current permit mandated pilot studies and projects designed to inform future negotiated permit mandates are not yet complete. Additionally, the permit reissuance process is just getting underway and there is currently no draft permit available for review. A time frame for further implementation of this recommendation is dependent on the permit reissuance process, which is dictated by the Regional Water Quality Control Board and pursuant to applicable provisions of the California Water Code. A funding plan will be developed once the permit requirements in the new MRP are established.

Recommendation #4: Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.

Response: The recommendation has not yet been implemented, but may be upon adoption of the new MRP. Danville can work through the CCCWP to prepare a "fact sheet" addressing these issues. It is expected that the information would be posted on the Town and CCCWP web sites after the next MRP is adopted and the requirements established in order to determine the projected costs.

Recommendation #5: The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs.

Response: The recommendation has been implemented. The CCCWP's activities are: (a) aligned to facilitate the Permittees' compliance with permit requirements, including foresight of potential future permit requirements; (b) implemented efficiently with the available budget, and (c) responsive to the direction of the CCCWP's Management Committee, which is comprised of Permittee representatives.

Recommendation #6: Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.

July 17, 2013

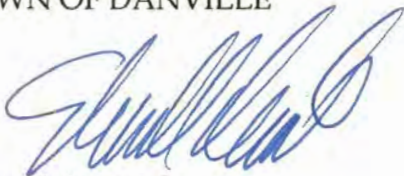
Page 6

Response: The recommendation will not be implemented because it is not warranted. It is not within the Permittee's power or authority to ensure that all stakeholders reach consensus on the objectives, timelines, or provisions of the next NPDES permit or future funding requests. Tests of reasonableness, if used, must be applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The Town appreciates the time and effort spent by His Honor and the Grand Jury in consideration of these matters.

Sincerely,

TOWN OF DANVILLE



Newell Arnerich  
Mayor





**PUBLIC WORKS DEPARTMENT**  
**(510) 215-4382**

August 28, 2013

**Via U.S. Mail and Email**

Marc Hamaji, Foreperson  
Contra Costa County Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553  
Email: [clope2@contracosta.courts.ca.gov](mailto:clope2@contracosta.courts.ca.gov)

**SUBJECT: EL CERRITO'S RESPONSE TO GRAND JURY REPORT NO. 1305,  
"GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY –  
WHAT'S THE PLAN AND WHERE'S THE MONEY?"**

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the City of El Cerrito is submitting responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report. The City is one of 19 members (hereinafter referred to collectively as "Permittees") of the Contra Costa Clean Water Program (CCCWP), which was formed in 1991 by a program agreement to apply for a joint municipal NPDES permit from the San Francisco Bay and Central Valley Regional Water Quality Control Boards.

**EL CERRITO'S RESPONSES TO GRAND JURY FINDINGS 1-11**

**GRAND JURY FINDING #1:**

"In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program."

**RESPONSE:** Agree.

**GRAND JURY FINDING #2:**

"Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

**RESPONSE:** Agree. The City of El Cerrito supplements its shortfall from other special funds; not from the General Fund at this time. Some municipalities supplement their stormwater programs with funding from sources other than, or in addition to, the general fund.



**GRAND JURY FINDING #3:**

"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

**RESPONSE:** Agree. The Ninth Circuit Court of Appeal decision in *NRDC v. County of LA* (9<sup>th</sup> Circuit, July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and therefore exposes those public agencies to considerable liability, including fines and costly remediation. Permittees, regulators, and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating, and maintaining stormwater drainage infrastructure improvements.

**GRAND JURY FINDING #4:**

"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

**RESPONSE:** Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

**GRAND JURY FINDING #5:**

"Permittees disagree on what reasonable/practical program requirements should entail."

**RESPONSE:** Partially disagree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop, and implement group permit compliance activities.

**GRAND JURY FINDING #6:**

"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

**RESPONSE:** Partially disagree. The City does not have information to determine whether all permittees are forecasting that a majority will be out of compliance in 2 to 5 years, but it is our understanding that many permittees believe a significant number of permittees will be unable to comply fully in 2 to 5 years.



**GRAND JURY FINDING #7:**

“The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.”

**RESPONSE:** Agree.

**GRAND JURY FINDING #8:**

“As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done, and what happens if it is not done.”

**RESPONSE:** Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. A key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators with a goal to work through those differences.

**GRAND JURY FINDING #9:**

“It is unclear what the impact of non-compliance status will be for a Permittee.”

**RESPONSE:** Agree. Civil penalties of up to \$10,000 per day plus \$10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to \$25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to \$27,500 per violation per day, and costs of litigation, including reasonable attorney’s fees. Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc...), which may require additional water quality monitoring and/or pollution prevention and control measure implementation further impacting funding for stormwater compliance activities.

**GRAND JURY FINDING #10:**

“The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.”

**RESPONSE:** Disagree. Both the City of El Cerrito and the CCCWP have consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees’ efforts to improve water quality and comply with federal and state mandates; and, that non-compliance with current and future permits, may result in significant fines, costly remediation, and/or third-party lawsuits.

**GRAND JURY FINDING #11:**

“Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.”

**RESPONSE:** Partially disagree. The City of El Cerrito was the only jurisdiction in which a majority of voters/property owners supported that Initiative. As a result, the City is considering pursuing and has undertaken preliminary steps toward a similar measure locally.



## **EL CERRITO'S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6**

### **GRAND JURY RECOMMENDATION #1:**

"The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

### **GRAND JURY RECOMMENDATION #2:**

"The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

### **GRAND JURY RECOMMENDATION #3:**

"Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

**RESPONSE:** The recommendation will not be implemented because it is not reasonable. Future expenditure requirements under the current permit were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative. Permittees that are considering the pursuit of local funding measures for permit requirements, such as the City of El Cerrito, will be developing funding plans as part of those processes. Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of the issues surrounding the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the fluctuating and unpredictable nature of the regulatory permit process. The City of El Cerrito and the CCCWP do not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time.

### **GRAND JURY RECOMMENDATION #4:**

"Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

**RESPONSE:** This recommendation requires further analysis. The CCCWP's Management Committee will consider preparing a "fact sheet" addressing these issues, which would be posted on the City and CCCWP's websites. This action will be considered in August and, if approved, implemented in October 2013.

### **GRAND JURY RECOMMENDATION #5:**

"The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs."

**RESPONSE:** This recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the CCCWP's response to Recommendation #3 above. In response to items (b) and (c), the CCCWP continually evaluates its activities and operating costs based on projected available funding and constituent needs.

**GRAND JURY RECOMMENDATION #6:**

"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

**RESPONSE:** This recommendation will not be implemented because it is not reasonable. It is not within the Permittees' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The City of El Cerrito thanks the Contra Costa County Civil Grand Jury for the opportunity to respond to its concerns. Please feel free to contact me at (510) 215-4382 should you need additional information.

Sincerely,



Yvetteh Ortiz  
Interim Public Works Director /  
City Engineer

City of El Cerrito

cc: Scott Hanin, City Manager, City of El Cerrito  
Tom Dalziel, CCCWP Manager





OFFICE OF THE CITY MANAGER

Steven Duran

July 15, 2013

Mr. Marc Hamaji, Foreperson  
Contra Costa County Civil Grand Jury  
P.O. Box 431  
Martinez, CA 94553

RE: Response To Grand Jury Report No. 1305, "Getting To Clean Water In Contra Costa County – What's The Plan And Where's The Money?"

Dear Mr. Hamaji:

The City of Hercules has reviewed Grand Jury Report No. 1305, "Getting To Clean Water In Contra Costa County – What's The Plan And Where's The Money?" Responses to Findings and Recommendations are provided below and meet the requirements of California Penal Code Sections 933.05(a) and 933.05(b).

## BACKGROUND

In November 1990, the United States Environmental Protection Agency (USEPA) published final stormwater rules implementing the 1987 federal Clean Water Act (CWA) amendments, which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) permit program. The rules prohibit the discharge of pollutants in stormwater unless the discharge is in compliance with a NPDES permit. In Response, the Permittees jointly established the CCCWP in 1991 through a Program Agreement, and applied for, and were subsequently issued, joint municipal NPDES permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards (Water Boards). The municipal NPDES permits are reissued approximately every five years.

The City of Hercules is a Permittee. The permits mandate Permittees to implement stormwater pollution prevention and control programs designed to reduce or eliminate the discharge of pollutants into and from municipal separate storm sewers (MS4s). Permittees conduct many of these mandated activities collectively (referred to as "Group Activities"). Costs for Group Activities are shared among the Permittees in accordance with a cost payment agreement between the Contra Costa County Flood Control and Wastewater Conservation District (District) and each individual Permittee. The roles and responsibilities of the CCCWP and Permittees are outlined in the Program Agreement, which was last updated and adopted by all Permittees in June 2010. In accordance with the Program Agreement, each City/Town/County/District

manager designates one representative to participate on a Management Committee, which is the CCCWP's decision-making body.

### **City Of Hercules Responses To Grand Jury Findings 1-11**

**Finding No. 1:** In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program.

**Response:** The City Council agrees with this finding.

**Finding No. 2:** Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.

**Response:** The City Council agrees with this finding.

**Finding No. 3:** Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.

**Response:** The City Council agrees with this finding.

**Finding No. 4:** The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.

**Response:** The City Council agrees with this finding.

**Finding No. 5:** Permittees disagree on what reasonable/practical program requirements should entail.

**Response:** The City Council agrees with this finding. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

**Finding No. 6:** All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.

**Response:** The City Council agrees with this finding.

**Finding No. 7:** The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.

**Response:** The City Council agrees with this finding.

**Finding No. 8:** As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.

**Response:** The City Council disagrees with this finding. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process and these differences do not lead to a conclusion that the CCCWP is failing.

**Finding No. 9:** It is unclear what the impact of non-compliance status will be for a Permittee.

**Response:** The City Council agrees with this finding.

**Finding No. 10:** The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.

**Response:** The City Council disagrees with this finding. The CCCWP, on behalf of Permittees, has consistently communicated that funding deficits for stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines and/or third-party lawsuits.

**Finding No. 11:** Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.

**Response:** The City Council agrees with this finding. Following the failure of the funding initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences.

#### **City Of Hercules Responses To Grand Jury Recommendations 1-6**

**Recommendation No. 1:** The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.

**Response:** The recommendation will be implemented in coordination with other Permittees through the CCCWP.

**Recommendation No. 2:** "The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."

**Response:** The recommendation will be implemented in coordination with other Permittees and the CCCWP.



**Recommendation No. 3:** Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.

**Response:** The recommendation has not yet been implemented, but will be implemented in the future. Implementation is subject to funding and staffing limitations.

**Recommendation No. 4:** Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.

**Response:** The recommendation has not yet been implemented, but will be implemented in the future. Implementation is subject to funding priorities and limitations.

**Recommendation No. 5:** The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.

**Response:** The recommendation will be implemented in coordination with other Permittees and the CCCWP.

**Recommendation No. 6:** Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.

**Response:** The recommendation will not be implemented, as neither Permittees nor the District can ensure that the Water Board, the District and Permittees will agree to what is reasonable in terms of objectives and timelines.

The Hercules City Council thanks the Grand Jury for its service. If you have any questions or need additional clarification, please do not hesitate to contact us at (510) 799-8200.

Sincerely,



Steve Duran  
City Manager



City Council

Mike Anderson, Mayor  
Don Tatzin, Vice Mayor  
Brandt Andersson, Council Member  
Mark Mitchell, Council Member  
Traci Reilly, Council Member

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July 8, 2013

Marc Hamaji, Foreperson  
2012-2013 Contra Costa County Civil Grand Jury  
725 Court Street  
Martinez, CA 94553

Dear Mr. Hamaji:

In reply to Grand Jury Report No. 1305, "Getting to Clean Water In Contra Costa County" please see the City of Lafayette's responses.

**City of Lafayette's Responses to Grand Jury Report Findings:**

1. In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program.

***The respondent agrees with the finding.***

2. Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.

***The respondent partially disagrees with the finding.***

***Shortfalls are also being covered by Cities' program reserve funds.***

3. Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.

***The respondent agrees with the finding.***

***The Contra Costa Clean Water Program provides additional information based on the 9th Circuit Court of Appeal decision in NRDC v. County of LA (9<sup>th</sup> Cir., July 13, 2011, No. 10-56017)***



*determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California, in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.*

4. The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.  
*The respondent agrees with the finding.*  
*Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy.*
5. Permittees disagree on what reasonable/practical program requirements should entail.  
*The respondent agrees with the finding.*  
*Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage systems, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Through the CCCWP's Management Committee, municipalities strive to maintain consensus in identifying, developing and implementing group permit compliance activities.*
6. All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.  
*The respondent agrees with the finding.*
7. The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.  
*The respondent agrees with the finding.*
8. As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.



*The respondent disagrees with the finding.*

*Significant differences between the expectations and views of the regulators and those of the Permittees and the regulator's unresponsiveness to local jurisdictions' direct comments and comments provided through the CCCWP have contributed to the unsuccessful resolution of what needs to be done, how it should be done and what happens if it is not done. The CCCWP is assisting Permittees in meeting requirements in the existing permit that are significantly enhanced from the previous permit and require advanced technical knowledge and skills to deal with permit requirements such as monitoring and pilot projects and working through joint efforts required by the consolidation of the six municipal stormwater NPDES permits.*

9. It is unclear what the impact of non-compliance status will be for a Permittee.

*The respondent agrees with the finding.*

*There are both government enforcement and citizen suit provision measures in place to ensure compliance with the Clean Water Act and NPDES permits.*

*Civil penalties of up to \$10,000 per day plus \$10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to \$25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to \$27,500 per violation per day, and costs of litigation, including reasonable attorney's fees.*

10. The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.

*The respondent disagrees with the finding.*

*The City of Lafayette City Council approves its SUA funding every year at a public meeting. A staff report highlighting concerns regarding future permit requirements and the ability of the City to meet those requirements is provided in meeting documents on the City's website and is available to all residents at City Hall or at the public meeting. Public hearings regarding SUA assessments are held at the County level by the Board of Supervisors of Contra Costa County. Funding needs and requirements were communicated to the public through direct mail to property owners through the Clean Water Initiative process. The CCCWP has communicated that funding deficits for stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines and/or third-party lawsuits. City Council is addressing future funding needs for stormwater pollution prevention as part of the public meeting and public hearing budget process.*

11. Following failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.

*The respondent partially disagrees with the finding.*

*The situation has left the City with no choice but to try to address the future anticipated short*



*fall of funds needed to meet increasing permit requirements. As addressed in Finding 10 above, the City is discussing viable plans to meet anticipated future funding needs.*

**City of Lafayette's Responses to Recommendations to Grand Jury Report:**

1. The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.

*The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.*

*The City of Lafayette will communicate with the regulator that there is an immediate need for the regulator to provide a negotiation process directly involving Permittees. Significant differences between the expectations and views of the regulators and the Permittees must be addressed.*

*The process followed in the past where the regulator held public hearings and then held numerous meetings with the Permittees (via the Bay Area Stormwater Management Agencies Association) and other key stakeholders to negotiate the permit; is not acceptable. Following those meetings the regulator issued a large MRP permit document and additional attachments of over 200 pages with significant differences between the expectations and views of the regulators and the Permittees not having been addressed and resolved.*

*The regulator has time allocated to communicate directly to Permittees at regular monthly meetings of the CCCWP. If these times are not acceptable to meet directly with Permittees, other specific times will be requested to meet with the regulator to negotiate prior to the upcoming permit issuance.*

2. The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.

*The recommendation has not yet been implemented.*

*The City of Lafayette looks forward to opportunities for direct communications between the City and regulatory authorities before the next permit issuance. Communications should begin immediately and continue up to the time of issuance of the permit.*

*One example of confusing communication from the regulator:*

*The Grand Jury report says, "The regulatory personnel indicate that when the SUA structure was enacted, many of the cities immediately shifted the funding of certain program-eligible activities (such as street sweeping and other elements of public works) out of their general funds to be funded out of the new stormwater assessments. While this may have been beneficial to cities in the short term, in the long run it removed funds which should have been available for the long-term growth and development of the stormwater program, which all understood would necessarily grow increasingly more complex and rigorous over time."*

*At a recent CCCWP Management Committee meeting, Water Board staff speaking about ways*



*to meet new permit requirements for trash management stated that “effective street sweeping and on land pickup is probably as effective as full trash capture.” If these and other public works activities have been and are continuing to meet permit requirements, why shouldn’t they be funded through the City’s stormwater assessments?*

3. Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.

*The recommendation has not yet been implemented but will be implemented in the future, with a time frame for implementation.*

*The City of Lafayette has prepared a stormwater pollution prevention fund 10-year forecast. The City Council will set aside a reserve fund over each of the next ten years to fully fund the program through fiscal year 2022-23. The fund will start with a reserve contribution of \$50,000 in the fiscal year 2013/2014 and be increased by an additional \$10,000 each following year. Additional re-evaluation will be done through the new permit negotiation process with consideration of the 3 a, b, and c points made within the Grand Jury Report: a) negotiation of more realistic, better-defined compliance terms that take into account differences in participant demographics; b) implementation of more efficient and effective operating practices of the Contra Costa Clean Water Program; and, c) identification of ways to make the impacted communities more aware of the importance of the program and the challenges ahead.*

4. Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.

*The recommendation has been implemented.*

*The City Council has discussed in public meetings the need for a funding reserve to fulfill their NPDES permit requirements. The City will continue to provide information to the public surrounding funding to fulfill NPDES permit requirements.*

5. The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.

*The recommendation requires further analysis.*

*The CCCWP has an accurate perspective of projected available funding by the Permittees and of the constituents’ needs to keep costs down and concentrate their efforts on effective pollution prevention activities within each of their municipalities. The CCCWP might have some idea of the probable outcomes from the negotiation of the next permit’s compliance requirements but both the CCCWP and the Permittees will need to have more input and clarification from the regulator as to what will be included in the permit.*

6. Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes



articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishments of those objectives.

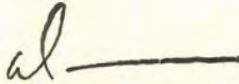
***The recommendation requires further analysis.***

***The City of Lafayette has no current plans to approach its citizens with another request for additional funding. Reaching a consensus plan for the path forward with all stakeholders is a goal Permittees strive for and will appreciate when it is reached allowing for available funding to be used in the most effective way possible to best prevent stormwater pollution within the City.***

***The CCCWP provides this response: It is not within the Permittess' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.***

We hope this letter is responsive to your request.

Sincerely,

A handwritten signature in dark ink, appearing to be 'al' followed by a long horizontal stroke.

Michael Anderson

Mayor



## City of Martinez

525 Henrietta Street, Martinez, CA 94553-2394

(925) 372-3505

FAX (925) 229-5012

July 25, 2013

Via US Mail and Email: [clope2@contracosta.courts.ca.gov](mailto:clope2@contracosta.courts.ca.gov)

Marc Hamaji, Foreperson  
Contra Costa County Civil Grand Jury  
P.O. Box 431  
Martinez, CA 94553

**SUBJECT: CITY OF MARTINEZ'S RESPONSE TO GRAND JURY REPORT NO. 1305,  
"GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY – WHAT'S  
THE PLAN AND WHERE'S THE MONEY?"**

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the City of Martinez (City) is submitting responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

### **BACKGROUND**

The Contra Costa Clean Water Program (CCCWP) consists of Contra Costa County, its 19 incorporated cities/towns, and the District, hereinafter referred to collectively as "Permittees."

In November 1990, the United States Environmental Protection Agency (USEPA) published final stormwater rules implementing the 1987 federal Clean Water Act (CWA) amendments, which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) permit program. The rules prohibit the discharge of pollutants in stormwater unless the discharge is in compliance with a NPDES permit. In response, the Permittees jointly established the CCCWP in 1991 through a Program Agreement, and applied for, and were subsequently issued, joint municipal NPDES permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards (Water Boards). The municipal NPDES permits are reissued approximately every five years.

The permits mandate Permittees to implement stormwater pollution prevention and control programs designed to reduce or eliminate the discharge of pollutants into and from municipal separate storm sewers (MS4s). Permittees conduct many of these mandated activities collectively (referred to as "Group Activities"). Costs for Group Activities are shared among the Permittees in accordance with a cost payment agreement between the District and each individual Permittee. The CCCWP is not itself a legal entity. The District provides staffing to the CCCWP and serves as the fiduciary agent and legal



entity of the CCCWP. The roles and responsibilities of the CCCWP and Permittees are outlined in the Program Agreement, which was last updated and adopted by all Permittees in June 2010. In accordance with the Program Agreement, each City/Town/County/District manager designates one representative to participate on a Management Committee, which is the CCCWP's decision-making body. The following responses are provided on behalf of the CCCWP's Management Committee.

## **CITY'S RESPONSES TO GRAND JURY FINDINGS 1-11**

### **GRAND JURY FINDING #1**

"In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program."

**CITY RESPONSE:** Agree; however the City of Martinez **did not** receive a Notice of Violation. Contra Costa County along with the other cities and towns within the County are responsible for implementing their permit and each are individually subject to enforcement from the Water Board.

### **GRAND JURY FINDING #2**

"Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

**CITY RESPONSE:** Agree; however the City of Martinez is currently fully funding their permit implementation with Stormwater assessments collected by the County Assessor on behalf of the City.

### **GRAND JURY FINDING #3**

"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

**CITY RESPONSE:** Agree. The 9<sup>th</sup> Circuit Court of Appeal decision in NRDC v. County of LA (9<sup>th</sup> Circuit, July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. While current funding source is sufficient for exiting water quality compliance requirements, current dedicated funding is insufficient to meet future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.



#### **GRAND JURY FINDING #4**

“The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.”

**CITY RESPONSE:** Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

#### **GRAND JURY FINDING #5**

“Permittees disagree on what reasonable/practical program requirements should entail.”

**CITY RESPONSE:** Partially disagree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP’s Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

#### **GRAND JURY FINDING #6**

“All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.”

**CITY RESPONSE:** Agree.

#### **GRAND JURY FINDING #7**

“The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.”

**CITY RESPONSE:** Agree.

#### **GRAND JURY FINDING #8**

“As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.”

**CITY RESPONSE:** Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators, each month Water Board staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the San Francisco Bay Water Board attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

#### **GRAND JURY FINDING #9**

“It is unclear what the impact of non-compliance status will be for a Permittee.”

**CITY RESPONSE:** Agree. Civil penalties of up to \$10,000 per day plus \$10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to \$25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to \$27,500 per violation per day, and costs of litigation, including reasonable attorney’s fees. Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc...), which may require additional water quality monitoring and/or pollution prevention and control measure implementation further impacting funding for stormwater compliance activities.

#### **GRAND JURY FINDING #10**

“The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.”

**CITY RESPONSE:** Disagree. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees’ efforts to improve water quality and comply with federal and state mandates; and, that non-compliance with current and future permits, may result in significant fines, costly remediation, and/or third-party lawsuits.

#### **GRAND JURY FINDING #11**

“Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.”

**CITY RESPONSE:** Agree. Following the failure of the funding initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds and gas tax, have significant negative consequences.

### **CITY’S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6**

#### **GRAND JURY RECOMMENDATION #1:**

“The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.”

**CITY RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.



**GRAND JURY RECOMMENDATION #2:**

“The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.”

**CITY RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

**GRAND JURY RECOMMENDATION #3:**

“Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.”

**CITY RESPONSE:** The recommendation will not be implemented because it is not reasonable. Future expenditure requirements under the current permit were estimated as part of the Engineer’s Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11); Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of the issues surrounding the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the fluctuating and unpredictable nature of the regulatory permit process. The CCCWP does not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time.

**GRAND JURY RECOMMENDATION #4:**

“Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.”

**CITY RESPONSE:** This recommendation requires further analysis. The CCCWP’s Management Committee will consider preparing a “fact sheet” addressing these issues, which would be posted on the City’s and CCCWP’s website. This action will be considered in August and, if approved, implemented in October 2013.

**GRAND JURY RECOMMENDATION #5:**

“The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.

**CITY RESPONSE:** This recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the CCCWP’s response to Recommendation #3 above. In response to (b) and (c), the CCCWP continually evaluates its activities and operating costs based on projected available funding and constituent needs.



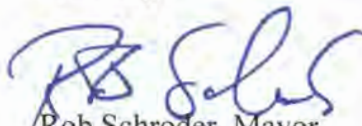
**GRAND JURY RECOMMENDATION #6:**

“Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.”

**CITY RESPONSE:** This recommendation will not be implemented because it is not reasonable. It is not within the Permittees’ power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The City of Martinez thanks the Contra Costa County Grand Jury for the opportunity to respond to its concerns. Please feel free to contact Tim Tucker, City Engineer at (925) 372-3562 should you need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rob Schroder".

Rob Schroder, Mayor  
City of Martinez



# Town of Moraga

TOWN MANAGER

August 29, 2013

Via US Mail and Email: [clope2@contracosta.courts.ca.gov](mailto:clope2@contracosta.courts.ca.gov)

Marc Hamaji, Foreperson  
Contra Costa County Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553

**SUBJECT: CONTRA COSTA CLEAN WATER PROGRAM'S RESPONSE TO GRAND JURY REPORT NO. 1305, "GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY – WHAT'S THE PLAN AND WHERE'S THE MONEY?"**

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the Contra Costa County Flood Control and Water Conservation District (District) is submitting, on behalf of the Contra Costa Clean Water Program, responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

## **BACKGROUND:**

The Town of Moraga is part of the Contra Costa Clean Water Program (CCCWP) which consists of Contra Costa County, its 19 incorporated cities/towns, and the District, hereinafter referred to collectively as "Permittees."

In November 1990, the United States Environmental Protection Agency (USEPA) published final stormwater rules implementing the 1987 federal Clean Water Act (CWA) amendments, which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) permit program. The rules prohibit the discharge of pollutants in stormwater unless the discharge is in compliance with a NPDES permit. In response, the Permittees jointly established the CCCWP in 1991 through a Program Agreement, and applied for, and were subsequently issued, joint municipal NPDES permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards (Water Boards). The municipal NPDES permits are reissued approximately every five years.

The permits mandate Permittees to implement stormwater pollution prevention and control programs designed to reduce or eliminate the discharge of pollutants into and from municipal separate storm sewers (MS4s). Permittees conduct many of these mandated activities collectively (referred to as "Group Activities"). Costs for Group Activities are shared among the Permittees in accordance with a cost payment agreement between the District and each individual Permittee. The CCCWP is not itself a legal entity. The District provides staffing to the CCCWP and serves as the fiduciary agent and legal entity of the CCCWP. The roles and responsibilities of the CCCWP and Permittees are outlined in the Program Agreement, which



was last updated and adopted by all Permittees in June 2010. In accordance with the Program Agreement, each City/Town/County/District manager designates one representative to participate on a Management Committee, which is the CCCWP's decision-making body. The following responses are provided on behalf of the CCCWP's Management Committee.

## **RESPONSES TO GRAND JURY FINDINGS 1-11:**

### **GRAND JURY FINDING #1:**

"In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program."

**RESPONSE:** Agree.

### **GRAND JURY FINDING #2:**

"Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

**RESPONSE:** Agree. Some municipalities supplement their stormwater programs with funding from sources other than, or in addition to, the general fund.

### **GRAND JURY FINDING #3:**

"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

**RESPONSE:** Agree. The 9<sup>th</sup> Circuit Court of Appeal decision in NRDC v. County of LA (9<sup>th</sup> Circuit, July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and development projects. Pilot studies and projects are being conducted under current municipal NPDES permits through the CCCWP to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

### **GRAND JURY FINDING #4:**

"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

**RESPONSE:** Agree. CCCWP staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area



Stormwater Management Agencies Association (BASMAA), CCCWP Permittees including the Town of Moraga have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

**GRAND JURY FINDING #5:**

"Permittees disagree on what reasonable/practical program requirements should entail."

**RESPONSE:** Partially disagree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

**GRAND JURY FINDING #6:**

"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

**RESPONSE:** Agree.

**GRAND JURY FINDING #7:**

"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

**RESPONSE:** Agree.

**GRAND JURY FINDING #8:**

"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."

**RESPONSE:** Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP which the Town of Moraga is a part of is to act as a liaison between Permittees and federal and state regulators, each month Water Board staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the San Francisco Bay Water Board attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

**GRAND JURY FINDING #9:**

"It is unclear what the impact of non-compliance status will be for a Permittee."

**RESPONSE:** Agree. Civil penalties of up to \$10,000 per day plus \$10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to \$25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a

citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to \$27,500 per violation per day, and costs of litigation, including reasonable attorney's fees. Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc...), which may require additional water quality monitoring and/or pollution prevention and control measure implementation further impacting funding for stormwater compliance activities.

**GRAND JURY FINDING #10:**

"The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."

**RESPONSE:** Disagree. The CCCWP which the Town of Moraga is a part of has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees' efforts to improve water quality and comply with federal and state mandates; and, that non-compliance with current and future permits, may result in significant fines, costly remediation, and/or third-party lawsuits.

**GRAND JURY FINDING #11:**

"Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."

**RESPONSE:** Agree. Following the failure of the funding initiative, many Permittees like the Town of Moraga are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences.

**RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6**

**GRAND JURY RECOMMENDATION #1:**

"The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

**GRAND JURY RECOMMENDATION #2:**

"The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives including the Town of Moraga and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.



**GRAND JURY RECOMMENDATION #3:**

"Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

**RESPONSE:** This recommendation has not yet been implemented, but will be implemented in the future. Future expenditure requirements under the current permit were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11). However, estimating future expenditure requirements for the yet to be negotiated reissued permit is premature at this time as current permit mandated pilot studies and projects designed to inform future negotiated permit mandates are not yet complete. Additionally, permit reissuance negotiations are just getting underway and there is currently no draft permit available for review. Given the complexity and scope of municipal NPDES permits, and the inherent unpredictability of the reissuance process, quantifying a range of future expenditure requirements at this time would be highly speculative and subject to significant debate. A time frame for implementation of this recommendation is dependent on the permit reissuance process, which is dictated by the Water Board pursuant to applicable provisions of the California Water Code.

**GRAND JURY RECOMMENDATION #4:**

"Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

**RESPONSE:** This recommendation requires further analysis. The CCCWP's Management Committee which the Town of Moraga is a part of will consider preparing a "fact sheet" addressing these issues, which would be posted on the CCCWP's website, and, if appropriate, may also be posted on the Town's website. This action will be considered in August and, if approved, implemented in October 2013.

**GRAND JURY RECOMMENDATION #5:**

"The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs."

**RESPONSE:** This recommendation has been implemented. CCCWP activities are: (a) aligned to facilitate Town of Moraga and other Permittees' compliance with permit requirements, including foresight of potential future permit requirements; (b) implemented efficiently with the available budget, and (c) responsive to the direction of the CCCWP's Management Committee, which is comprised of Permittee representatives.

**GRAND JURY RECOMMENDATION #6:**

"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

**RESPONSE:** This recommendation will not be implemented because it is not reasonable. It is not within the Permittees' power or authority to ensure that the objectives, timelines, or



provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The Town of Moraga thanks the Contra Costa County Grand Jury for the opportunity to respond to its concerns. Please feel free to contact Tom Dalziel, CCCWP Manager at (925) 313-2392 or myself at (925) 888-7025 should you need additional information.

Sincerely,



Jill Keimach  
Moraga Town Manager

cc: Moraga Town Council  
Tom Dalziel, CCCWP Manager



8231 Main Street  
Oakley, CA 94561  
925 625 7000 tel  
925 625 9859 fax  
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**MAYOR**  
Kevin Romick

**VICE MAYOR**  
Randy Pope

**COUNCILMEMBERS**  
Diane Burgis  
Doug Hardcastle  
Carol Rios

June 26, 2013

Contra Costa County Civil Grand Jury  
Attn: Mark Hamaji, Foreperson  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553-0091  
[Clope2@contracosta.courts.ca.gov](mailto:Clope2@contracosta.courts.ca.gov)

**RE: Response to Grand Jury Report No. 1305 "Getting to Clean Water in Contra Costa County"**

Mr. Hamaji:

Thank you for the opportunity to respond to the Grand Jury's recent Report No. 1305. Below are our replies regarding each Finding and Recommendation requested of the City of Oakley.

**Finding #1:** Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program.

*City's Response: We agree with this finding.*

**Finding #2:** Many permittees are currently spending more than the total amounts collected from fees/taxes/assessments, etc, designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.

*City's Response: We agree with this finding, though we are aware that some municipalities supplement their stormwater programs sources other than, or in addition to, their general funds.*

**Finding #3:** Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.

*City's Response: We agree with this finding.*

**Finding #4:** The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.

*City's Response: We agree with this finding.*

**Finding #5:** Permittees disagree on what reasonable/practical program requirements should entail.

*City's Response: We agree with this finding.*

**Finding #6:** All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.

*City's Response: We agree with this finding.*

**Finding #7:** The CCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.

*City's Response: We agree with this finding.*

**Finding #8:** As an intermediary between the Permittees and the regulatory bodies, the CCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done and what happens if it is not done.

*City's Response: We don't agree with this finding. The regulatory process often produces disagreements and different interpretations.*

**Finding #9:** It is unclear what the impact of non-compliance status will be for a Permittee.

*City's Response: We agree with this finding. It appears that the federal Clean Water Act allows any one to file a suit against any person who has allegedly violated the law. The results of any given claim may be different and the exact impact of non-compliance is not clear.*



**Finding #10:** The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.

*City's Response:* We disagree with this finding. Representing the Permittees, the CCWP has consistently communicated that funding deficits for stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines and/or third-party lawsuits.

**Finding #11:** Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.

*City's Response:* We mostly agree with this finding. We are not aware of all cities' activities/plans; however, Oakley is still evaluating options and alternative plans to comply.

**Recommendation #1:** The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.

*City's Response:* This recommendation is being implemented by CCWP in cooperation with the Bay Area Stormwater Management Agencies Association (BASMAA) and the Water Board staff.

**Recommendation #2:** The CCWP immediately begin to implement more direct communication between the individual Permittees and the regulatory authorities

*City's Response:* This recommendation is being implemented by CCWP in cooperation with the Bay Area Stormwater Management Agencies Association (BASMAA) and the Water Board staff. There is an agreement for a process for permit negotiations.

**Recommendation #3:** Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.

*City's Response:* Oakley prepared an estimated future expenditure requirement as a part of the Engineer's Report for the 2012 Community Clean Water Initiative. Continued evaluation, out of necessity, will be conducted.

**Recommendation #4:** Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including discussion of potential, but realistic, impacts of non-compliance.

*City's Response:* This information was presented during the 2012 Community Clean Water Initiative and CCWP has committed to develop a fact sheet that can be used by all Permittees that will be made public. *yes*

**Recommendation #5:** The CCWP consider immediately beginning to re-align its activities and operating costs.

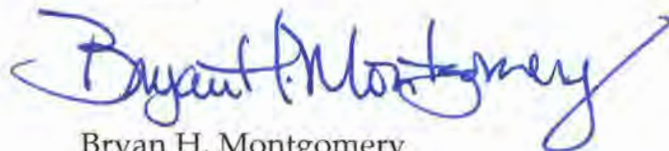
*City's Response:* CCWP activities are aligned to facilitate the Permittees' compliance with permit requirements, including foresight of potential future permit requirements, implemented efficiently with the available budget, and responsive to the direction of CCWP's Management Committee, which is comprised of Permittee representatives.

**Recommendation #6:** Before any Permittee makes any effort to approach its citizens with another request for additional funding and all stakeholders reach a consensus on a plan for the path forward.

*City's Response:* It is difficult to determine if all stakeholders could reach a consensus, particularly if some provisions of the NPDES permit are deemed to be reasonable by the Permittees. With that said, Oakley is willing to participate in any discussion to seek such a consensus.

Again, we thank you for the opportunity to respond to the Grand Jury's recent Report No. 1305. If you have any questions or need any assistance, please contact me directly at (925) 625-7025 or at [montgomery@ci.oakley.ca.us](mailto:montgomery@ci.oakley.ca.us).

Sincerely,



Bryan H. Montgomery  
City Manager

cc: City Council





22 orinda way • orinda • california • 94563

August 29, 2013

Via US Mail and Email: [clope2@contracosta.courts.ca.gov](mailto:clope2@contracosta.courts.ca.gov)

Marc Hamaji, Foreperson  
Contra Costa County Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553

**SUBJECT: CITY OF ORINDA'S RESPONSE TO GRAND JURY REPORT NO. 1305,  
"GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY – WHAT'S  
THE PLAN AND WHERE'S THE MONEY?"**

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, I am submitting, on behalf of the City of Orinda, responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

## **BACKGROUND**

The City of Orinda is a member of the Contra Costa Clean Water Program (CCCWP) which consists of Contra Costa County, its 19 incorporated cities/towns, and the Contra Costa County Flood Control and Water Conservation District, hereinafter referred to collectively as "Permittees."

In November 1990, the United States Environmental Protection Agency (USEPA) published final stormwater rules implementing the 1987 federal Clean Water Act (CWA) amendments, which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) permit program. The rules prohibit the discharge of pollutants in stormwater unless the discharge is in compliance with a NPDES permit. In response, the Permittees jointly established the CCCWP in 1991 through a Program Agreement, and applied for, and were subsequently issued, joint municipal NPDES permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards (Water Boards). The municipal NPDES permits are reissued approximately every five years.

The permits mandate Permittees to implement stormwater pollution prevention and control programs designed to reduce or eliminate the discharge of pollutants into and from municipal separate storm sewers (MS4s). Permittees conduct many of these mandated activities collectively (referred to as "Group Activities").

**General Information**  
(925) 253-4200 (ph)  
(925) 254-9158 (fax)

**Administration**  
(925) 253-4220 (ph)  
(925) 254-2068 (fax)

**Planning**  
(925) 253-4210 (ph)  
(925) 253-7719 (fax)

**Parks & Recreation**  
(925) 254-2445 (ph)  
(925) 253-7716 (fax)

**Police**  
(925) 254-6820 (ph)  
(925) 254-9158 (fax)

**Public Works**  
(925) 253-4231 (ph)  
(925) 253-7699 (fax)



Costs for Group Activities are shared among the Permittees in accordance with a cost payment agreement between the District and each individual Permittee. The CCCWP is not itself a legal entity. The District provides staffing to the CCCWP and serves as the fiduciary agent and legal entity of the CCCWP. The roles and responsibilities of the CCCWP and Permittees are outlined in the Program Agreement, which was last updated and adopted by all Permittees in June 2010.

## **CITY OF ORINDA'S RESPONSES TO GRAND JURY FINDINGS 1-11**

### **GRAND JURY FINDING #1**

"In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program."

**RESPONSE:** Agree.

### **GRAND JURY FINDING #2**

"Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

**RESPONSE:** Agree. Orinda supplements its stormwater program with funding from the general fund.

### **GRAND JURY FINDING #3**

"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

**RESPONSE:** Agree. The 9<sup>th</sup> Circuit Court of Appeal decision in NRDC v. County of LA (9<sup>th</sup> Circuit, July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

### **GRAND JURY FINDING #4**

"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

**RESPONSE:** Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area



Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

**GRAND JURY FINDING #5**

"Permittees disagree on what reasonable/practical program requirements should entail."

**RESPONSE:** Partially disagree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

**GRAND JURY FINDING #6**

"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

**RESPONSE:** Agree.

**GRAND JURY FINDING #7**

"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

**RESPONSE:** Agree.

**GRAND JURY FINDING #8**

"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."

**RESPONSE:** Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators, each month Water Board staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the San Francisco Bay Water Board attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

**GRAND JURY FINDING #9**

"It is unclear what the impact of non-compliance status will be for a Permittee."

**RESPONSE:** Agree. Civil penalties of up to \$10,000 per day plus \$10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to \$25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil



penalties of up to \$27,500 per violation per day, and costs of litigation, including reasonable attorney's fees. Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc...), which may require additional water quality monitoring and/or pollution prevention and control measure implementation further impacting funding for stormwater compliance activities.

#### **GRAND JURY FINDING #10**

"The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."

**RESPONSE:** Disagree. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees' efforts to improve water quality and comply with federal and state mandates; and, that non-compliance with current and future permits, may result in significant fines, costly remediation, and/or third-party lawsuits.

#### **GRAND JURY FINDING #11**

"Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."

**RESPONSE:** Partially disagree. Following the failure of the funding initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences. Although these are not realistic alternative plans, we are continuing to seek solutions.

### **CITY OF ORINDA'S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6**

#### **GRAND JURY RECOMMENDATION #1:**

"The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

#### **GRAND JURY RECOMMENDATION #2:**

"The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.



**GRAND JURY RECOMMENDATION #3:**

"Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

**RESPONSE:** The recommendation will not be implemented because it is not reasonable. Future expenditure requirements under the current permit were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11); Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of the issues surrounding the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the fluctuating and unpredictable nature of the regulatory permit process. The CCCWP does not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time.

**GRAND JURY RECOMMENDATION #4:**

"Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

**RESPONSE:** This recommendation requires further analysis. The CCCWP's Management Committee will consider preparing a "fact sheet" addressing these issues, which would be posted on the CCCWP's website. This action will be considered in August and, if approved, implemented in October 2013.

**GRAND JURY RECOMMENDATION #5:**

"The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs."

**RESPONSE:** This recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the CCCWP's response to Recommendation #3 above. In response to items (b) and (c), the CCCWP continually evaluates its activities and operating costs based on projected available funding and constituent needs.

**GRAND JURY RECOMMENDATION #6:**

"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

**RESPONSE:** This recommendation continues to be implemented. It is the City's goal to approach and inform its citizens regarding any objectives mandated to the Clean Water Program which may require another future request for additional funding. However, it is not within the Permittees' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

On behalf of the City of Orinda, thank you for the opportunity to respond to the Contra Costa County Grand Jury's concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amy R. Worth".

Amy R. Worth  
Mayor, City of Orinda

cc: Charles Swanson, Director of Public Works and Engineering Services  
Larry Theis, Senior Civil Engineer

Q:\NPDES\Grand Jury\Orinda Response Grand Jury Report No. 1305 Getting to Clean Water.docx





# CITY OF PINOLE

## City Manager's Office

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August 22, 2013

Sent Via US Mail and Email: [clope2@contracosta.courts.ca.gov](mailto:clope2@contracosta.courts.ca.gov)

Marc Hamaji, Foreperson  
Contra Costa County Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553

Dear Mr. Hamaji:

Enclosed, please find the City of Pinole response to Grand Jury Report Number 1305, "Getting to Clean Water in Contra Costa County – What's the Plan and Where's the Money?"

### **Grand Jury Findings:**

1. *"In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its storm water program."*

Response: The City of Pinole agrees with this finding.

2. *"Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."*

Response: The City of Pinole agrees with this finding. Some municipalities supplement their stormwater programs with funding from sources other than, or in addition to, the General Fund.

3. *"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."*



Response: The City of Pinole agrees with this finding.

4. ***"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."***

Response: The City of Pinole agrees with this finding.

5. ***"Permittees disagree on what reasonable/practical program requirements should entail."***

Response: The City of Pinole partially agrees. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

6. ***"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."***

Response: The City of Pinole agrees with this finding.

7. ***"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."***

Response: The City of Pinole agrees with this finding.

8. ***"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."***

Response: The City of Pinole Disagrees with this finding. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators, each month Water Board staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the San Francisco Bay

Water Board attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

9. ***"It is unclear what the impact of non-compliance status will be for a Permittee."***

Response: The City of Pinole Agrees with this finding.

10. ***"The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."***

Response: The City of Pinole Disagrees with this finding. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees' efforts to improve water quality and comply with federal and state mandates; and, that non-compliance with current and future permits, may result in significant fines, costly remediation, and/or third-party lawsuits.

11. ***"Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."***

Response: The City of Pinole Agrees with this finding. Following the failure of the funding initiative, many Permittees are still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting monies from their General Funds, have significant negative consequences.

#### **Grand Jury Recommendations:**

1. ***"The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."***

Response:

This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

2. ***"The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."***



Response:

This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

- 3. *"Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."***

Response:

This recommendation has not yet been implemented, but will be implemented in the future. Future expenditure requirements under the current permit were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11). However, estimating future expenditure requirements for the yet to be negotiated reissued permit is premature at this time as current permit mandated pilot studies and projects designed to inform future negotiated permit mandates are not yet complete.

Additionally, permit reissuance negotiations are just getting underway and there is currently no draft permit available for review. Given the complexity and scope of municipal NPDES permits, and the inherent unpredictability of the reissuance process, quantifying a range of future expenditure requirements at this time would be highly speculative and subject to significant debate. A time frame for implementation of this recommendation is dependent on the permit reissuance process, which is dictated by the Water Board pursuant to applicable provisions of the California Water Code.

- 4. *"Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."***

Response:

This recommendation requires further analysis. The CCCWP's Management Committee will consider preparing a "fact sheet" addressing these issues, which would be posted on the CCCWP's website. This action will be considered in August and, if approved, implemented in October 2013.

5. *"The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs.*

Response:

The City of Pinole has implemented this recommendation through the CCCWP activities including: (a) aligned to facilitate the Permittees' compliance with permit requirements, including foresight of potential future permit requirements; (b) implemented efficiently with the available budget, and (c) responsive to the direction of the CCCWP's Management Committee, which is comprised of Permittee representatives.

6. *"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."*

Response:

The City of Pinole will not implement this recommendation because it is not reasonable. It is not within the Permittees' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

If you have any questions about the above, please do not hesitate to contact me at (510) 724-8933.

Sincerely,



Belinda B. Espinosa  
City Manager

C Mayor and Council  
Ben Reyes, City Attorney  
Patricia Athenour, City Clerk





**CITY OF PITTSBURG**  
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August 12, 2013

Via US Mail and Email: [clope2@contracosta.courts.ca.gov](mailto:clope2@contracosta.courts.ca.gov)

Marc Hamaji, Foreperson  
Contra Costa County Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553

**SUBJECT: CONTRA COSTA CLEAN WATER PROGRAM'S RESPONSE TO GRAND JURY  
REPORT NO. 1305, "GETTING TO CLEAN WATER IN CONTRA COSTA  
COUNTY – WHAT'S THE PLAN AND WHERE'S THE MONEY?"**

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the City of Pittsburg is submitting responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

## **BACKGROUND**

In 1987, the U.S. Congress began requiring NPDES permits for all non-point source discharges of stormwater runoff entering waters of the state. Permit compliance responsibilities are vested with the State Water Quality Control Board (SWQCB). In 1993, the City of Pittsburg joined with the Contra Costa County Flood Control and Water Conservation District, Contra Costa County, and nineteen other cities to create the Contra Costa Clean Water Program (the "Clean Water Program") to effectively respond to the federal and state requirements regulating local discharges of stormwater into the San Joaquin / Sacramento River Delta and other waters of the state. The Clean Water Program conducts many of these mandated activities collectively ("Group Activities"). As a member of the Clean Water Program, the City is required to fund its pro-rata share of the Clean Water Program costs and the cost of its own City staff, which carry out many of the mandates at the local level.

## **City of Pittsburg's responses to G 1-11 and Jury Findings**

### **GRAND JURY FINDING #1**

"In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program."

**RESPONSE:** Agree.

## **GRAND JURY FINDING #2**

"Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

**RESPONSE:** Agree. The City of Pittsburg's stormwater control activities are supplemented by the City's solid waste fund, as funds are available. This supplement supports the City's stormwater efforts with regard to street sweeping and management of illegal dumping.

## **GRAND JURY FINDING #3**

"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

**RESPONSE:** Agree. The 9<sup>th</sup> Circuit Court of Appeal decision in NRDC v. County of LA (9<sup>th</sup> Circuit, July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit of existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements. The City of Pittsburg is judicious about how stormwater funds are expended. The availability of supplemental funding for the stormwater program varies from year to year. Therefore, the City makes every effort to choose and / or implement the most effective compliance activities for the monies available.

## **GRAND JURY FINDING #4**

"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

**RESPONSE:** Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

## **GRAND JURY FINDING #5**

"Permittees disagree on what reasonable/practical program requirements should entail."

**RESPONSE:** Partially disagree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-



making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

#### **GRAND JURY FINDING #6**

"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

**RESPONSE:** Agree.

#### **GRAND JURY FINDING #7**

"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

**RESPONSE:** Agree.

#### **GRAND JURY FINDING #8**

"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."

**RESPONSE:** Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. While a key function of the CCCWP is to act as a liaison between Permittees and federal and state regulators, each month Water Board staff is invited to attend the CCCWP Management Committee meetings to directly communicate to Permittees. In the last 12 months, representatives of the San Francisco Bay Water Board attended just two meetings and a representative of the Central Valley Water Board attended just one meeting.

#### **GRAND JURY FINDING #9**

"It is unclear what the impact of non-compliance status will be for a Permittee."

**RESPONSE:** Agree. Civil penalties of up to \$10,000 per day plus \$10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to \$25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to \$27,500 per violation per day, and costs of litigation, including reasonable attorney's fees. Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc...), which may require additional water quality monitoring and/or pollution prevention and control measure implementation further impacting funding for stormwater compliance activities.

#### **GRAND JURY FINDING #10**

"The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."

**RESPONSE:** Partially disagree. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control services and facilities will hinder Permittees' efforts

to improve water quality and comply with federal and state mandates; and, that non-compliance with current and future permits, may result in significant fines, costly remediation, and/or third-party lawsuits. More effort must be made by the permittee to convey to the general public that this funding source also funds the maintenance of many Cities' storm drainage infrastructure. Therefore any funding deficits could also impact the City's ability to provide needed response services during emergencies and to address all maintenance services in a timely fashion.

#### **GRAND JURY FINDING #11**

"Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."

**RESPONSE:** Partially agree. The City of Pittsburg anticipated that funding available for stormwater program permit compliance would inevitably become insufficient to address both the maintenance demands of the City's aging stormwater conveyance system, as well as the increasingly stringent mandates of a dynamic NPDES municipal permit. To help defray these increased costs of permit compliance, the Pittsburg City Council passed a resolution allowing the use of solid waste funds to help defray the costs of trash-related NPDES compliance mandates. In addition, the City continues to be as judicious as possible, expending funds for compliance activities that would produce the most meaningful results. Redirection of monies from the General Fund would have significant impacts to other City services obligated to the public.

#### **CITY OF PITTSBURG'S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6**

##### **GRAND JURY RECOMMENDATION #1:**

"The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.

##### **GRAND JURY RECOMMENDATION #2:**

"The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

##### **GRAND JURY RECOMMENDATION #3:**

"Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

**RESPONSE:** The recommendation will not be implemented because it is not reasonable. Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of the issues surrounding the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the



fluctuating and unpredictable nature of the regulatory permit process. The City of Pittsburg does not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time.

**GRAND JURY RECOMMENDATION #4:**

"Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

**RESPONSE:** This recommendation requires further analysis. The CCCWP's Management Committee will consider preparing a "fact sheet" addressing these issues, which would be posted on the CCCWP's website. This action will be considered in August and, if approved, implemented in October 2013.

**GRAND JURY RECOMMENDATION #5:**

"The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs.

**RESPONSE:** This recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the City's response to Recommendation #3 above. In response to items (b) and (c), the City and CCCWP continually evaluate the activities and operating costs based on projected available funding and constituent needs.

**GRAND JURY RECOMMENDATION #6:**

"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

**RESPONSE:** If this recommendation refers to the pursuit of a city-wide funding measure, the City would ensure that the objectives and expectant milestones of the proposed measure would clearly be articulated to its public. However, if this recommendation refers to a forward path for the permittee to implement measures for permit compliance, then this recommendation will not be implemented because finding consensus amongst all stakeholders is difficult. It is not within the Permittees' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The City of Pittsburg thanks the Contra Costa County Civil Grand Jury for the opportunity to respond to its concerns. Please feel free to contact Jolan Longway at (925) 252-4803 should you need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Sbranti".

Joe Sbranti  
City Manager

cc: Jolan Longway, Civil Engineer II



SEP - 4 2013

CITY MANAGER'S OFFICE



August 29, 2013

Via US Mail and Email: [clope2@contracosta.courts.ca.gov](mailto:clope2@contracosta.courts.ca.gov)

Marc Hamaji, Foreperson  
Contra Costa County Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553

**SUBJECT: CONTRA COSTA CLEAN WATER PROGRAM'S RESPONSE TO GRAND JURY REPORT NO. 1305, "GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY – WHAT'S THE PLAN AND WHERE'S THE MONEY?"**

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the Contra Costa County Flood Control and Water Conservation District (District) is submitting, on behalf of the Contra Costa Clean Water Program, responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

#### **BACKGROUND**

The Contra Costa Clean Water Program (CCCWP) consists of Contra Costa County, its 19 incorporated cities/towns, and the District, hereinafter referred to collectively as "Permittees."

In November 1990, the United States Environmental Protection Agency (USEPA) published final stormwater rules implementing the 1987 federal Clean Water Act (CWA) amendments, which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) permit program. The rules prohibit the discharge of pollutants in stormwater unless the discharge is in compliance with a NPDES permit. In response, the Permittees jointly established the CCCWP in 1991 through a Program Agreement, and applied for, and were subsequently issued, joint municipal NPDES permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards (Water Boards). The municipal NPDES permits are reissued approximately every five years.

The permits mandate Permittees to implement stormwater pollution prevention and control programs designed to reduce or eliminate the discharge of pollutants into and from municipal separate storm sewers (MS4s). Permittees conduct many of these mandated activities collectively (referred to as "Group Activities"). Costs for Group Activities are shared among the Permittees in accordance with a cost payment agreement between the District and each individual Permittee. The CCCWP is not itself a legal entity. The District provides staffing to the CCCWP and serves as the fiduciary agent and legal entity of the CCCWP. The roles and responsibilities of the CCCWP and Permittees are outlined in the Program Agreement, which

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was last updated and adopted by all Permittees in June 2010. In accordance with the Program Agreement, each City/Town/County/District manager designates one representative to participate on a Management Committee, which is the CCCWP's decision-making body. The following responses are provided on behalf of the CCCWP.

## **CCCWP'S RESPONSES TO GRAND JURY FINDINGS 1-11**

### **GRAND JURY FINDING #1**

"In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program."

**RESPONSE:** Agree.

### **GRAND JURY FINDING #2**

"Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

**RESPONSE:** Agree. City of Richmond supplement's the stormwater program with funding from grants when awarded and the general fund.

### **GRAND JURY FINDING #3**

"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

**RESPONSE:** Agree. The 9<sup>th</sup> Circuit Court of Appeal decision in NRDC v. County of LA (9<sup>th</sup> Cir., July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit to existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

### **GRAND JURY FINDING #4**

"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."



**RESPONSE:** Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

**GRAND JURY FINDING #5**

"Permittees disagree on what reasonable/practical program requirements should entail."

**RESPONSE:** Agree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

**GRAND JURY FINDING #6**

"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

**RESPONSE:** Agree.

**GRAND JURY FINDING #7**

"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

**RESPONSE:** Agree.

**GRAND JURY FINDING #8**

"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."

**RESPONSE:** Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process.

**GRAND JURY FINDING #9**

"It is unclear what the impact of non-compliance status will be for a Permittee."

**RESPONSE:** Agree. Note that the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of civil penalties of up to \$27,500 per violation per day, and costs of litigation, including reasonable attorney's fees.



**GRAND JURY FINDING #10**

"The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."

**RESPONSE:** Disagree. The CCCWP has consistently communicated that funding deficits for stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines and/or third-party lawsuits.

**GRAND JURY FINDING #11**

"Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."

**RESPONSE:** Disagree. Following the failure of the funding initiative, the City of Richmond is in the process of evaluating options and alternative plans. This includes working with State legislators to change the mechanism of raising fees for stormwater compliance.

**CCCWP'S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6****GRAND JURY RECOMMENDATION #1:**

"The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff.

**GRAND JURY RECOMMENDATION #2:**

"The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

**GRAND JURY RECOMMENDATION #3:**

"Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

**RESPONSE:** Future expenditure requirements were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative. Funding plans are being developed (see response to Finding #11).

**GRAND JURY RECOMMENDATION #4:**

"Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

**RESPONSE:** The Contra Costa Clean Water Program (CCCWP) will consider preparing a "fact sheet" addressing these issues, which would be posted on the CCCWP's website.

**GRAND JURY RECOMMENDATION #5:**

"The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs.

**RESPONSE:** CCCWP activities are: (a) aligned to facilitate the Permittees' compliance with permit requirements, including foresight of potential future permit requirements; (b) implemented efficiently with the available budget, and (c) responsive to the direction of the CCCWP's Management Committee, which is comprised of Permittee representatives including the city of Richmond.

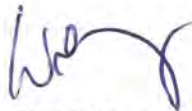
**GRAND JURY RECOMMENDATION #6:**

"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

**RESPONSE:** It is not within the City of Richmond's power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The City of Richmond thanks the Contra Costa County Grand Jury for the opportunity to respond to its concerns. Please feel free to contact Lynne Scarpa, Environmental Manager at (510) 307-8135 should you need additional information.

Sincerely,



Bill Lindsay  
City Manager  
City of Richmond

cc: Lynne Scarpa, Environmental Manager  
Tom Dalziel, CCCWP Manager



August 6, 2013



CITY OF SAN PABLO

City of New Directions

Marc Hamaji, Foreperson  
Contra Costa County Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553

**SUBJECT: Contra Costa County Grand Jury Report No. 1305 "Getting to Clean Water in Contra Costa County – What's the Plan and Where's the Money?"**

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the City of San Pablo is submitting responses to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report. The City of San Pablo appreciates the time and effort that the Grand Jury spent considering these matters.

**GRAND JURY FINDINGS**

1. **In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program.**

*RESPONSE: Agree.*

2. **Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.**

*RESPONSE: Agree. The City of San Pablo supplements the stormwater program with funding from the general fund.*

3. **Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.**

*RESPONSE: Agree.*

4. **The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.**

*RESPONSE: Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit. Through the Bay Area Stormwater*

Management Agencies Association (BASMAA), and as a member of the Contra Costa Clean Water Program (CCCWP), the City of San Pablo has joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

**5. Permittees disagree on what reasonable/practical program requirements should entail.**

*RESPONSE: Partially disagree. Each municipality has different water-quality issues, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to build and maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.*

**6. All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.**

*RESPONSE: Agree.*

**7. The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.**

*RESPONSE: Agree.*

**8. As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.**

*RESPONSE: Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process. A key function of the CCCWP is to represent Permittees while acting as a liaison between Permittees and federal and state regulators. It should be noted that Water Board staff is invited every month to attend the CCCWP Management Committee meetings to directly communicate with Permittees but they seldom attend.*

**9. It is unclear what the impact of non-compliance status will be for a Permittee.**

*RESPONSE: Agree. Civil penalties of up to \$10,000 per day plus \$10 per gallon of polluted discharge for each violation may be imposed administratively by the Regional Water Quality Control Boards; fines of up to \$25,000 per day for each violation may be assessed if imposed by the Superior Court. Furthermore, the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Other potential non-compliance enforcement options include, but are not limited to, corrective action notices (e.g., Notice to Comply, Notice of Deficiency, Notice of Violation, etc.), which may require*



*additional programs further impacting funding for stormwater compliance activities. The Grand Jury interviewed only one regulator and one NGO who indicated a more lenient treatment, however, that information is not conclusive or binding.*

**10. The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.**

*RESPONSE: Disagree. The CCCWP has stated in public outreach materials that funding deficits for stormwater pollution prevention will hinder Permittees' efforts to comply with federal and state mandates; and, that non-compliance with NPDES permits, may result in significant fines, costly remediation, and/or third-party lawsuits. These issues are also communicated to the public through City Council presentations and staff reports.*

**11. Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.**

*RESPONSE: Agree. Following the failure of the funding initiative, the City of San Pablo is still in the process of evaluating options and alternative plans. Most or all of the available options, including redirecting General Fund monies, have significant negative consequences.*

**GRAND JURY RECOMMENDATIONS**

**1. The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.**

*RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. BASMAA committees, Water Board staff, and Permittee representatives including San Pablo staff are attending regularly scheduled meetings to negotiate the terms and conditions of the next permit.*

**2. The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.**

*RESPONSE: This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.*

**3. Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.**

*RESPONSE: The recommendation will not be implemented because it is not reasonable at this time. Future expenditure requirements under the current permit were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative, and funding plans are being developed (see response to Finding #11); Estimates of future expenditure requirements associated with a range of future negotiation outcomes is not practical due to the complexity of the issues surrounding*



*the management of municipal stormwater conveyance systems coupled with the number of permit requirements and the fluctuating and unpredictable nature of the regulatory permit process. The CCCWP does not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time.*

**4. Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.**

*RESPONSE: This recommendation requires further analysis (see Finding #9 above). The CCCWP's Management Committee will consider preparing a “fact sheet” addressing these issues, which would be posted on the CCCWP's website. This action will be considered this fall.*

**5. The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs.**

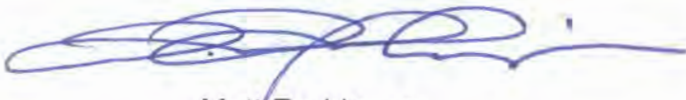
*RESPONSE: This recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the City's response to Recommendation #3 above. In response to items (b) and (c), the City and CCCWP annually evaluate the activities and operating costs based on projected available funding and constituent needs.*

**6. Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.**

*RESPONSE: This recommendation will not be implemented because it is not within the Permittees' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.*

The City of San Pablo appreciates the opportunity to respond to the Contra Costa County Civil Grand Jury concerns. Please feel free to contact Karineh Samkian, Environmental Program Analyst, at (510) 215-3064 if you have any further questions.

Sincerely,



Maty Rodriguez  
City Manager

Cc: San Pablo City Council





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## CITY OF SAN RAMON

2222 CAMINO RAMON  
SAN RAMON, CALIFORNIA 94583  
PHONE: (925) 973-2500  
WEB SITE: [www.sanramon.ca.gov](http://www.sanramon.ca.gov)

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August 14, 2013

Via U.S. Mail and Email: [clope2@contracosta.courts.ca.gov](mailto:clope2@contracosta.courts.ca.gov)

Marc Hamaji, Foreperson  
Contra Costa County Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553

**RE: Contra Costa County Grand Jury Report No. 1305: "Getting to Clean Water in Contra Costa County – What's the Plan and Where's the Money"**

Dear Mr. Hamaji,

On behalf of the City of San Ramon, this letter responds to the Contra Costa Grand Jury Report No. 1305: "Getting to Clean Water in Contra Costa County – What's the Plan and Where's the Money". The City of San Ramon appreciates the time and effort that you and the Grand Jury spend considering these matters. As required by California Penal Code §933.05, the City's response to the overall findings and recommendations is provided below.

**Finding #1: In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program.**

*City Response: The City of San Ramon agrees with this finding.*

**Finding #2: Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.**

*City Response: The City of San Ramon agrees with this finding.*

**Finding #3: Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.**

*City Response: The City of San Ramon agrees with this finding.*

**Finding #4:** The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.

*City Response: The City of San Ramon agrees with this finding.*

**Finding #5:** Permittees disagree on what reasonable/practical program requirements should entail.

*City Response: The City of San Ramon partially disagrees with this finding. While disagreements do occur as part of discussions related to stormwater management practices and priorities, Permittees consistently reach a consensus on matters related to county-wide efforts and initiatives. Each Permittee manages challenges and issues unique to their municipal storm water conveyance system which creates a fluctuation of priorities from one municipality to another.*

**Finding #6:** All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.

*City Response: The City of San Ramon agrees with this finding.*

**Finding #7:** The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.

*City Response: The City of San Ramon agrees with this finding.*

**Finding #8:** As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.

*City Response: The City of San Ramon disagrees with this finding. Significant differences between the expectations and views of the regulators and Permittees exist due to the complexity of municipal storm water conveyance systems; the detection and management of pollutants; and the ability to fund maintenance, monitoring, and pollutant mitigation activities.*

**Finding #9:** It is unclear what the impact of non-compliance status will be for a Permittee.

*City Response: The City of San Ramon agrees with this finding.*

**Finding #10:** The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.

*City Response: The City of San Ramon disagrees with this finding. Non-compliance and funding deficit risks are communicated accurately to the public through public presentations, City Council staff reports, and outreach campaigns.*



**Finding #11: Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.**

*City Response: The City of San Ramon partially disagrees with this finding. The uncertainty of future permit requirements creates a situation in which the projection of long term funding needs is not possible; therefore municipalities must wait for adopted permits in order to create realistic long-term alternate plans. The City of San Ramon continues to discuss alternatives with a range of funding options, some of which could lead to a reduction of services.*

**Recommendation #1: The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.**

*City Response: This recommendation has been implemented through coordination between the CCCWP, Bay Area Stormwater Management Agencies Association (BASMAA), and the Regional Water Board staff.*

**Recommendation #2: The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.**

*City Response: The recommendation has been implemented. The CCCWP implemented procedures to ensure individual permittees are well informed of negotiations between BASMAA and the regulatory authorities. Permittees are made aware of meetings with regulatory authorities and are encouraged to participate in those meetings directly should a permittee choose to do so. Regulators have a standing invitation with a dedicated agenda item to attend CCCWP Management Committee meetings in order to directly communicate with permittees.*

**Recommendation #3: Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.**

*City Response: The recommendation will not be implemented because it is not reasonable. Estimates of future expenditure requirements associated with a range of negotiation outcomes is not feasible due to the complexity of the issues surrounding the management of a municipal storm water management conveyance system coupled with the number of permit requirements and the fluctuating nature of the regulatory permit process. Permittees and the CCCWP do not have the resources to provide a meaningful prediction of the outcomes of future negotiations in order to develop future funding plans at this time. Future expenditure requirements can be estimated after a permit is adopted. The Engineer's Report for the 2012 Community Clean Water Initiative estimated future expenditures and developed a funding plan for the current permit cycle.*

**Recommendation #4: Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.**

*City Response: The recommendation has not been implemented but will be implemented through the CCCWP in the near future.*

**Recommendation #5: The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.**

*City Response: The recommendation has been partially implemented. In response to item (a) of the recommendation, please refer to the City response to Recommendation #3. In response to (b) and (c), the City and CCCWP continually evaluate the activities and operating costs based on projected available funding and constituent needs.*

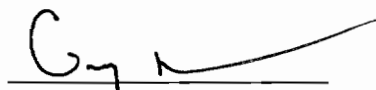
**Recommendation #6: Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.**

*City Response: The recommendation will not be implemented because it is not reasonable. The City of San Ramon faces a funding shortfall under the current permit terms. Based on information from Regional Water Board staff and the history of prior permit cycles, the next permit will increase the cost of compliance for all Permittees. Most Permittees do not have the resources to wait for a consensus from all stakeholders before exploring options to generate additional funding to cover existing shortfalls. The nature of the negotiation process combined with the complexity of the issue and the five-year term of the permit fosters a situation where reaching a consensus is an ongoing and dynamic process. In addition, it is not within the Permittees’ power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.*

The City of San Ramon appreciates the work performed by the Grand Jury and acknowledges the importance of the role served in oversight of local government activities.

We trust the Grand Jury will find these responses helpful to its endeavor.

Sincerely,



Greg Rogers  
City Manager

(1) Mayor & City Council





CITY OF  
**WALNUT  
CREEK**

August 8, 2013

Via US Mail and Email: [clope2@contracosta.courts.ca.gov](mailto:clope2@contracosta.courts.ca.gov)

Mr. Marc Hamaji, Foreperson  
Contra Costa County Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553

**SUBJECT: CITY OF WALNUT CREEK'S RESPONSE TO GRAND JURY REPORT NO. 1305,  
"GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY - WHAT'S THE PLAN  
AND WHERE'S THE MONEY?"**

Dear Jury Foreperson Hamaji:

In accordance with your request and Section 933.05(a) of the California Penal Code, the City of Walnut Creek wishes to respond to Findings 1-11 and Recommendations 1-6 in the subject Grand Jury Report.

The City of Walnut Creek is co-permittee of the Contra Costa Clean Water Program (CCCWP), which is subsequently issued a joint municipal National Pollutants Discharge Elimination Permit (NPDES) permit issued by the San Francisco Bay Regional Water Quality Control Board. Costs for CCCWP activities are shared among the co-permittees in accordance with a cost payment agreement.

**GRAND JURY FINDING #1**

"In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a "Notice of Violation" with regard to its stormwater program."

**RESPONSE: Agree.**

**GRAND JURY FINDING #2**

"Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund."

**RESPONSE:** Disagree. The City of Walnut Creek funds its Stormwater program solely through its Stormwater Utility Assessment and program fund reserves. The reserves are anticipated to run out in 5 years unless alternative funding source is identified.

**GRAND JURY FINDING #3**

"Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements."

**RESPONSE:** Agree. The 9<sup>th</sup> Circuit Court of Appeal decision in NRDC v. County of LA (9<sup>th</sup> Cir., July 13, 2011, No. 10-56017) determined that a municipality is strictly liable for violations of its NPDES permit if its discharges cause or contribute to an exceedance of a water quality standard in receiving waters. This decision potentially places every municipal stormwater discharger in the State of California in immediate non-compliance with their NPDES permit if monitoring data show an exceedance, and exposed to considerable liability, including fines and costly remediation. Permittees, regulators and watershed stakeholders agree compliance with strict numeric water quality standards will require substantial public investment for the redesign and retrofit to existing municipal separate storm sewer systems (MS4s). Currently, stormwater treatment and flow control measures are required on many new and redevelopment projects. Pilot studies and projects are being conducted under current municipal NPDES permits to evaluate the costs and benefits of implementing facilities that treat runoff from existing developed areas. Current dedicated funding is insufficient to meet existing and future water quality compliance requirements. Municipalities require federal and state assistance to identify capital funding and new revenue sources necessary for constructing, operating and maintaining stormwater drainage infrastructure improvements.

**GRAND JURY FINDING #4**

"The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear."

**RESPONSE:** Agree. Water Board staff determines the process for negotiating the terms and conditions of the next permit in accordance with state law and policy. Through the Bay Area Stormwater Management Agencies Association (BASMAA), CCCWP Permittees have joined with other Bay Area municipalities that are also Permittees under the Municipal Regional Stormwater Permit (MRP) to participate in discussions with Water Board staff regarding the terms and conditions of the next permit.

**GRAND JURY FINDING #5**

"Permittees disagree on what reasonable/practical program requirements should entail."

**RESPONSE:** Agree. Each municipality has different water-quality issues that must be addressed, different pollutant sources, different drainage system characteristics, different availability of funds, and different priorities for use of funds. Each municipality has its own decision-making body. Despite these differences, Permittees, through the CCCWP's Management Committee, continue to maintain consensus regarding permit negotiating positions and successfully identify, develop and implement group permit compliance activities.

**GRAND JURY FINDING #6**

"All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years."

**RESPONSE:** Agree.

**GRAND JURY FINDING #7**

"The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring."

**RESPONSE:** Agree.



**GRAND JURY FINDING #8**

"As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done."

**RESPONSE:** Disagree. There are significant differences between the expectations and views of the regulators and those of the Permittees; however, this is characteristic of the regulatory process.

**GRAND JURY FINDING #9**

"It is unclear what the impact of non-compliance status will be for a Permittee."

**RESPONSE:** Agree. Note that the Clean Water Act provides that any U.S. citizen may file a citizen suit against any person who has allegedly violated an effluent limitation regulation. Citizen enforcers are entitled to measures sufficient to ensure compliance, the imposition of administrative civil penalties of up to \$27,500 per violation per day, and costs of litigation, including reasonable attorney's fees.

**GRAND JURY FINDING #10**

"The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees."

**RESPONSE:** Disagree. City staff has consistently communicated that funding deficits for stormwater pollution prevention and control, and non-compliance with current and future permits, may result in significant fines and/or third-party lawsuits.

**GRAND JURY FINDING #11**

"Following the failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans."

**RESPONSE:** Disagree. Following the failure of the funding initiative, City of Walnut Creek has streamlined many activities through innovative technology to be more efficient. The City strives not to impact its General Funds to augment Stormwater program implementation.

**CCCWP'S RESPONSES TO GRAND JURY RECOMMENDATIONS 1-6****GRAND JURY RECOMMENDATION #1:**

"The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff.

**GRAND JURY RECOMMENDATION #2:**

"The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward."

**RESPONSE:** This recommendation is being implemented in cooperation with BASMAA and Water Board staff. Specifically, BASMAA and Water Board staffs have agreed to a permit negotiation process that includes Permittee representatives. In addition, Permittee representatives and Water

Board staff continue to attend regularly scheduled discussions of permit issues in BASMAA committees.

**GRAND JURY RECOMMENDATION #3:**

"Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans."

**RESPONSE:** Future expenditure requirements were estimated as part of the Engineer's Report for the 2012 Community Clean Water Initiative. Funding plans are being developed (see response to Finding #11).

**GRAND JURY RECOMMENDATION #4:**

"Permittees consider identifying funds to disclose to the public "the issues" surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance."

**RESPONSE:** The City of Walnut Creek will consider preparing a "fact sheet" addressing these issues, which would be posted on the City's Clean Water website ([www.walnut-creek.org/cleanwater](http://www.walnut-creek.org/cleanwater)).

**GRAND JURY RECOMMENDATION #5:**

"The City consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit's compliance requirements; (b) projected available funding; and (c) constituent needs."

**RESPONSE:** CCCWP activities are: (a) aligned to facilitate the Permittees' compliance with permit requirements, including foresight of potential future permit requirements; (b) implemented efficiently with the available budget, and (c) responsive to the direction of the CCCWP's Management Committee, which is comprised of Permittee representatives.

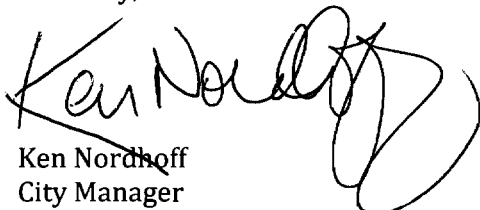
**GRAND JURY RECOMMENDATION #6:**

"Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives."

**RESPONSE:** It is not within the Permittees' power or authority to ensure that the objectives, timelines, or provisions of their NPDES permit are reasonable. Tests of reasonableness, if used, are applied by the Water Board pursuant to the applicable provisions of the California Water Code.

The City of Walnut Creek thanks the Contra Costa County Grand Jury for the opportunity to respond to its concerns. Please feel free to contact Rinta Perkins, Clean Water Program Manager at (925) 256-3511 should you need additional information.

Sincerely,



Ken Nordhoff  
City Manager

cc: Rinta Perkins, Clean Water Program Manager



**2013 Grand Jury Report 1305**  
**"Getting to Clean Water in Contra Costa County"**

**A REPORT BY  
THE 2012-2013 CONTRA COSTA COUNTY GRAND JURY**

725 Court Street  
Martinez, California 94553

**Report 1305**

**GETTING TO CLEAN WATER IN  
CONTRA COSTA COUNTY**

**What's the Plan and Where's the Money?**

APPROVED BY THE GRAND JURY:

Date: 5/21/2013

  
\_\_\_\_\_  
MARTHA WHITTAKER  
GRAND JURY FOREPERSON-PRO TEM

ACCEPTED FOR FILING:

Date: 5/29/13

  
\_\_\_\_\_  
JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1305

## GETTING TO CLEAN WATER IN CONTRA COSTA COUNTY

### *What's the Plan and Where's the Money?*

**TO:** Cities and Towns of Contra Costa County; Contra Costa County Board of Supervisors; Contra Costa Flood and Water Conservation District (collectively "Permittees"), and the Contra Costa Clean Water Program

### **SUMMARY**

The Contra Costa Clean Water Program (CCCWP) is characterized by an inability among the stakeholder organizations to reach agreement regarding exactly what they are trying to accomplish, in what manner, in what period of time, and the consequences of failing to do so. Stakeholders include CCCWP management and Permittees, empowered regulatory bodies, and interested activist community groups. They have different opinions and perspectives of what is important, what should or should not be prioritized, what is urgent, what quantifiable indicators should be used to gauge progress and compliance and what is the real exposure for non-compliance. The result is a stream of public communication and comment that is, at best, contradictory and, at worst, misleading. As a starting point, there needs to be constructive dialogue between each of the Permittees and the appropriate regulatory authorities.

The failure of Proposition 218, the 2012 Community Clean Water Initiative, to receive voter approval was a serious setback for the program. The ballot initiative was intended to, at least partially and for a short period of time, address the imbalance between the current and projected future costs for planned clean water activities that far exceeded available funds. Now the Permittees must determine alternative funding sources.

It is projected that by 2015, with no changes in the current permit requirements, a funding gap of several million dollars will exist. This shortfall could significantly grow if new permit requirements are incrementally more onerous than current requirements, as expected. This funding gap, if not resolved, may result in an inability to conduct critical activities needed to meet permit standards. It may also place some Permittees in a condition of non-compliance, with consequent exposure to fines, other monetary damages and enforcement actions.

As the challenge of finding additional funding is addressed, it is an appropriate time for the Permittees to make an effort to better define and understand their paths forward and develop more detailed plans, timelines, and desired outcomes. These re-evaluations should, at least,



include:

- a) negotiation of more realistic, better-defined compliance terms that take into account differences in participant characteristics;
- b) implementation of more efficient and effective operating practices of the Contra Costa Clean Water Program; and,
- c) identification of ways to make the impacted communities more aware of the importance of the program and the challenges ahead.

## **METHODOLOGY**

In evaluating the stormwater pollution control activities as instituted in Contra Costa County by the Permittees, the following tasks were performed:

- Interviews with selected city managers and selected county officials
- Interviews with CCCWP staff, selected Permittee representatives to the CCCWP (collectively “program personnel”) and regulatory personnel
- Interview with a representative from an environmental Non-Governmental Organization (NGO)
- Review of the stormwater permits applicable in Contra Costa County
- Review of individual Permittee stormwater program budgets
- Review of CCCWP publications and operating data
- Review of Permittee Annual Reports for the most recent year
- Attendance at CCCWP Management Committee Meetings and review of minutes for those meetings and others not attended
- Review of Environmental Protection Agency (EPA) and California State Water Board literature with regard to stormwater programs and requirements
- Review of information prepared (and in some cases sent to voters) as part of the 2012 Community Clean Water Initiative, including a number of different outside consultant reports
- Review of public media articles involving the local storm water program and recent ballot initiative
- Review of informational websites including California Stormwater Quality Association (casqa.org), Bay Area Stormwater Management Agencies Association (basmaa.org) and Contra Costa Clean Water Program (cccleanwater.org)

## BACKGROUND

The Federal Clean Water Act (as amended from time to time) established the National Pollutant Discharge Elimination System (NPDES) Permit Program to control water pollution. The program regulates point sources that discharge pollutants into the waterways of the United States. The Permit Program is administered by the individual states - in California, by the State Water Board and a series of Regional Water Quality Control Boards (RWQCB). The various water boards are responsible for issuing NPDES permits governing discharges into specific watersheds and determining and enforcing compliance with the individual permit requirements.

One requirement of amendments to the Clean Water Act in 1987 was that many municipalities were obligated to obtain NPDES permits for discharges of urban runoff from their storm sewer systems into local watersheds. Accordingly, the 19 incorporated cities/towns of Contra Costa County, along with the Contra Costa County Flood Control District and the unincorporated areas of Contra Costa County (collectively the "Permittees"), were required to obtain these NPDES permits. The Permittees are covered by one of two applicable permits as shown in the following table:

San Francisco Permit (Discharge into San Francisco Bay)		Central Valley Permit (Discharge into Delta)
Clayton	Pittsburg	Antioch
Concord	Pleasant Hill	Brentwood
El Cerrito	Richmond	Oakley
Hercules	San Pablo	
Lafayette	San Ramon	
Martinez	Walnut Creek	
Orinda	Moraga	
Pinole	Danville	

The Contra Costa Flood Control and Water Conservation District and Contra Costa County are parties to both permits. For purposes of the discussion in this report, no distinction is made between the two permits.

These parties to the two permits -- the Permittees -- are individually responsible for complying with the requirements of their respective permits. The activities typically include street sweeping, storm drain maintenance and cleaning, litter control, creek cleanup programs, construction site and business inspection and control, and public outreach.

In Contra Costa County, in 1991 the Permittees formed the Contra Costa Clean Water Program (CCCWP) to coordinate certain centralized services or group activities such as training and monitoring programs, and public outreach. The CCCWP also serves as the point organization for the Permittees' interface with the Regional Water Quality Control Boards and is expected to continue to do so in the upcoming permit renegotiations. CCCWP is run by a "management committee" comprised of representatives of each of the Permittees. Each of the Permittees and the CCCWP file an Annual Report detailing their compliance with the permit. Reviews of these reports indicate that, for the most recent period, no instances of non-compliance were reported.

However, in December, 2012, Contra Costa County received a “Notice of Violation” with regard to its stormwater program identifying 9 different violations and 30 required actions. Moreover, in January, 2013, several of the Permittees received “Notices of Deficiency” related to a review by the Water Board of certain sections of the 2012 Annual Reports. County personnel interviewed acknowledged that, the most recent Annual Report notwithstanding, the County is not in compliance under the permits. Additionally, a number of the cities interviewed suggested that they were either on the verge of non-compliance, if not already noncompliant.

Generally, the cities and county fund their storm water permit activities via a Stormwater Utility Assessment (SUA) levied on property owners (exceptions are Brentwood and Richmond which use alternative sources including general fund revenues). CCCWP is funded by the participating cities out of the assessment revenue collected.

According to a report to the CCCWP from SCI Consulting Group, since the implementation of the SUA, “inflation and ever-expanding permit mandates have progressively increased the cost of NPDES permit implementation and drainage system maintenance. All municipalities now charge the maximum authorized by the SUA.”

From a budgetary perspective, over the past two fiscal years the majority of cities are spending more than they collect in assessment revenue. Municipalities are absorbing shortfalls using non-storm water funds, general fund resources or prior years’ reserves. Several city managers indicate that, to the extent general fund monies are required for this purpose; there will be an impact on their city’s ability to provide other services.

The regulatory authorities are aware of and sympathetic to the fiscal challenges faced by cities with respect to the program, but have a somewhat different view as to why the cities face the challenges they do. The regulatory personnel indicate that when the SUA structure was enacted, many of the cities immediately shifted the funding of certain program-eligible activities (such as street sweeping and other elements of public works) out of their general funds to be funded out of the new stormwater assessments. While this may have been beneficial to the cities in the short term, in the long run it removed funds which should have been available for the long-term growth and development of the stormwater program, which all understood would necessarily grow increasingly more complex and rigorous over time.

Some city managers and program personnel indicate that, while still in compliance, they are not necessarily doing everything they need to do to ensure continued future compliance due to funding limitations. In a report by SCI Consulting Group commissioned by the CCCWP, consultants stated “Because of current fiscal difficulties, most municipalities are deferring some required maintenance on infrastructure. Some permit-mandated activities, such as staff training, routine surveillance and inspections and outreach are also being minimized. While these budget balancing reductions will not necessarily compromise permit compliance in the short term, in the long term, they could erode local program effectiveness.”

The current permits have introduced additional requirements including expanded storm water monitoring and increased trash control. It is expected that the renegotiated permits will have additional significant implementation requirements. For example, cities now have a requirement that 40% of all trash be removed from the storm water discharge by mid-2014. This rises to 70% by 2017 and 100% by 2022. The State Water Board has rejected the short-term plan submitted by CCCWP for meeting these requirements.



The exact timing of negotiations and program requirements of the new permits are not fully known at this time. Discussion with program personnel and observation of select CCCWP management committee meetings indicate that there is some disagreement as to what Permittees view as reasonable requirements. However, the Permittees also believe that, individually, they have very limited ability to influence the permit process.

The regulators believe that they must balance the requirements of the legal mandates (including Federal Clean Water Act requirements and California state requirements), the desires of outside advocacy groups (primarily environmental groups such as San Francisco Baykeeper, Natural Resource Defense Council, etc.) and the Permittees. Regulators feel the permits are sufficiently flexible to account for size differentials and, to the extent possible, take into account individual circumstances.

The overall structure of the Clean Water Program, with the resulting multiple layers of bureaucracy between the regulatory authorities and the individual Permittees may be a key contributing factor to the dramatically different perspectives of what needs to be done, how it should be done, and what happens if it is not done. Discussions with representatives of many stakeholder organizations revealed a lack of alignment on these issues. In particular, while regulators indicate that the underlying rules are flexible and enforcement activity is subjective, Permittees indicate they are forced to “interpret” the message and this makes formulation of their stormwater program plans and activities difficult. This is especially true during a time of scarcity of financial resources, and a need to make hard choices between competing demands for those resources.

To address the current and expected future fiscal shortfalls, the municipalities and CCCWP sponsored a county-wide Proposition 218 compliant ballot initiative to increase funding by approximately \$8.7 million per year. According to program personnel, this additional funding level was based on “what the public would accept”; however, consultants to CCCWP estimated future costs to be well in excess of those requested via the ballot measure. The ballot measure failed. In its Annual Report the CCCWP described the results as follows:

“The defeat of the 2012 Community Clean Water Initiative represents a setback for Permittees’ clean water programs in Contra Costa County. Permittees have exhausted their reserves. Many are now relying on other municipal revenues, such as their general funds, to implement MRP (Municipal Regional Permit) compliance. At the same time, reductions in general fund revenues due to significant losses in property and sales tax revenues has resulted in reductions in staffing, salaries and benefits, and community services and programs. Local elected officials are faced with agonizing and unpopular public policy decisions on how to use and allocate their limited resources and revenues to continue to provide critical services (e.g. public safety, road maintenance, public facilities operation and maintenance, natural resource protection).”

Some city managers have referred to the current storm water situation as an “unfunded mandate”. They indicate that specific solutions to the potential funding problems have not been determined. At least one city, El Cerrito, has held some limited public discussion on the issue and has begun to explore potential funding options including a city-specific bond measure. In its 2012 Annual Report, the CCCWP indicates that it does not believe any additional county-wide funding measures would be successful at this time.

Interviews with some city managers and program personnel indicate that, given the fiscal issues

they face, the level of deferred program activities, and both currently known and expected more rigorous future program requirements, the majority of cities in the county will be in non-compliance with the NPDES permits over the next 2-5 years. The impact of non-compliance is not clear at this point. There is a wide range of potential outcomes. In a report prepared as part of the ballot initiative effort, consultants to the CCCWP indicate the following:

“Non-compliance with Permit Requirements exposes the Permittees to fines from the RWQCB as well as to potential third-party lawsuits. All Permittees must demonstrate full compliance or be subject to regulatory actions including:

- Administrative Civil Liability - \$10,000 per day of violation and/or \$10.00 per gallon of discharge
- Cease and Desist Orders for either public or private development projects
- Third-Party lawsuits alleging non-compliance and recommending regulatory actions be taken against the entity until violations have been corrected or negative impacts eliminated.”

One regulatory agency made it clear that, while these statements might reflect the “letter of the law”, they in no way reflect the “spirit of the law” or any intention on the part of that regulatory agency to implement fines of any kind in the near term on Permittees making reasonable efforts to achieve compliance. An interview conducted with a member of a prominent environmental group echoed this position that they do not intend to put undue financial burden or bring third-party lawsuits against Permittees as long as they can demonstrate that concerted and continuous efforts are being made to fulfill the mandates of the permit. The environmentalist clearly stated that while they have in the past and will continue to rigorously monitor various Permittee compliance activities in the future, their approach remains realistic and mindful of the financial and personnel constraints of those Permittees.

Some city managers and program personnel acknowledge the potential for significant monetary fines or other regulatory actions. It is possible that the Regional Water Quality Control Boards will recognize the severity of the fiscal situation and enter into a consent-decree type arrangement which, while not changing the discharge requirements, will allow more time to reach those levels as long as continuous progress can be demonstrated by each Permittee and will not impose onerous fines or penalties.

Observation of discussions at the CCCWP Management Committee meetings and a review of their meeting minutes reflect that they have not developed substantive solutions to the fiscal issues facing the group. The CCCWP Annual Report describes actions which they are currently taking to ameliorate the situation as, “specific actions identified include, but are not limited to:

- Review and analyze alternative CCCWP organizational structures, staffing and consultant support levels, and tasks;
- Review other potential sources of revenue (e.g. increased fees) to fund mandated compliance activities;
- Engage local elected officials, municipal managers, businesses, citizens and other stakeholders in development of effective water quality attainment strategies;

- Identify prioritized actions to reduce the discharge of trash and other pollutants of concern to local creeks, the Delta and bay; and,
- Seek flexibility requirements to allow individual Permittees to focus their limited resources to address local water quality priority problems.”

It is not clear from interviews with program personnel or city managers that these actions have resulted in any significant or concrete changes which go to solve the current set of problems or at least partially ameliorate the current set of problems facing the Permittees.

Attendance at CCCWP Management Committee meetings, as well as a review of the group’s minutes and discussions with city managers and program personnel indicate that there are concerns with how the organization is operating and whether it is really in a position to provide or contribute significantly to resolving the current fiscal situation. City managers in particular believe that the 2012 ballot initiative was mishandled in the way it was conducted, and the public was not educated as to its necessity. Some individual city participants question whether they might be better off trying to resolve their issues independently rather than as a combined group. Discussions with program personnel and a review of the history of local watershed permitting, as contained in the current NPDES permits, show that the regulatory authorities have fostered the creation of larger groups of participants in Contra Costa County that share standard agreements. Doing so removes the necessity of negotiating a series of unique agreements with individual municipalities. This is also true outside of Contra Costa County.

The San Francisco Bay permit expires in 2014 and the Central Valley Permit expires in 2015. Both will require renegotiation of new pollution standards and required activities. It is not clear how successfully the CCCWP (including its various committees) has undertaken the efforts to actively communicate issues and problems in order to influence the structure and requirements of the next permits, including dialogue to understand the possibility and ramifications of potential non-compliance and the regulatory bodies’ likely responses.

While some Permittees have made excellent efforts to educate their constituents as to the nature and magnitude of the problems they face, most have not. Interviews with program personnel indicate that little or no discussion with citizens of either the current or the expected longer-term fiscal issues faced by the stormwater programs have occurred.

## **FINDINGS**

1. In the most recent Annual Reports, Permittees reported compliance with their permits; however, Contra Costa County recently received a “Notice of Violation” with regard to its stormwater program.
2. Many Permittees are currently spending more than the total amounts collected from fees/taxes/assessments etc., designated for stormwater management purposes; any funding shortfalls are covered via supplements from the general fund.
3. Despite the current levels of money being spent on the stormwater control initiatives, many Permittees do not think they are doing as much as necessary to position themselves to meet future compliance requirements.



4. The requirements for compliance are expected to become increasingly demanding and the process of negotiating the terms and conditions of the next permit are unclear.
5. Permittees disagree on what reasonable/practical program requirements should entail.
6. All Permittees are forecasting that the lack of funds needed to undertake the critical activities to reach compliance levels will result in the majority of them being non-compliant in 2-5 years.
7. The CCCWP seems to be doing a reasonable job in terms of its role for centralized activities such as public education, outreach, training and monitoring.
8. As an intermediary between the Permittees and the regulatory bodies, the CCCWP appears to be failing because there is a significant difference between the expectations and views of the regulators and the Permittees. There are dramatically different perspectives of what needs to be done, how it should be done and what happens if it is not done.
9. It is unclear what the impact of non-compliance status will be for a Permittee.
10. The potential future risk associated with funding deficits and non-compliance is not being accurately communicated to citizens by the Permittees.
11. Following failure of the 2012 Community Clean Water Initiative, cities do not appear to have formulated realistic alternative plans.

## **RECOMMENDATIONS**

The Grand Jury recommends that:

1. The permit negotiation process be clarified with roles, negotiating strategies, and negotiation objectives defined.
2. The CCCWP immediately begin to implement more direct communications between the individual Permittees and the regulatory authorities to eliminate the confusion that currently exists between the two parties as to program requirements, solutions for meeting long-term permit compliance and development of mutually agreed-upon plans for the path forward.
3. Permittees immediately quantify a range of future expenditure requirements associated with a range of negotiation outcomes and develop funding plans.
4. Permittees consider identifying funds to disclose to the public “the issues” surrounding the lack of funding to fulfill their NPDES permit requirements, including a discussion of potential, but realistic, impacts of non-compliance.
5. The CCCWP consider immediately beginning to re-align its activities and operating costs with; (a) probable outcomes from the negotiation of the next permit’s compliance requirements; (b) projected available funding; and (c) constituent needs.

6. Before any Permittee makes any effort to approach its citizens with another request for additional funding, all stakeholders reach consensus on a plan for the path forward that includes articulations of reasonable objectives, ways to measure those objectives and reasonable timelines for accomplishment of those objectives.

## REQUIRED RESPONSES

	<b>Findings</b>	<b>Recommendations</b>
City of Antioch	1 – 11	1 - 6
City of Brentwood	1 – 11	1 - 6
City of Clayton	1 – 11	1 - 6
City of Concord	1 – 11	1 - 6
Town of Danville	1 – 11	1 - 6
City of El Cerrito	1 – 11	1 - 6
City of Hercules	1 – 11	1 - 6
City of Lafayette	1 – 11	1 - 6
City of Martinez	1 – 11	1 - 6
Town of Moraga	1 – 11	1 - 6
City of Oakley	1 – 11	1 - 6
City of Orinda	1 – 11	1 - 6
City of Pinole	1 – 11	1 - 6
City of Pittsburg	1 – 11	1 - 6
City of Pleasant Hill	1 – 11	1 - 6
City of Richmond	1 – 11	1 - 6
City of San Pablo	1 – 11	1 - 6
City of San Ramon	1 – 11	1 - 6
City of Walnut Creek	1 – 11	1 - 6
Contra Costa County Board of Supervisors	1 – 11	1 - 6
Contra Costa Flood and Water Conservation District	1 – 11	1 - 6
Contra Costa Clean Water Program	1 – 11	1 - 6

**CONTRA COSTA COUNTY PUBLIC WORKS**  
**Response to Civil Grand Jury**  
**Report No. 1705 Board Order**





# Contra Costa County

To: Board of Supervisors  
From: David Twa, County Administrator  
Date: August 1, 2017

Subject: Response to Civil Grand Jury Report No. 1705, Entitled "Funding Flood Control Infrastructure"

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## **RECOMMENDATION(S):**

ADOPT report as the Board of Supervisors' response to Civil Grand Jury Report No. 1705, entitled "Funding Flood Control Infrastructure" and DIRECT the Clerk of the Board to forward to the Superior Court no later than August 29, 2017.

## **FISCAL IMPACT:**

No fiscal impact.

## **BACKGROUND:**

The 2016/17 Civil Grand Jury filed the above-reference report attached, on May 31, 2017, which was reviewed by the Board of Supervisors and subsequently referred to the County Administrator and Public Works Department, who prepared the attached response that clearly specifies:

- A. Whether the finding or recommendation is accepted or will be implemented;
- B. If a recommendation is accepted, a statement as to who will be responsible for implementation and a definite target date;
- C. A delineation of the constraints if a recommendation is accepted but cannot be

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

---

Action of Board On: **08/01/2017** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

## **VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: August 1, 2017

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: Stephanie Mello, Deputy

Contact: Laura Strobel, (925)  
335-1091

implemented within a six-month period; and

D. The reason for not accepting or adopting a finding or recommendation.

## BACKGROUND: (CONT'D)

### FINDINGS

F1. Reserves have not been set aside for the replacement costs of the County flood control system.

**Response:** *The respondent agrees with the finding.*

F2. Presently, there is little public support to fund the replacement costs of the County flood control system.

**Response:** *The respondent neither agrees nor disagrees with the finding; however, based on presentations given to a wide variety of groups in Contra Costa County and the feedback received, there does not appear to be public support to raise revenue to fund replacement costs of Flood Control District facilities.*

F3. There is little sense of urgency among elected officials towards financing the replacement costs of flood control in California.

**Response:** *The respondent disagrees with the finding. The Contra Costa County Board of Supervisors understands the urgency to develop a funding source for replacement, however the solution includes modifying the California State Constitution. Senate Bill 231 by Hertzberg would define Sewer to include stormwater and flood control facilities and, therefore, be considered a utility and be allowed to raise rates similar to water and wastewater. The California State Association of Counties (CSAC) is committed to finding a funding solution for local stormwater programs. CSAC staff are working in coordination with county public works departments to build local political support with county Board of Supervisors and state legislators as well as to increase public awareness of this critical issue until a successful statewide solution is identified.*

F4: The older sections of the County flood control system are approaching their design life of 70 years.

**Response:** *The respondent agrees with the finding.*

F5: The current mechanism for funding flood control is not enough to maintain and eventually replace the system.

**Response:** *The respondent agrees with the finding. None of the Flood Control Zones have adequate funding to maintain and eventually replace the systems. For example, the County receives no money to maintain and replace the existing infrastructure for Pinole Creek, Zone 9 because the tax rate was set at zero when Proposition 13 went into effect.*

F6. The proposed California Water Conservation, Flood Control and Storm Water Management Act could provide revenues for County Flood Control to begin building financial reserves for full maintenance and eventual replacement of the system.

**Response:** *The respondent agrees with the finding. The proposed legislation is an*



*effort to modify the California Constitution to allow stormwater to be treated as a utility similar to water or sewer. This proposed modification would allow a rate structure for stormwater to be used for maintenance or replacement of facilities.*

## **RECOMMENDATIONS**

R1. The County Board of Supervisors, as the Governing Board of the Flood Control and Water Conservation District, should consider continuing to pursue efforts to educate elected officials about the urgency of passing the California Water Conservation, Flood Control and Storm Water Management Act.

**Response:** *The recommendation has been implemented. The Board of Supervisors is working with the California State Association of Counties and the League of Cities to outreach to elected officials and the public in general in California on the importance of stormwater funding.*

R2. The County Board of Supervisors, as the Governing Board of the Flood Control and Water Conservation District, should consider identifying funds to increase the Flood Control maintenance budget to begin reducing the deferred maintenance backlog, prior to January 2018.

**Response:** *The recommendation has been implemented. The Board of Supervisors is very involved in the ongoing efforts to identify funding to increase the Flood Control maintenance budget and is working closely with CSAC and state Legislators to determine the best course of action to address stormwater funding. It is not anticipated that currently proposed legislation will pass before January 2018.*

R3. The County Board of Supervisors, as the Governing Board of the Flood Control and Water Conservation District, should consider identifying funds to begin building reserves to fund the reconstruction of the County flood control system, prior to January 2018.

**Response:** *The recommendation has been implemented. The Board of Supervisors has considered availability of funding and is closely following efforts in Sacramento to determine the best course of action to address stormwater funding. It is not anticipated that the proposed legislation would pass before January 2018.*

R4. The County Board of Supervisors, as the Governing Board of the Flood Control and Water Conservation District, should consider instructing Flood Control staff to prepare plans for a County wide campaign to educate the public on the need to replace the infrastructure.

**Response:** *The recommendation has been implemented. The Flood Control District is engaged in an ongoing outreach campaign to residents on the importance of stormwater infrastructure and the funding for installation, replacement and maintenance. District Staff regularly reports to the Board of Supervisors' Transportation Water and Infrastructure Committee on the outreach efforts and to the full Board of Supervisors annually and receives input and direction.*

## **CONSEQUENCE OF NEGATIVE ACTION:**

In order to comply with statutory requirements, the Board of Supervisors must provide a response to the Superior Court no later than August 29, 2017. The Board must take timely action in order to comply with the statutory deadline.

## ATTACHMENTS

Civil Grand Jury Report No. 1705

**2017 Grand Jury Report 1705**  
**"Funding Flood Control Infrastructure"**



**A REPORT BY  
THE 2016-2017 CONTRA COSTA COUNTY GRAND JURY**  
725 Court Street  
Martinez, California 94553

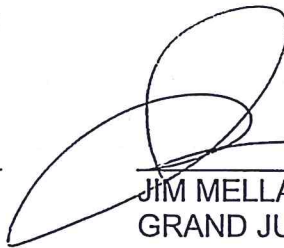
Report 1705

# **Funding Flood Control Infrastructure**

APPROVED BY THE GRAND JURY:

Date: \_\_\_\_\_

6/8/17

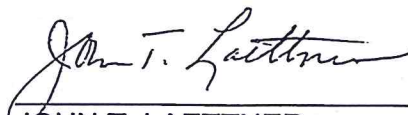


JIM MELLANDER  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: \_\_\_\_\_

5/31/17



JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contra Costa County Civil Grand Jury Report 1705

## **Funding Flood Control Infrastructure**

**TO: Board of Supervisors, as the Governing Board of the Flood Control and Water Conservation District**

### **SUMMARY**

Most portions of the Contra Costa County (County) flood control system were built over 55 years ago. Because of its age, the system requires a high level of maintenance and will eventually need to be replaced. Currently, there is a shortfall in funds to adequately maintain the flood control system. Due to the lack of funds, the system has unmet maintenance needs. Deferred maintenance of the system not only reduces its efficiency, but could lead to failure of flood control components.

To prevent failure of the flood control system, immediate funding is needed to pay for deferred maintenance. The Contra Costa County Flood Control and Water Conservation District (Flood Control) lacks adequate sources of revenue to pay for these needs. State legislation has been proposed that would enable flood control to be funded as a utility through assessed fees.

The Grand Jury recommends that the County Board of Supervisors consider funding deferred maintenance, while continuing to support efforts to get State legislation passed allowing Flood Control to increase revenues for replacement of its aging infrastructure.

### **METHODOLOGY**

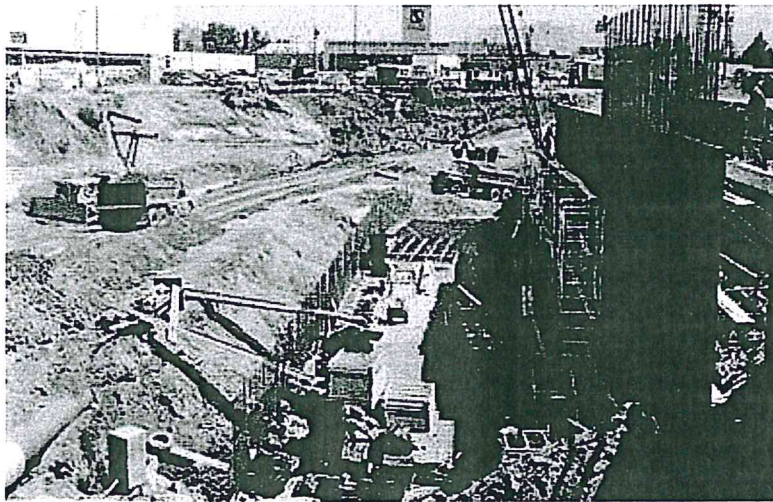
In the course of its investigation, the Grand Jury:

- Interviewed members of County Flood Control, County Public Works, the County Board of Supervisors and engineering consultants
- Reviewed Flood Control documents related to maintenance, capital

- improvement requirements, and financial management of the system
- Reviewed the Flood Control Fifty-Year Plan
- Attended a Flood Control report to the Board of Supervisors
- Participated in a tour of the Lower Walnut Creek Flood Control System

## BACKGROUND

Flood Control was formed in 1951 in response to widespread flooding. In the late 1950s, the Army Corps of Engineers began construction of the flood control system, paid by federal funding. A series of flood control projects was constructed over the next 30 years. Today, the system is extensive, consisting of 75 miles of channels, 35 detention basins and 25 trash racks. The oldest sections of this system are over 55 years old.



Construction of the culvert under Broadway Plaza in the early 1960s  
(Courtesy of the Walnut Creek Historical Society)

According to staff from Flood Control, most of its revenue for operations and maintenance is collected from an assessment of property taxes. Flood Control receives only 0.75% of the one percent of the property tax collected. The 0.75% rate has not changed since 1978.

Some other revenue sources include:

- Special assessments in some drainage areas to fund ongoing maintenance costs
- Impact fees from development projects within some drainage areas to fund construction of planned drainage facilities
- Fees for services related to hydraulic and hydrological analysis



The funding sources are insufficient to maintain and/or replace the flood control infrastructure. It requires an increasing amount of annual maintenance due to its age and will eventually need to be replaced. Required maintenance costs far exceed the money budgeted to properly maintain the system, resulting in a substantial backlog of maintenance requirements. Flood Control has no reserves set aside for the eventual replacement of the infrastructure. Past attempts to raise money for flood control improvements have not been successful.

In 2012 Flood Control tried to raise revenues to cover funding shortfalls through the Community Clean Water Initiative, which was placed on the ballot for Contra Costa County. Some of the monies from the proposed per-parcel fee would have helped to fund the flood control system, but County voters rejected the initiative.

In 2015, AB 1362 was introduced in the State Assembly as the first step in providing cities and counties with a mechanism to fund storm water related infrastructure and services. The introduced version of the bill was later changed to a different purpose, deleting the mechanism to fund flood control.

Two recent polls in Contra Costa County showed low public support for increased taxes or assessments to fund the reconstruction of the flood control system.

## **DISCUSSION**

To varying degrees, the County flood control system prevents flooding every year. January 2017 was the wettest January on record in the County since 1973, and no major flooding occurred within the County during that month. This is a testament to the quality of maintenance that Flood Control and County Public Works have accomplished with limited funding.

Flood Control believes that the present level of flood deterrence cannot be maintained at current funding levels. As parts of the system age past their design life and maintenance fails to keep pace with needed repairs, flood control performance will be impacted negatively. Deferred maintenance of flood control structures leads to poor system performance and will eventually result in subsystem failures.

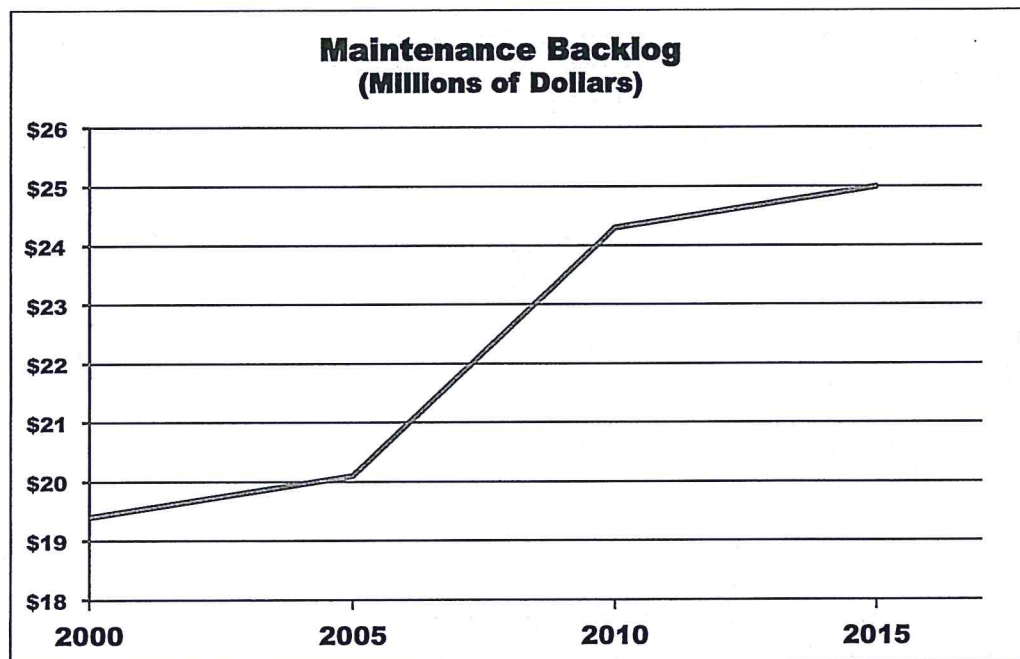
The design life of the flood control system's concrete-lined channels is approximately 70 years. This means that the system's older sections are approaching the time when deterioration will accelerate. The extent of the deterioration will depend upon the funding that Flood Control has available for maintenance.

A public poll conducted for Flood Control by Fairbank, Maslin, Metz & Associates in 2015 showed "a lack of understanding of the danger of flooding." The poll reflected low support (about 40%) for increased property or parcel taxes to fund future system needs.

Flood Control staff have sometimes referred to themselves as “stewards of forgotten infrastructure.”

Flood Control has implemented a seven-year program to assess the current condition of the system’s structures. The goal of this program is to prioritize the structures or portions of the system in greatest need of repair. The preliminary results, based on visual inspection techniques, have provided an average structural rating of ‘good,’ with an 80% confidence level. If properly maintained and needed repairs are made in a timely manner, many of the system’s newer sections could last several decades.

Flood Control estimates that to rebuild the entire system to its original standards would take 40 or more years and cost about \$2.4 billion, in 2016 dollars.



This graph is part of Flood Control's presentation to the County Board of Supervisors 2/7/17

The above graph shows the growing shortfall, since 2000, between flood control system maintenance needs and system maintenance revenues. Flood Control has a current annual maintenance and capital improvement budget of \$5.15 million. At the level of funding presently available, the growing backlog shortfall is projected to be over \$25 million dollars in 2017.

The County has no current reserves to fund an increased level of flood control system maintenance or to cover the much greater costs of future system reconstruction.



In 2016, The California State Association of Counties (CSAC), of which Contra Costa is a member, proposed a statewide ballot measure titled the California Water Conservation, Flood Control and Storm Water Management Act. Other interested statewide organizations included the League of California Cities, the County Engineers Association of California (CEAC) and the Association of California Water Agencies. The proposed State ballot measure would allow local governments to assess flood control services as a utility. Once the measure is passed, voters in a county would still be required to approve the change. To determine voter sentiment on the proposed legislation, a statewide poll was conducted by CSAC and CEAC. The polling results were negative, so the proposed ballot measure did not move forward in 2016.

## **FINDINGS**

- F1. Reserves have not been set aside for the replacement costs of the County flood control system.
- F2. Presently, there is little public support to fund the replacement costs of the County flood control system.
- F3. There is little sense of urgency among elected officials towards financing the replacement costs of flood control in California.
- F4. The older sections of the County flood control system are approaching their design life of 70 years.
- F5. The current mechanism for funding flood control is not enough to maintain and eventually replace the system.
- F6. The proposed California Water Conservation, Flood Control and Storm Water Management Act could provide revenues for County Flood Control to begin building financial reserves for full maintenance and eventual replacement of the system.

## **RECOMMENDATIONS**

- R1. The County Board of Supervisors, as the Governing Board of the Flood Control and Water Conservation District, should consider continuing to pursue efforts to educate elected officials about the urgency of passing the California Water Conservation, Flood Control and Storm Water Management Act.
- R2. The County Board of Supervisors, as the Governing Board of the Flood Control and Water Conservation District, should consider identifying funds to increase the



Flood Control maintenance budget to begin reducing the deferred maintenance backlog, prior to January 2018.

- R3. The County Board of Supervisors, as the Governing Board of the Flood Control and Water Conservation District, should consider identifying funds to begin building reserves to fund the reconstruction of the County flood control system, prior to January 2018.
- R4. The County Board of Supervisors, as the Governing Board of the Flood Control and Water Conservation District, should consider instructing Flood Control staff to prepare plans for a County wide campaign to educate the public on the need to replace the infrastructure.

## REQUIRED RESPONSES

	Findings	Recommendations
Contra Costa County Board of Supervisors, as the Governing Board of the Flood Control and Water Conservation District	F1 to F6	R1 to R4

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [ctadmin@contracosta.courts.ca.gov](mailto:ctadmin@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson  
725 Court Street  
PO Box 431  
Martinez CA 94553-0091



**CONTRA COSTA COUNTY FLOOD CONTROL  
CAPITAL IMPROVEMENT PLAN  
2018 UPDATE  
FISCAL YEAR 2017/2018 – 2023/2024**





# Contra Costa County Flood Control

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## & Water Conservation District



## **Flood Control Capital Improvement Plan 2018 Update**

**Fiscal Year 2017/2018 – 2023/2024**

**CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

**November 2018**

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## 2018 FLOOD CONTROL CAPITAL IMPROVEMENT PLAN

### A. INTRODUCTION AND OVERVIEW

The Flood Control Capital Improvement Plan (CIP) is a programming document for the funding of capital flood control projects<sup>1</sup> within the Contra Costa County Flood Control and Water Conservation District (District). The District's jurisdictional boundary covers the entire Contra Costa County and includes cities in addition to the unincorporated County communities.

The District operates 79 miles of flood control channels, 29 dams and detention basins, and 47 drop structures throughout the County. These facilities are on 4,189 parcels covering over 1,500 acres, and provide the regional backbone of flood protection in Contra Costa County. The CIP is prepared in accordance with the District's Expenditure Policy and presented to the Board of Supervisors for approval. This CIP is intended to be updated every two years and it provides a 7-year outlook on the District's capital activities in support of the regional, long-range development and related flood control plans.

It is recognized that local communities have direct interest in the regional flood control projects and that those projects can impact a wide range of stakeholders. Therefore, the District is committed to developing projects in an open, community-based planning process. Furthermore, development of consistent stormwater management strategies in the region requires close coordination between local governments, regulators, as well as developers and landowners. Those strategies include concepts for comprehensive watershed management and resilient and sustainable design integration. To the extent feasible, those concepts have been incorporated into the development of this CIP. It is the intention of the District to continue to work collaboratively with all stakeholders to coordinate the implementation of regional drainage improvements.

Approval of this CIP by the Board of Supervisors does not automatically approve projects for implementation. Flood control projects typically require years of advance planning, coordination, and cooperation between various agencies and community stakeholders. This CIP is prepared as a programmatic, planning-level document that intends to guide the District to program and initiate preliminary engineering work on the identified projects. Each project must undergo its own individual feasibility analysis and environmental assessment. As such, scope and cost of each project is preliminary and may change after additional reviews. Some projects may later prove to be infeasible or not cost-effective and may be dropped from subsequent plans.

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<sup>1</sup> A capital project is a long-term capital investment that constructs, expands, renovates, or replaces a facility or facilities, often called infrastructure.



## **B. FUNDING CHALLENGES AND PRIORITIES**

Over the years, the District's revenues have been constrained by fiscally-restrictive, state-wide ballot measures, while the cost of operations and maintenance has increased significantly due to more stringent regulatory requirements and aging facilities. As a result, deferred maintenance has created over \$24 million backlog of facility repair and restoration work throughout the District. In response to these challenges and increasing demand for more capital improvements, in 2005, the Board of Supervisors, as the governing Board of the District, established the Flood Control Expenditure Policy to provide overall fiscal programming direction and guidance to staff in developing the District's capital improvement program. That Policy, generally, dictates that the District establish Capital Improvement Plans and give the highest priority to those projects that preserve the existing infrastructure and extend the useful life of a facility.

## **C. REVENUE SOURCES**

Funds for flood control improvements are mainly derived from property tax assessments, development and special benefit fees, and federal and state grants. Property tax and fee assessments are typically collected through various Flood Control Zones, Drainage Areas, and Benefit Assessment Areas. These areas have been established throughout the District over the years. A map of established Drainage Areas and Drainage Zones is shown in Figure 1. The following provides a summary description of funding sources from those areas and other revenue sources:

### **1. Flood Control Zone Property Tax Assessments**

Flood Control Zones were established over entire watersheds to fund the design, construction, and maintenance of flood control and water conservation facilities in the watershed. Funding resources vary from Zone to Zone with some Zones having no operating funds. In most cases, funding is not sufficient to maintain existing improvements, construct additional drainage facilities needed to provide the desired level of flood protection, or restore flood control channels to sustainable natural systems<sup>2</sup>. There are 14 identified major watershed Flood Control Zones in the District. Ten Flood Control Zones have been formed, but only five generate tax revenue.

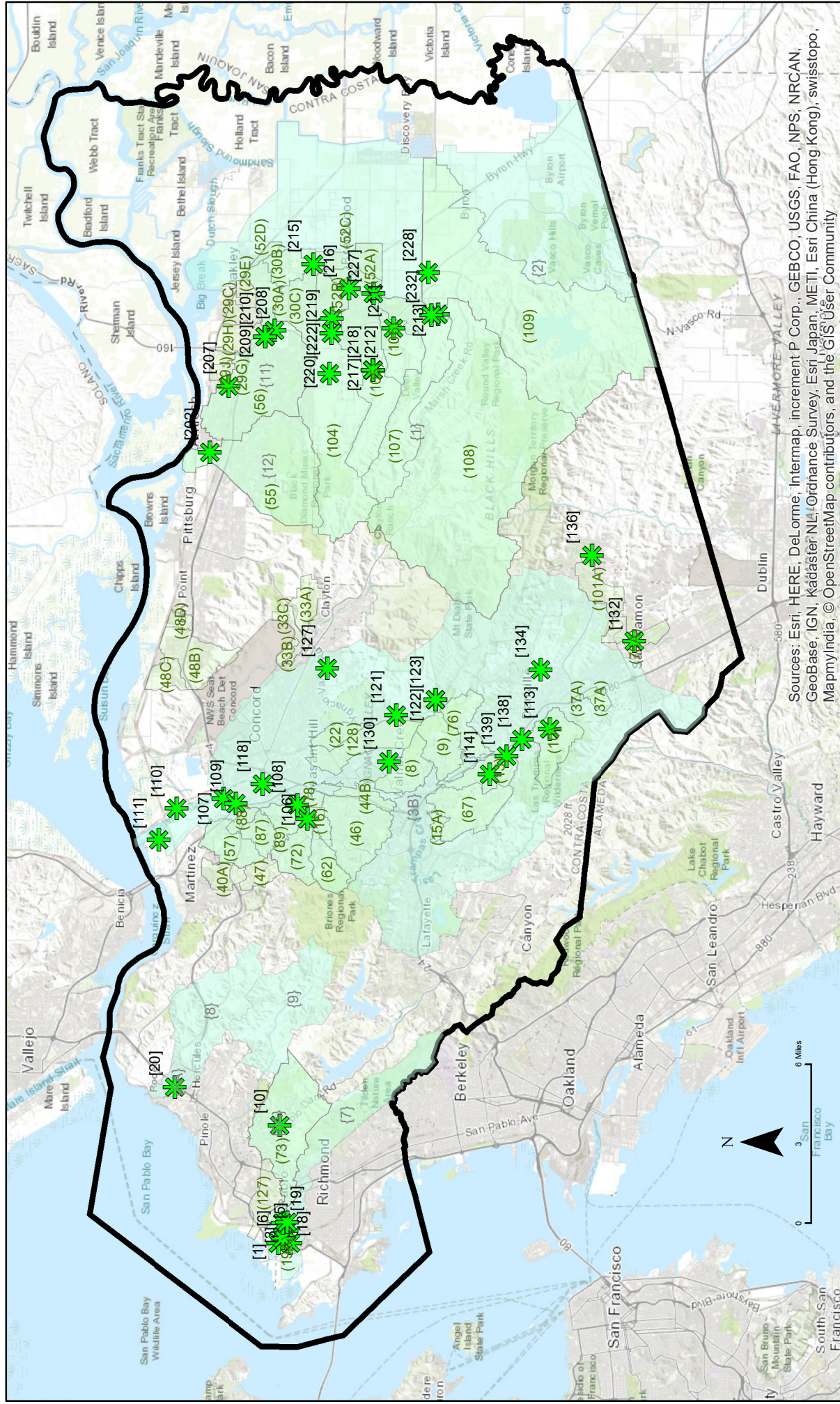
### **2. Drainage Area Fees**

Drainage Areas were formed, as subwatersheds of Flood Control Zones, to provide funding for the construction of drainage improvements needed to mitigate increased storm runoff resulting from development within the subwatershed area<sup>3</sup>. Drainage Areas typically do not provide funding for ongoing maintenance of the DA improvements. There are 180 Drainage

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<sup>2</sup> Funding discrepancy between Zones is mainly due to Proposition 13 which effectively fixed property tax rates and constrained the District's ability to raise new revenues.

<sup>3</sup> Drainage Areas are analogous to the "Areas of Benefits" or "AOB" that collect revenues and fund transportation projects.





Areas identified in the District representing small watersheds or subwatersheds. Sixty-three of the Drainage Areas have been formed and have an adopted plan and a drainage fee ordinance. These are in areas where development has, is, or will be occurring. As such, revenues from these areas are dependent on the housing and land development economy.

3. Drainage Area Benefit Assessments

Drainage Area Benefit Assessments (DABA) are funds that are typically used on operation, maintenance, and repair of storm drainage facilities in a defined drainage benefit assessment area. There are currently seven DABAs established in the District.

4. Drainage Area Tax Assessments

Three of the 63 formed Drainage Areas receive a small portion of tax revenue in addition to, or instead of, developer fees. Drainage Area property tax revenue is typically spent on the design, construction, operation, maintenance, repair, rehabilitation, and reconstruction of storm drainage facilities within the Drainage Area.

5. Federal and State Grants

The District has been successful in seeking and obtaining various state and federal grants for many of its projects in the recent past and continues to pursue those sources actively for future projects. In general, federal and state grants are becoming more competitive and very limited for single-purpose, flood control projects. This is a change from past decades when state and federal grants provided a majority of the District's capital funding. Most grants now provide assistance to projects that provide grant-specific environmental benefits. This is another incentive for the District to incorporate environmental components to its flood control projects in order to be competitive with state and federal grants.

## **D. 2018 FLOOD CONTROL CAPITAL IMPROVEMENT PLAN**

In accordance with its Expenditure Policy, the District sets priorities within three specific program categories in establishing its capital program. These priorities are then balanced with the available funding in given Flood Control Zones or Drainage Areas to ensure the most feasible project delivery. The program categories in order of priority are:

1. System Preservation
2. Public Safety
3. System Expansion

Based on the Expenditure Policy framework, a total of 43 projects representing an investment of \$53 million over seven years make up this plan's recommended projects. Figure 1 shows the geographic location of the proposed projects. Table 1 below provides an overall summary of recommended projects by funding entity highlighting project locations by watershed/major creek.



**Table 1. 7-Year Flood Control Capital Improvement Overall Summary**  
(By Fund Source/Creek)

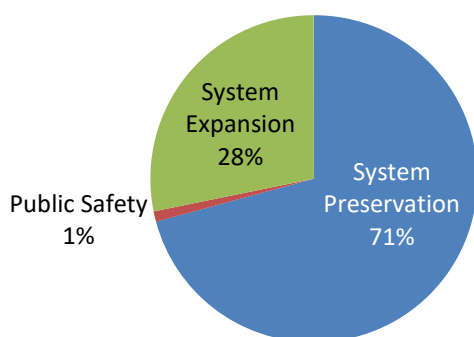
Funding Source/Creek	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2023-25	Totals
<b>Flood Control Zone 1</b>	<b>\$ 481,571</b>	<b>\$ 590,000</b>	<b>\$ 1,306,000</b>	<b>\$ 1,059,000</b>	<b>\$ 468,000</b>	<b>\$ 1,640,000</b>	<b>\$ 420,000</b>		<b>\$ 5,964,571</b>
Marsh *	\$ 391,571	\$ 430,000	\$ 1,306,000	\$ 1,059,000	\$ 468,000	\$ 1,500,000	\$ 210,000	\$ -	\$ 5,364,571
Dry	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 140,000	\$ 210,000	\$ -	\$ 350,000
Deer	\$ 90,000	\$ 160,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 250,000
<b>Flood Control Zone 3B</b>	<b>\$ 770,000</b>	<b>\$ 1,158,000</b>	<b>\$ 7,818,000</b>	<b>\$ 5,585,000</b>	<b>\$ 305,000</b>	<b>\$ 20,000</b>	<b>\$ 40,000</b>		<b>\$ 15,696,000</b>
Grayson *	\$ 160,000	\$ 271,000	\$ 2,760,000	\$ 600,000	\$ -	\$ -	\$ -	\$ -	\$ 3,791,000
Walnut *	\$ 215,000	\$ 417,000	\$ 4,775,000	\$ 4,800,000	\$ -	\$ -	\$ -	\$ 4,846,500	\$ 10,207,000
Pacheco *	\$ -	\$ -	\$ -	\$ 75,000	\$ 75,000	\$ -	\$ -	\$ -	\$ 150,000
Pine	\$ -	\$ -	\$ -	\$ 110,000	\$ 230,000	\$ -	\$ -	\$ -	\$ 483,000
Galindo	\$ -	\$ -	\$ 143,000	\$ -	\$ -	\$ 20,000	\$ 40,000	\$ -	\$ 60,000
San Ramon	\$ 20,000	\$ 70,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 915,000
Various	\$ 375,000	\$ 400,000	\$ 140,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40,000
<b>Flood Control Zone 6A - San Pablo</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 20,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 20,000</b>		<b>\$ 40,000</b>
<b>Flood Control Zone 7 - Wildcat</b>	<b>\$ -</b>	<b>\$ 27,000</b>	<b>\$ -</b>	<b>\$ 20,000</b>	<b>\$ 27,000</b>	<b>\$ -</b>	<b>\$ 20,000</b>		<b>\$ 94,000</b>
Drainage Area 10	\$ -	\$ -	\$ 17,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 17,000
Drainage Area 13	\$ 20,000	\$ 333,000	\$ 300,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 653,000
Drainage Area 46 - Grayson/Murderer's *	\$ -	\$ -	\$ -	\$ 528,000	\$ 626,000	\$ -	\$ -	\$ -	\$ 1,154,000
Drainage Area 55 - Antioch	\$ 827,000	\$ 280,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,107,000
Drainage Area 56 - Antioch	\$ 90,000	\$ 225,000	\$ 1,078,000	\$ 500,000	\$ 115,000	\$ 108,000	\$ 102,000	\$ -	\$ 2,218,000
Drainage Area 73	\$ -	\$ -	\$ -	\$ 50,000	\$ -	\$ -	\$ -	\$ -	\$ 50,000
Drainage Area 75A	\$ 10,000	\$ 90,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100,000
Drainage Area 130	\$ 36,050	\$ 192,000	\$ 920,000	\$ 166,000	\$ 353,000	\$ 814,000	\$ 1,607,000	\$ -	\$ 4,088,050
Marsh *	\$ 26,050	\$ 100,000	\$ 867,000	\$ -	\$ 11,000	\$ 77,000	\$ 578,000	\$ 55,000	\$ 1,659,050
Deer	\$ -	\$ -	\$ 22,000	\$ 39,000	\$ 215,000	\$ 88,000	\$ 594,000	\$ 5,143,000	\$ 958,000
Sand	\$ 10,000	\$ 92,000	\$ 31,000	\$ 127,000	\$ 127,000	\$ 649,000	\$ 435,000	\$ 76,000	\$ 1,471,000
<b>Drainage Area 910</b>	<b>\$ -</b>	<b>\$ 26,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>		<b>\$ 26,000</b>
Drainage Area 1010A - Shadow	\$ -	\$ 30,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 30,000
Grants - Walnut *	\$ 175,000	\$ 400,000	\$ 237,000	\$ 1,250,000	\$ -	\$ -	\$ -	\$ -	\$ 2,062,000
Other - Grayson *	\$ 140,000	\$ 146,000	\$ 900,000	\$ 100,000	\$ -	\$ -	\$ -	\$ -	\$ 1,286,000
<b>Unfunded</b>	<b>\$ 23,000</b>	<b>\$ 353,000</b>	<b>\$ 40,000</b>	<b>\$ 8,000,000</b>	<b>\$ 6,407,000</b>	<b>\$ 3,430,000</b>	<b>\$ 890,000</b>	<b>\$ 4,846,500</b>	<b>\$ 19,143,000</b>
Wildcat/San Pablo/Rodeo	\$ -	\$ -	\$ -	\$ -	\$ 273,000	\$ -	\$ -	\$ -	\$ 666,000
Grayson/Murderer's *	\$ -	\$ -	\$ -	\$ -	\$ 34,000	\$ -	\$ -	\$ -	\$ 34,000
Walnut *	\$ -	\$ -	\$ -	\$ 8,000,000	\$ 500,000	\$ 450,000	\$ 450,000	\$ 4,846,500	\$ 9,400,000
Pacheco *	\$ -	\$ -	\$ -	\$ -	\$ 5,600,000	\$ -	\$ -	\$ -	\$ 5,600,000
Galindo	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 440,000	\$ -	\$ 440,000
Marsh *	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,980,000	\$ -	\$ -	\$ 2,980,000
Kellogg	\$ 23,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 23,000
<b>Totals</b>	<b>\$ 2,572,621</b>	<b>\$ 3,850,000</b>	<b>\$ 12,616,000</b>	<b>\$ 17,278,000</b>	<b>\$ 8,301,000</b>	<b>\$ 6,012,000</b>	<b>\$ 3,099,000</b>	<b>\$ 4,846,500</b>	<b>\$ 53,728,621</b>

\* Projects with multiple funding sources

Each location shown in the list may have several projects in various phases of development and implementation.

It must be noted that some of the recommended projects are partially unfunded. Approximately \$31 million is planned to be funded through various flood control funds and \$3 million is planned to come from other local, State, or federal grants. An additional \$19 million will be needed to fully fund the projects. As projects are further developed, efforts will be made to seek additional resources. A more detailed list of all projects within each funding entity, including partially unfunded, is included in Table 2.

As stated above, priorities set for each project are based on the framework outlined in the District's Expenditure Policy. Approximately, 71% of planned capital expenditures will fund system preservation while 28% will support system expansion in support of flood risk reduction. The remaining 1% will improve public safety. Figure 2 below shows the breakdown of capital expenditures by program priority.



**Figure 2. 7-Year CIP Expenditure by priority**

Additionally, detailed information about each project is included in Appendix A. The information provided for each project includes project name, description, justification, cost estimate, funding source(s), program priority, and anticipated expenditure plan category.

Each project is assigned a unique number. Projects with numbers from 1 to 99 are located in West County, 100 to 199 are in Central County and 200 and greater are in East County. Projects are presented in numerical order.

Generally, all identified projects are led by the District; however, for the purpose of completeness, this CIP may include some projects that are co-funded by the District, but managed in partnership with other jurisdictions. It must be noted that in addition to capital projects, this CIP also includes several hydraulic, seismic, and condition assessment studies that support capital projects.

**Table 2. 7-Year Flood Control Capital Improvement Project List**

(By Fund Source)

Funding Source	ID	Project Title	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	Totals
<b>Flood Control Zone 1</b>										
	210	Marsh Creek Reservoir Seismic Assessment [8355]	\$ 481,571	\$ 590,000	\$ 1,306,000	\$ 1,059,000	\$ 468,000	\$ 1,640,000	\$ 420,000	\$ 5,964,571
	211	Dry Creek Reservoir Seismic Assessment [WO TBD]	\$ -	\$ 130,000	\$ 160,000	\$ -	\$ -	\$ -	\$ -	\$ 290,000
	212	Deer Creek Reservoir Seismic Assessment [8355]	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 140,000	\$ 210,000	\$ 350,000
	213	Marsh Creek Reservoir Capacity and Habitat Restoration [8495]	\$ 90,000	\$ 160,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 250,000
	216	Marsh Creek Widening Between Dainty Avenue and Sand Creek [8466]	\$ 55,521	\$ -	\$ 129,000	\$ 109,000	\$ 468,000	\$ 1,500,000	\$ 210,000	\$ 2,471,521
	227	Marsh Creek and Sand Creek Structures Conditions Assessment [8360]	\$ 26,050	\$ 100,000	\$ 867,000	\$ -	\$ -	\$ -	\$ -	\$ 993,050
	232	Marsh Creek Reservoir Emergency Spillway Rehabilitation [TBD]	\$ 310,000	\$ 200,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 510,000
			\$ -	\$ -	\$ 150,000	\$ 950,000	\$ -	\$ -	\$ -	\$ 1,100,000
			\$ 770,000	\$ 1,158,000	\$ 7,818,000	\$ 5,585,000	\$ 305,000	\$ 20,000	\$ 40,000	\$ 15,696,000
			\$ 140,000	\$ 146,000	\$ 900,000	\$ 100,000	\$ -	\$ -	\$ -	\$ 1,286,000
			\$ -	\$ -	\$ -	\$ 500,000	\$ -	\$ -	\$ -	\$ 500,000
	108	Grayson Creek Levee Rehabilitation at CCCSD Treatment Plant [8348]	\$ 20,000	\$ 125,000	\$ 1,860,000	\$ -	\$ -	\$ -	\$ -	\$ 2,005,000
	109	Grayson Creek Sediment Removal [8334]	\$ 165,000	\$ 292,000	\$ 525,000	\$ 4,700,000	\$ -	\$ -	\$ -	\$ 5,682,000
	110	Lower Walnut Creek Restoration Project [8285]	\$ -	\$ -	\$ -	\$ 75,000	\$ 75,000	\$ -	\$ -	\$ 150,000
	111	Pacheco Marsh Restoration [8494]	\$ 50,000	\$ 125,000	\$ 4,250,000	\$ 100,000	\$ -	\$ -	\$ -	\$ 4,525,000
	118	Walnut Creek Sediment Removal - Clayton Valley Drain to Drop Structure 1 [8334]	\$ -	\$ -	\$ -	\$ -	\$ 40,000	\$ -	\$ -	\$ 40,000
	121	Kubicek Basin Sediment Removal [WO TBD]	\$ -	\$ -	\$ 143,000	\$ 110,000	\$ 190,000	\$ -	\$ -	\$ 300,000
	122	Pine Creek Dam Seismic Assessment [8346]	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 143,000
	123	Pine Creek Reservoir Functional Assessment [WO TBD]	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 60,000
	127	Galindo Creek Improvements [WO TBD]	\$ 375,000	\$ 400,000	\$ 140,000	\$ -	\$ -	\$ 20,000	\$ 40,000	\$ 915,000
	130	Flood Control Zone 3B Channels and Structures Conditions Assessment [8353]	\$ 20,000	\$ 70,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 90,000
	138	San Ramon Creek Watershed Study [8541]	\$ -	\$ -	\$ -	\$ 20,000	\$ -	\$ -	\$ 20,000	\$ 40,000
<b>Flood Control Zone 6A</b>										
	1	San Pablo Creek Silt Survey	\$ -	\$ -	\$ -	\$ 20,000	\$ -	\$ -	\$ 20,000	\$ 40,000
<b>Flood Control Zone 7</b>										
	3	Wildcat Creek Silt Survey	\$ -	\$ 27,000	\$ -	\$ 20,000	\$ 27,000	\$ -	\$ 20,000	\$ 94,000
	5	Wildcat Sediment Basin Desilt	\$ -	\$ -	\$ -	\$ 20,000	\$ -	\$ -	\$ 20,000	\$ 40,000
<b>Drainage Area 10</b>										
	113	Update DA 10 for Danville Area	\$ -	\$ -	\$ 17,000	\$ -	\$ -	\$ -	\$ -	\$ 17,000
<b>Drainage Area 13</b>										
	114	Update DA 13 Plan for Western Alamo	\$ 20,000	\$ 333,000	\$ 300,000	\$ -	\$ -	\$ -	\$ -	\$ 653,000
	139	DA 13 Line F-1 Storm Drainage in Alamo	\$ -	\$ 33,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 33,000
<b>Drainage Area 46</b>										
	106	DA46 Grayson and Murderer's Creek Subregional Improvements	\$ 20,000	\$ 300,000	\$ 300,000	\$ 528,000	\$ 626,000	\$ -	\$ -	\$ 1,154,000
<b>Drainage Area 55</b>										
	202	West Antioch Creek - DA55 Culverts at 10th Street [8399]	\$ -	\$ -	\$ -	\$ 528,000	\$ 626,000	\$ -	\$ -	\$ 1,154,000
<b>Drainage Area 56</b>										
	207	Trembath Detention Basin [8532]	\$ 827,000	\$ 280,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,107,000
	208	Lindsey Basin Finalization Tasks & R/W Transfer [8126]	\$ 90,000	\$ 225,000	\$ 1,078,000	\$ 500,000	\$ 115,000	\$ 108,000	\$ 102,000	\$ 2,218,000
<b>Drainage Area 73</b>										
	209	Develop Revenue Generating Sites at Lindsey Basin [WO TBD]	\$ -	\$ -	\$ 11,000	\$ 33,000	\$ 16,000	\$ 6,000	\$ -	\$ 66,000
	10	DA 73 Drainage Plan Update - Richmond [WO TBD]	\$ -	\$ -	\$ 17,000	\$ 17,000	\$ 99,000	\$ 102,000	\$ 102,000	\$ 337,000
<b>Drainage Area 75A</b>										
	132	Canyon Lakes Facilities Conditions Assessment [8361]	\$ 10,000	\$ 90,000	\$ -	\$ 50,000	\$ -	\$ -	\$ -	\$ 100,000
<b>Drainage Area 130</b>										
	215	Marsh Creek Supplemental Capacity [WO TBD]	\$ 36,050	\$ 192,000	\$ 920,000	\$ 166,000	\$ 353,000	\$ 814,000	\$ 1,607,000	\$ 4,088,050
	216	Marsh Creek Widening Between Dainty Avenue and Sand Creek [8466]	\$ 26,050	\$ 100,000	\$ 867,000	\$ -	\$ 11,000	\$ 77,000	\$ 578,000	\$ 666,000
	217	Deer Creek Reservoir Expansion [8447]	\$ -	\$ -	\$ 22,000	\$ 11,000	\$ -	\$ -	\$ -	\$ 993,050
	218	Deer Creek Reservoir Expansion - R/W Acquisition [8463]	\$ -	\$ -	\$ -	\$ 28,000	\$ 149,000	\$ 88,000	\$ 594,000	\$ 781,000
	220	Upper Sand Creek Basin Surplus Material [8517]	\$ 10,000	\$ 72,000	\$ 11,000	\$ 66,000	\$ 11,000	\$ 66,000	\$ 11,000	\$ 177,000
	222	Lower Sand Creek Basin Construction [8492]	\$ -	\$ 20,000	\$ 20,000	\$ 61,000	\$ 116,000	\$ 583,000	\$ 424,000	\$ 1,224,000
<b>Drainage Area 910</b>										
	134	Rassier Ranch Basin Conditions Assessment [8362]	\$ -	\$ 26,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 26,000



Funding Source	ID	Project Title	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	Totals
<b>Drainage Area 1010A</b>										
<b>Grants</b>	136	Shadow Creek Basin Conditions Assessment [WO TBD]	\$ -	\$ 30,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 30,000
			\$ 175,000	\$ 400,000	\$ 237,000	\$ 1,250,000	\$ -	\$ -	\$ -	\$ 2,062,000
<b>Other</b>	110	Lower Walnut Creek Restoration Project [8285]	\$ 175,000	\$ 400,000	\$ 237,000	\$ 1,250,000	\$ -	\$ -	\$ -	\$ 2,062,000
			\$ 140,000	\$ 146,000	\$ 900,000	\$ 100,000	\$ -	\$ -	\$ -	\$ 1,286,000
<b>Unfunded</b>	107	Grayson Creek Levee Rehabilitation at CCCSD Treatment Plant [8348]	\$ 140,000	\$ 146,000	\$ 900,000	\$ 100,000	\$ -	\$ -	\$ -	\$ 1,286,000
			\$ 23,000	\$ 353,000	\$ 40,000	\$ 8,000,000	\$ 6,407,000	\$ 3,430,000	\$ 890,000	\$ 19,143,000
	5	Wildcat Sediment Basin Desilt [WO TBD]	\$ -	\$ 273,000	\$ -	\$ -	\$ 273,000	\$ -	\$ -	\$ 546,000
	18	San Pablo Conditions Assessment [WO TBD]	\$ -	\$ -	\$ 20,000	\$ -	\$ -	\$ -	\$ -	\$ 20,000
	19	Wildcat Conditions Assessment [WO TBD]	\$ -	\$ -	\$ 20,000	\$ -	\$ -	\$ -	\$ -	\$ 20,000
	20	Rodeo Conditions Assessment [WO TBD]	\$ -	\$ 80,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 80,000
	106	DA46 Grayson and Murderer's Creek Subregional Improvements [TBD]	\$ -	\$ -	\$ -	\$ -	\$ 34,000	\$ -	\$ -	\$ 34,000
	110	Lower Walnut Creek Restoration Project [8285]	\$ -	\$ -	\$ -	\$ 8,000,000	\$ 500,000	\$ 450,000	\$ 450,000	\$ 9,400,000
	111	Pacheco Marsh Restoration [8494]	\$ -	\$ -	\$ -	\$ -	\$ 5,600,000	\$ -	\$ -	\$ 5,600,000
	127	Galindo Creek Improvements [WO TBD]	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 440,000	\$ 440,000
	213	Marsh Creek Reservoir Capacity and Habitat Restoration [8495]	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,980,000	\$ -	\$ 2,980,000
	228	Kellogg Conditions Assessment [WO TBD]	\$ 23,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 23,000
<b>Totals</b>			<b>\$ 2,572,621</b>	<b>\$ 3,850,000</b>	<b>\$ 12,616,000</b>	<b>\$ 17,278,000</b>	<b>\$ 8,301,000</b>	<b>\$ 6,012,000</b>	<b>\$ 3,099,000</b>	<b>\$ 53,728,621</b>

## E. UNPROGRAMMED FUTURE PROJECTS

Unprogrammed future projects are those that have been scoped, but not yet programmed for funding in the next 7 years. Those projects are expected to be included in future plans for implementation after 2024. Table 3 includes a list of future projects. Details of these projects are included in Appendix B.

Funding Source	ID	Project Title	FY 2024-
<b>Flood Control Zone 3B</b>			<b>\$ 13,767,000</b>
	124	Pine Creek Reservoir Sediment Removal and Capacity Restoration [WO TBD]	\$ 5,000,000
	125	San Ramon Creek Sediment Removal near San Ramon Bypass [WO TBD]	\$ 363,000
	128	Green Valley Creek Improvements up to 1st Crossing of Diablo Road [WO TBD]	\$ 6,600,000
	129	Green Valley Creek Improvements Upstream of 2nd Crossing of Diablo Road [WO TBD]	\$ 1,804,000
<b>Drainage Area 33A</b>			<b>\$ 209,779</b>
	120	DA 33A Concord Boulevard Culvert Replacement [WO TBD]	\$ 209,779
<b>Drainage Area 48B</b>			<b>\$ 429,000</b>
	201	DA 48B Line A at Port Chicago Highway	\$ 429,000
<b>Drainage Area 55</b>			<b>\$ 215,000</b>
	205	Fitzuren Road Remainder Parcel	\$ 215,000
<b>Drainage Area 109</b>			<b>\$ 270,000</b>
	225	DA 109 - Kellogg Creek Project Development	\$ 270,000
<b>Unfunded</b>			<b>\$ 51,139,221</b>
	7	Wildcat Creek Habitat Improvements (USACE 1135 Program) [8619]	\$ 2,000,000
	9	Wildcat / San Pablo Creeks Phase II [WO TBD]	\$ 12,045,000
	12	Pinole Creek Habitat Restoration (1135 Project) [8493]	\$ 6,250,000
	17	Sustainable Capacity Improvement at Rodeo Creek [WO TBD]	\$ 10,285,000
	23	Canada di Cierbo Habitat Improvement [WO TBD]	\$ 3,000,000
	26	Pinole Creek Capacity Assessment	\$ 300,000
	117	DA 67 - Tice Creek Bypass [WO TBD]	\$ 2,481,000
	120	DA 33A Concord Boulevard Culvert Replacement [WO TBD]	\$ 87,221
	203	West Antioch Creek Improvements - L Street to 10th Street [WO TBD]	\$ 4,906,000
	204	West Antioch Creek Improvements at Highway 4 [WO TBD]	\$ 2,200,000
	206	East Antioch Creek Marsh Restoration [WO TBD]	\$ 7,585,000
<b>Totals</b>			<b>\$ 66,030,000</b>

**Table 3. Unprogrammed Future Projects**

## **F. FUTURE UPDATES**

As staff develops and implements these capital projects, future CIP updates will include information on the progress and delivery of the listed projects. Additionally, efforts on the identification of funding shortfalls and additional funding sources to support the District's capital needs are underway. The 2013 Report on the Status of Flood Protection Infrastructure and its 2017 update provided some information about those efforts. Additional detailed information will be reported in future updates.

## **G. CREDITS**

Prepared By: Gus Amirzehni, PE

Reviewed By: Paul Detjens, PE

List of Appendices:

Appendix A Detailed Project Information Sheets

Appendix B Unprogrammed Future Projects Details



## *Appendix A*   Detailed Project Information

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: San Pablo Creek Silt Survey

WORK ORDER: WO TBD ID: 1

PROJECT DESCRIPTION: Perform focused topographic surveys at six predesignated cross section locations to determine the amount of sediment accumulation and to determine the need for channel desilting. Channel desilting, once determined to be needed, would be scoped under a separate CIP entity.

PROJECT NEED: The current operations and maintenance manual produced by the Corps requires annual sediment surveys. These surveys are a method to determine channel capacity and are in lieu of a more comprehensive survey and hydraulic model.

SUPERVISOR DISTRICT: I

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 4

FUNDING SOURCE(S): Flood Control Zone 6

TOTAL PROJECT COST: \$40,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$20,000	\$0	\$0	\$20,000
FUNDING SOURCE(S):							
Flood Control Zone 6A	\$0	\$0	\$0	\$20,000	\$0	\$0	\$20,000

AFFECTED AREA: Richmond, North Richmond



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Wildcat Creek Silt Survey

WORK ORDER: 9705 ID: 3

PROJECT DESCRIPTION: Perform focused topographic surveys at six predesignated cross section locations to determine the amount of sediment accumulation and to determine the need for channel desilting. Channel desilting, once determined to be needed, would be scoped under a separate CIP entity.

PROJECT NEED: The current operations and maintenance manual produced by the Corps requires annual sediment surveys. These surveys are a method to determine channel capacity and are in lieu of a more comprehensive survey and hydraulic model.

SUPERVISOR DISTRICT: I

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 4

FUNDING SOURCE(S): FC Zone 7, TBD

TOTAL PROJECT COST: \$40,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$20,000	\$0	\$0	\$20,000
FUNDING SOURCE(S):							
Flood Control Zone 7	\$0	\$0	\$0	\$20,000	\$0	\$0	\$20,000

AFFECTED AREA: Richmond



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:



## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Wildcat Sediment Basin Desilt

WORK ORDER: WO TBD ID: 5

PROJECT DESCRIPTION: Remove accumulated sediment from the Wildcat Creek Sediment Basin and stockpile on adjacent storage site for later off haul.

PROJECT NEED: The Wildcat Creek sediment basin is designed to trap sediment and prevent sediment accumulation in more sensitive areas downstream. If it is not periodically desilted, the basin becomes less effective and sediment escapes downstream.

SUPERVISOR DISTRICT: I

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 2

FUNDING SOURCE(S): Flood Control Zone 7, Unfunded

TOTAL PROJECT COST: \$900,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$300,000	\$0	\$0	\$300,000	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 7	\$0	\$27,000	\$0	\$0	\$27,000	\$0	\$0
Unfunded	\$0	\$273,000	\$0	\$0	\$273,000	\$0	\$0

AFFECTED AREA: Richmond



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: Basin was last desilted in 2010-2011.

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: DA 73 Drainage Plan Update - Richmond

WORK ORDER: WO TBD ID: 10

PROJECT DESCRIPTION: Update the Drainage Area 73 Drainage Plan to reflect community needs

PROJECT NEED: Drainage Area 73 has an outdated plan, and it does not reflect current drainage needs. In collaboration with the City of Richmond and community stakeholders, this project will develop an updated drainage plan and a list of drainage projects to accommodate current drainage needs.

SUPERVISOR DISTRICT: I

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 3

FUNDING SOURCE(S): Drainage Area 73

TOTAL PROJECT COST: \$50,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$50,000	\$0	\$0	\$0
FUNDING SOURCE(S):							
Drainage Area 73	\$0	\$0	\$0	\$50,000	\$0	\$0	\$0

AFFECTED AREA: Richmond



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: San Pablo Conditions Assessment

WORK ORDER: WO TBD ID: 18

PROJECT DESCRIPTION: Hire specialized consultants to assess conditions of existing facilities. Two-phase approach: start with initial assessment, and proceed to more detailed assessment as warranted.

PROJECT NEED: Need to identify deficiencies and conduct a retrofit plan, if needed.

SUPERVISOR DISTRICT: I

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 1

FUNDING SOURCE(S): Unfunded

TOTAL PROJECT COST: \$20,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$20,000	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Unfunded	\$0	\$0	\$20,000	\$0	\$0	\$0	\$0

AFFECTED AREA: Community of North Richmond and San Pablo



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): No

NOTE:



## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Wildcat Conditions Assessment

WORK ORDER: WO TBD ID: 19

PROJECT DESCRIPTION: Hire specialized consultants to assess conditions of existing facilities. Two-phase approach: start with initial assessment, and proceed to more detailed assessment as warranted.

PROJECT NEED: Need to identify deficiencies and conduct a retrofit plan, if needed.

SUPERVISOR DISTRICT: I

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 1

FUNDING SOURCE(S): Flood Control District Fund 7505

TOTAL PROJECT COST: \$20,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$20,000	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Unfunded	\$0	\$0	\$20,000	\$0	\$0	\$0	\$0

AFFECTED AREA: Richmond, E. Richmond Heights, San Pablo, and Community of N. Richmond



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

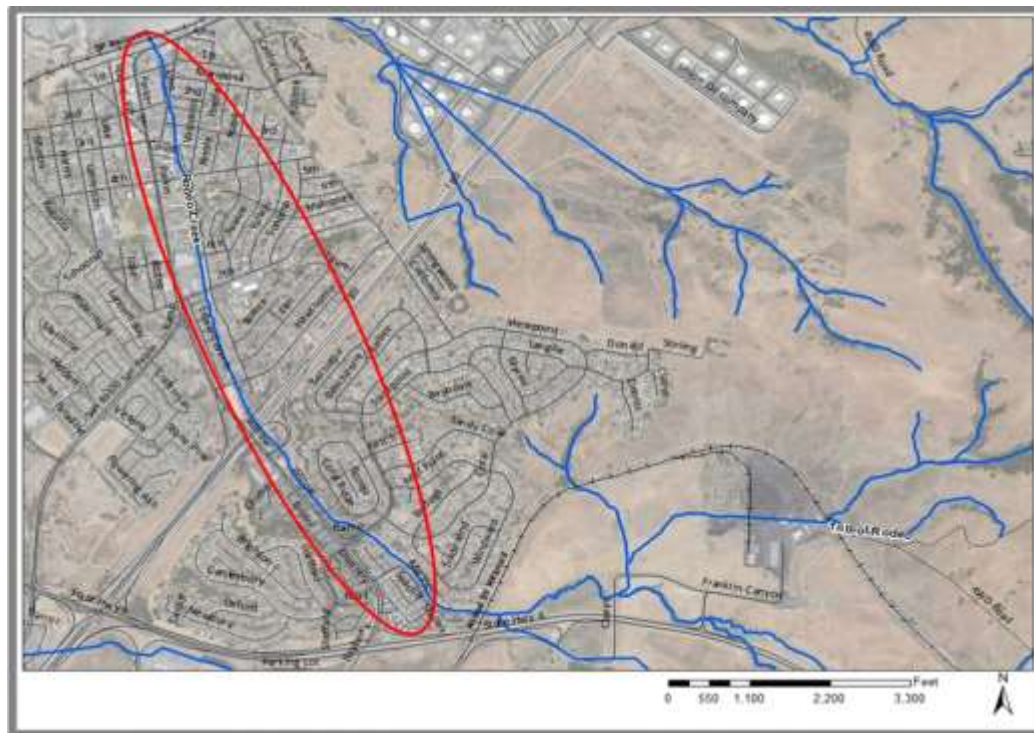
## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME:	Rodeo Conditions Assessment	
WORK ORDER:	WO TBD	ID: 20
PROJECT DESCRIPTION:	Hire specialized consultants to assess conditions of existing facilities. Two-phase approach: start with initial assessment, and proceed to more detailed assessment as warranted.	
PROJECT NEED:	Need to identify deficiencies and conduct a retrofit plan, if needed.	
SUPERVISOR DISTRICT:	V	
PROGRAM TYPE:	<u>System Preservation</u>	
PROJECT PRIORITY:	1	
FUNDING SOURCE(S):	Unfunded	
TOTAL PROJECT COST:	\$125,000	

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$80,000	\$0	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Unfunded	\$0	\$80,000	\$0	\$0	\$0	\$0	\$0

AFFECTED AREA: The unincorporated community of Rodeo



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: Prior year expenditures not shown.

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: DA46 Grayson and Murderer's Creek Subregional Improvements

WORK ORDER: TBD ID: 106

PROJECT DESCRIPTION: In partnership with the City of Pleasant Hill, the project will identify, design and implement sub-regional drainage improvements in the Grayson / Murderer's Creeks subwatershed. Likely projects are capacity improvements at bridges, floodwalls along sections of creek, and collector storm drains to more efficiently deliver stormwater to the creek.

PROJECT NEED: Downtown Pleasant Hill and Poet's Corner areas are identified on the FEMA maps as having moderate flood risk. Area flooded in 1997 and again in 2006. City desires a project to take residents out of the floodplain. Early indications from the Corps study were favorable, but project ultimately did not have a sufficient benefit / cost ratio, or federal funding. This local, smaller project is the result.

SUPERVISOR DISTRICT: IV

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 2

FUNDING SOURCE(S): Drainage Area 46 funds + City of Pleasant Hill funds

TOTAL PROJECT COST: \$1,188,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$528,000	\$660,000	\$0	\$0
FUNDING SOURCE(S):							
Drainage Area 46	\$0	\$0	\$0	\$528,000	\$626,000	\$0	\$0
Unfunded	\$0	\$0	\$0	\$0	\$34,000	\$0	\$0

AFFECTED AREA: Pleasant Hill



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: DA46 plan amendment needed before implementation of this project.



## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Grayson Creek Levee Rehabilitation at CCCSD Treatment Plant

WORK ORDER: 8348 ID: 107

PROJECT DESCRIPTION: Raise levees along Grayson Creek along STA 8+00 to 39+00 LT to improve level of protection at CCCSD treatment plant.

PROJECT NEED: Additional flood protection is desired at the CCCSD Treatment Plant from Grayson Creek. This is in addition to the 2007 project that increased flood protection to a 100-year design storm level.

SUPERVISOR DISTRICT: V

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 1

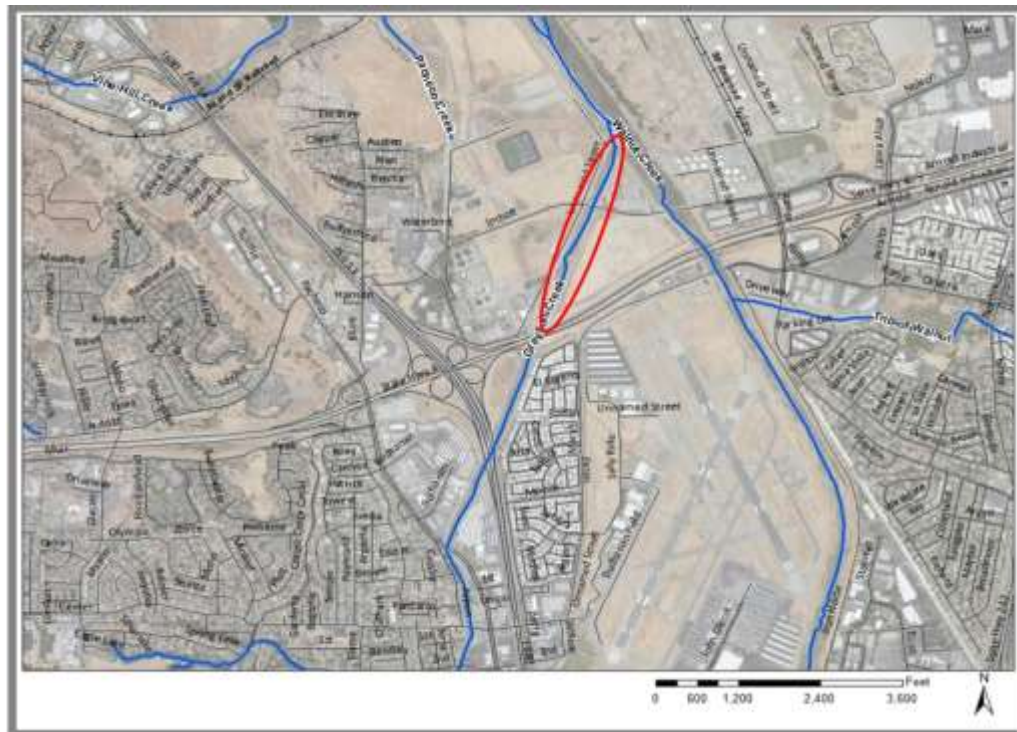
FUNDING SOURCE(S): Flood Control Zone 3B and CCCSD

TOTAL PROJECT COST: \$2,572,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$280,000	\$292,000	\$1,800,000	\$200,000	\$0	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 3B	\$140,000	\$146,000	\$900,000	\$100,000	\$0	\$0	\$0
Other	\$140,000	\$146,000	\$900,000	\$100,000	\$0	\$0	\$0

AFFECTED AREA: Martinez area, Unincorporated County



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Grayson Creek Channel Fence Rehabilitation

WORK ORDER: WO TBD ID: 108

PROJECT DESCRIPTION: Repair Fences along Grayson Creek concrete channel as part of our Creek and Channel Safety Program

PROJECT NEED: Existing fence posts are starting to rust and spalling concrete from the channel wall. This project would renovate existing fence posts and fence, rehabilitate the damaged concrete wall, and replace the failing fence with new material. This project would extend the useful life of the protective fenceline, as well as preventing further deterioration of the concrete wall as part of our Creek and Channel Safety Program.

SUPERVISOR DISTRICT: IV

PROGRAM TYPE: Public Safety

PROJECT PRIORITY: 3

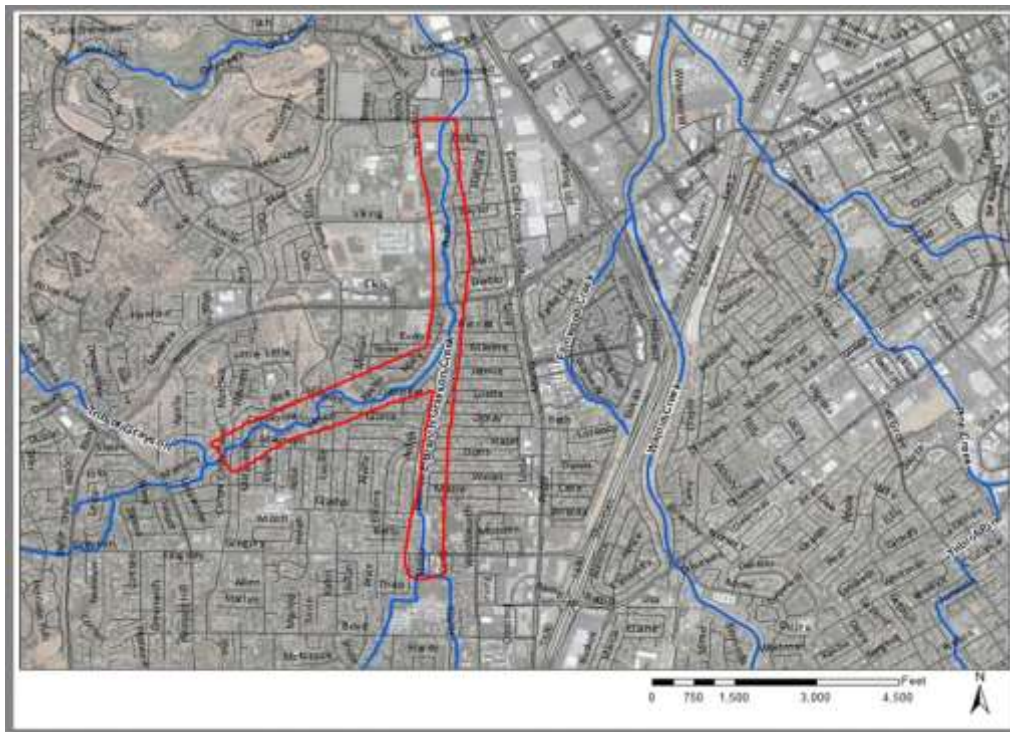
FUNDING SOURCE(S): Flood Control Zone 3B

TOTAL PROJECT COST: \$500,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$500,000	\$0	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 3B	\$0	\$0	\$0	\$500,000	\$0	\$0	\$0

AFFECTED AREA: Pleasant Hill



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Grayson Creek Sediment Removal

WORK ORDER: 8334 ID: 109

PROJECT DESCRIPTION: Remove accumulated sediment from Grayson creek between confluence with Walnut Creek to Chilpancingo Parkway (about 9,000 linear feet in selected areas)

PROJECT NEED: Remove accumulated sediment to restore design flood capacity of the channel. Exact areas to be desilted will be determined with a pre-design topographic silt survey.

SUPERVISOR DISTRICT: IV & V

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 1

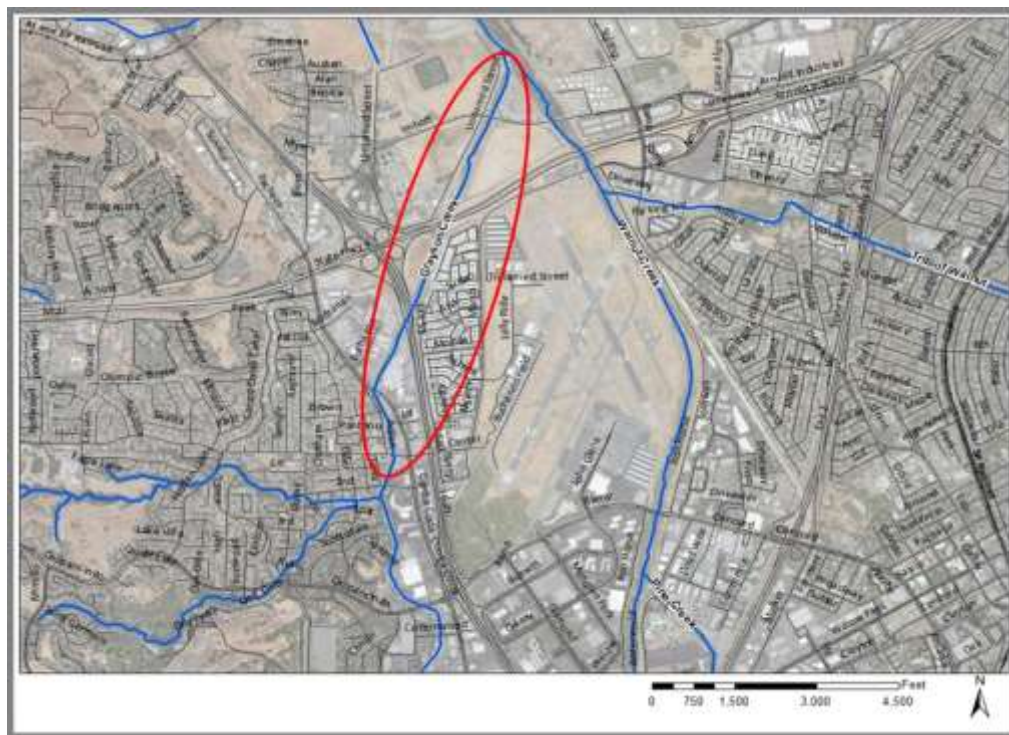
FUNDING SOURCE(S): Flood Control Zone 3B

TOTAL PROJECT COST: \$2,005,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$20,000	\$125,000	\$1,860,000	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 3B	\$20,000	\$125,000	\$1,860,000	\$0	\$0	\$0	\$0

AFFECTED AREA: Pleasant Hill, Pacheco



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: Portions of this area was last desilted in 2006. Effort shared with Walnut Creek desilt (#118)



## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Lower Walnut Creek Restoration Project

WORK ORDER: 8285 ID: 110

PROJECT DESCRIPTION: Transform Lower Walnut Creek from an antiquated, difficult to maintain, legacy USACE facility into a sustainable, environmentally sensitive facility for the next 50 years. Project includes modification of project levees, acquisition of flowage easements and possible reconfiguration of the channel conveyance to better accommodate sediment and habitat.

PROJECT NEED: The Lower Walnut Creek project incorporates a new way of approaching the traditional methods of operating and maintaining a flood control facility. This alternative approach moves away from the single purpose, flood protection USACE design, to a sustainable, environmentally sensitive plan that will restore appropriate floodplains and habitat in the area.

SUPERVISOR DISTRICT: V

PROGRAM TYPE: System Preservation

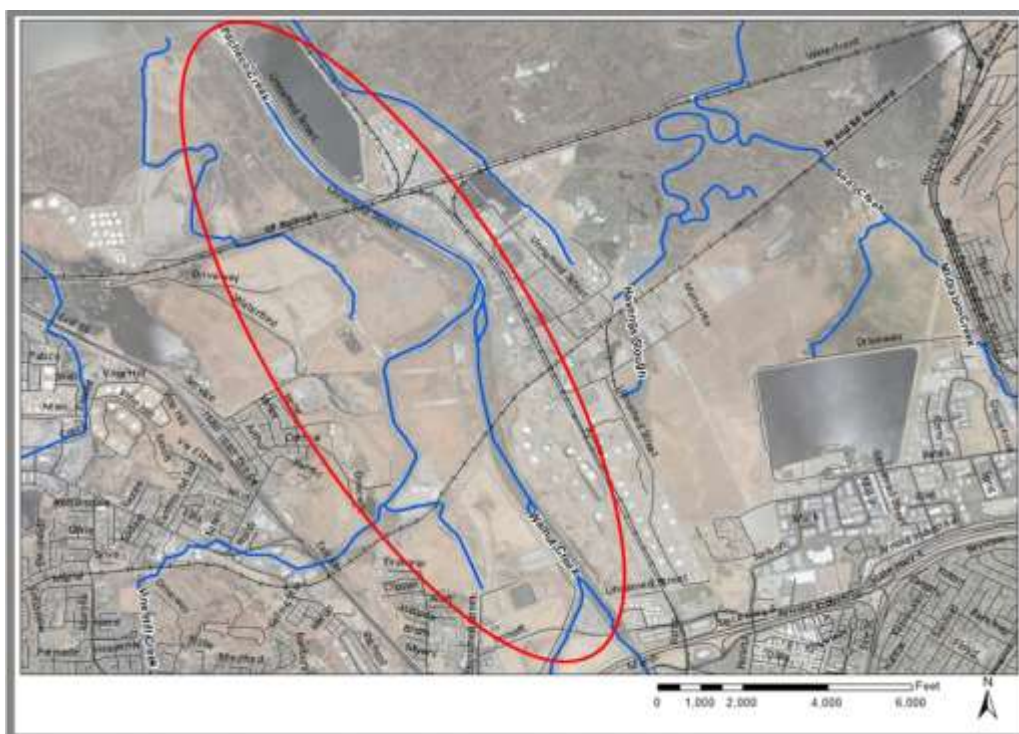
PROJECT PRIORITY: 1

FUNDING SOURCE(S): Flood Control Zone 3B and Regional, State and federal Grant Funds (TBD)

TOTAL PROJECT COST: \$41,630,000

	PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)						
	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$340,000	\$692,000	\$762,000	\$13,950,000	\$500,000	\$450,000	\$450,000
FUNDING SOURCE(S):							
Flood Control Zone 3B	\$165,000	\$292,000	\$525,000	\$4,700,000	\$0	\$0	\$0
Grants	\$175,000	\$400,000	\$237,000	\$1,250,000	\$0	\$0	\$0
Unfunded	\$0	\$0	\$0	\$8,000,000	\$500,000	\$450,000	\$450,000

AFFECTED AREA: Martinez, Pacheco, Concord



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: Signature District project. Prior and future year expenditures not shown. Existing grants received from CDFW and EPA. Anticipated future grants to cover unfunded.

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Pacheco Marsh Restoration

WORK ORDER: 8494 ID: 111

PROJECT DESCRIPTION: Project is another name for the North Reach of Lower Walnut Creek (CIP#110.) Pacheco Marsh is unique in that it has different partners for restoration than the rest of LWC and, as such, is worthy of a separate CIP designation. This project intends to directly follow implementation of LWC Restoration (CIP#110) and will provide recreational amenities, additional habitat creation and long term stewardship of the site.

PROJECT NEED: A restored Pacheco Marsh will provide 126 acres of quality habitat for a number of rare and endangered species, as well as passive recreation amenities.

SUPERVISOR DISTRICT: V

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 1

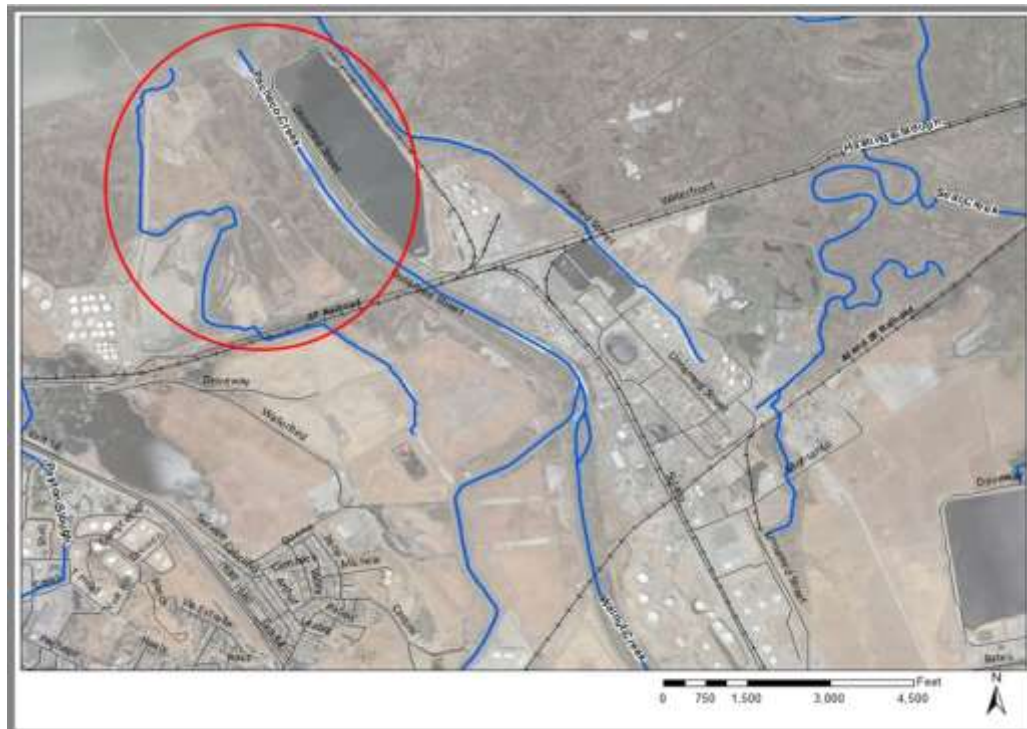
FUNDING SOURCE(S): Flood Control Zone 3B + funds from EBRPD, John Muir Land Trust, and future state and federal grants (TBD)

TOTAL PROJECT COST: \$10,895,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$75,000	\$5,675,000	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 3B	\$0	\$0	\$0	\$75,000	\$75,000	\$0	\$0
Unfunded	\$0	\$0	\$0	\$0	\$5,600,000	\$0	\$0

AFFECTED AREA: Martinez



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: reference "Pacheco Marsh Public Access Plan-draft Vision Concepts", Alternative B (Placeworks. 4/102017) for details. Anticipate John Muir Land Trust funds to cover unfunded amount.

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Update DA 10 for Danville Area

WORK ORDER: 8302 ID: 113

PROJECT DESCRIPTION: Update Drainage Area 10 Plan for Danville and develop a project for implementing the remaining elements of the drainage area plan in coordination with the Town of Danville

PROJECT NEED: This project is needed to update existing drainage plan and determine future drainage improvements and related costs.

SUPERVISOR DISTRICT: II

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 4

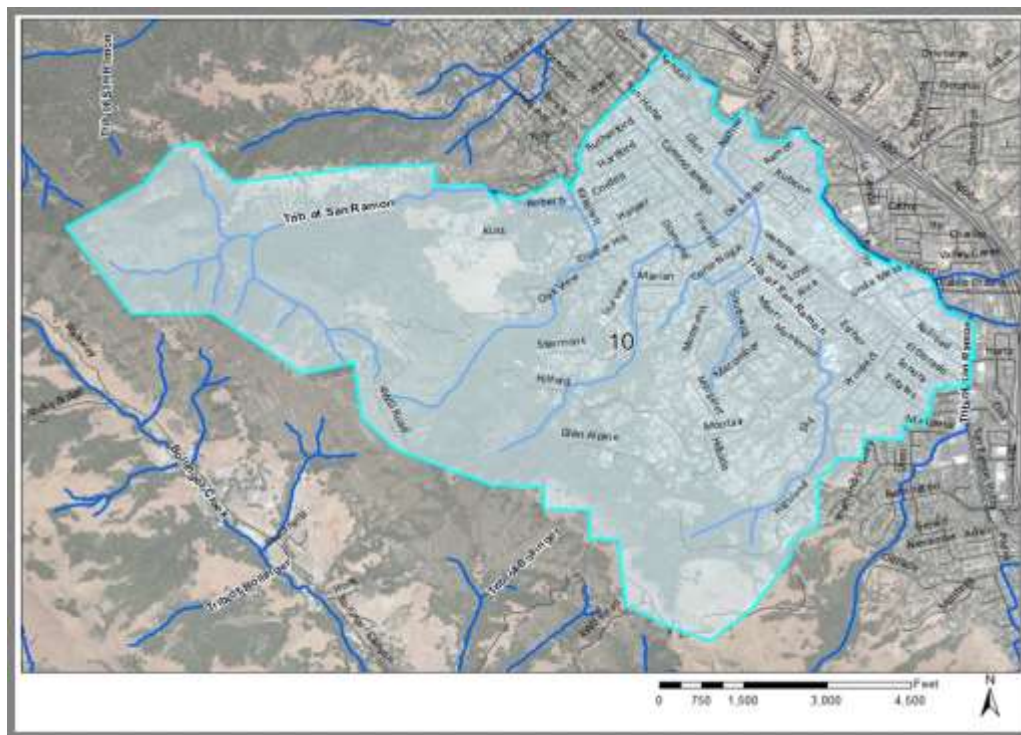
FUNDING SOURCE(S): Drainage Area funds

TOTAL PROJECT COST: \$86,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$17,000	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Drainage Area 10	\$0	\$0	\$17,000	\$0	\$0	\$0	\$0

AFFECTED AREA: Danville



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): YES

NOTE: Prior year expenditures not shown.



## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Update DA 13 Plan for Western Alamo

WORK ORDER: 8303 ID: 114

PROJECT DESCRIPTION: Update the DA13 drainage plan and related costs

PROJECT NEED: The adopted DA13 plan is old, and it does not reflect the current needs of the community. This project would update the plan so it is relevant, current, and ensures DA13 fees and ad valorem revenue are adequate to implement the needed capital projects.

SUPERVISOR DISTRICT: II

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 3

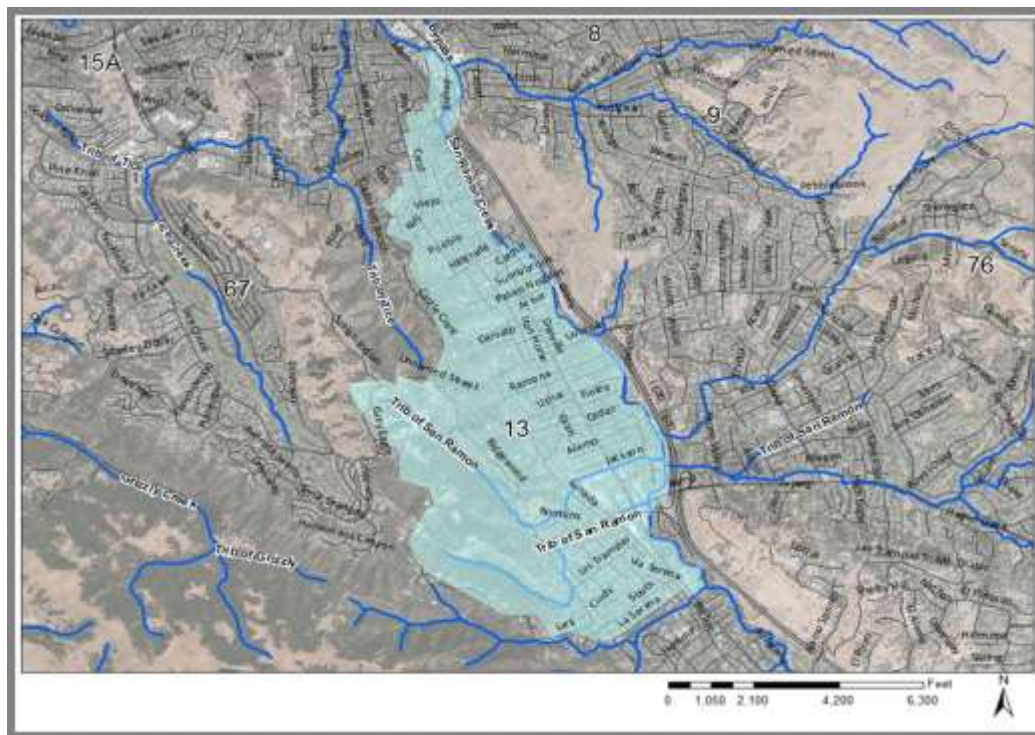
FUNDING SOURCE(S): Drainage Area 13 ad-valorem tax and drainage fee funds

TOTAL PROJECT COST: \$174,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$33,000	\$0	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Drainage Area 13	\$0	\$33,000	\$0	\$0	\$0	\$0	\$0

AFFECTED AREA: Alamo



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): No

NOTE: Prior year expenditures not shown.

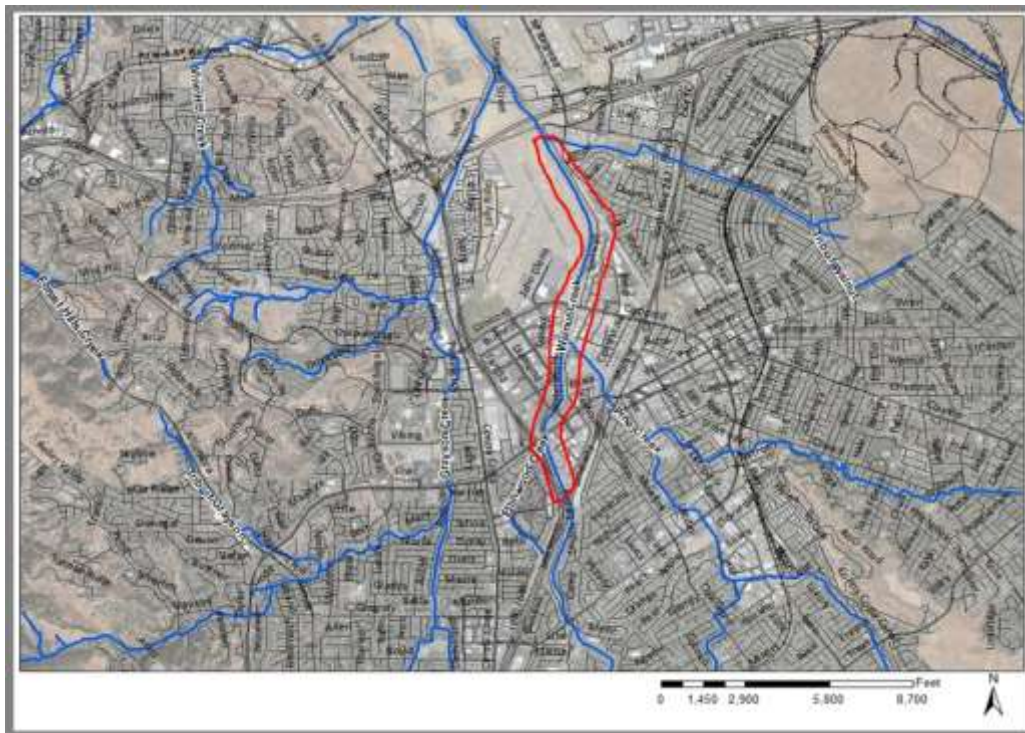
## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Walnut Creek Sediment Removal - Clayton Valley Drain to Drop Structure 1  
WORK ORDER: 8334 ID: 118  
PROJECT DESCRIPTION: Remove accumulated sediment from upland benches in Walnut Creek to restore channel capacity and restore wetlands  
PROJECT NEED: Remove accumulated sediment to restore design flood capacity of the channel. Exact areas to be desilted will be determined with a pre-design topographic silt survey.  
SUPERVISOR DISTRICT: IV  
PROGRAM TYPE: System Preservation  
PROJECT PRIORITY: 1  
FUNDING SOURCE(S): Flood Control Zone 3B  
TOTAL PROJECT COST: \$4,525,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$50,000	\$125,000	\$4,250,000	\$100,000	\$0	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 3B	\$50,000	\$125,000	\$4,250,000	\$100,000	\$0	\$0	\$0

AFFECTED AREA: Concord, Pleasant Hill



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: Effort shared with Grayson desilt (#109)

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME:	Kubicek Basin Sediment Removal	
WORK ORDER:	WO TBD	ID: 121
PROJECT DESCRIPTION:	Remove sediment and restore habitat to ensure basin continues to function as designed	
PROJECT NEED:	The Pine Creek Detention Basin -- now known as the Kubicek Basin -- was designed for sediment storage. This sediment needs to be periodically removed to ensure proper functioning of the basin. Sediment has not been removed since the basin was constructed in the 1970s.	
SUPERVISOR DISTRICT:	IV	
PROGRAM TYPE:	<u>System Preservation</u>	
PROJECT PRIORITY:	3	
FUNDING SOURCE(S):	Flood Control Zone 3B	
TOTAL PROJECT COST:	\$88,000	

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$40,000	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 3B	\$0	\$0	\$0	\$0	\$40,000	\$0	\$0

AFFECTED AREA: Walnut Creek, Concord



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: Prior year expenditures not shown.



## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Pine Creek Dam Seismic Assessment

WORK ORDER: 8346 ID: 122

PROJECT DESCRIPTION: Hire specialized consultant to assess seismic performance of existing dam and recommend retrofit improvements. Two-phase approach: start with hazard assessment, and proceed to more detailed geotechnical analysis if warranted.

PROJECT NEED: This project would identify deficiencies and conduct a retrofit plan, if needed.

SUPERVISOR DISTRICT: IV

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 3

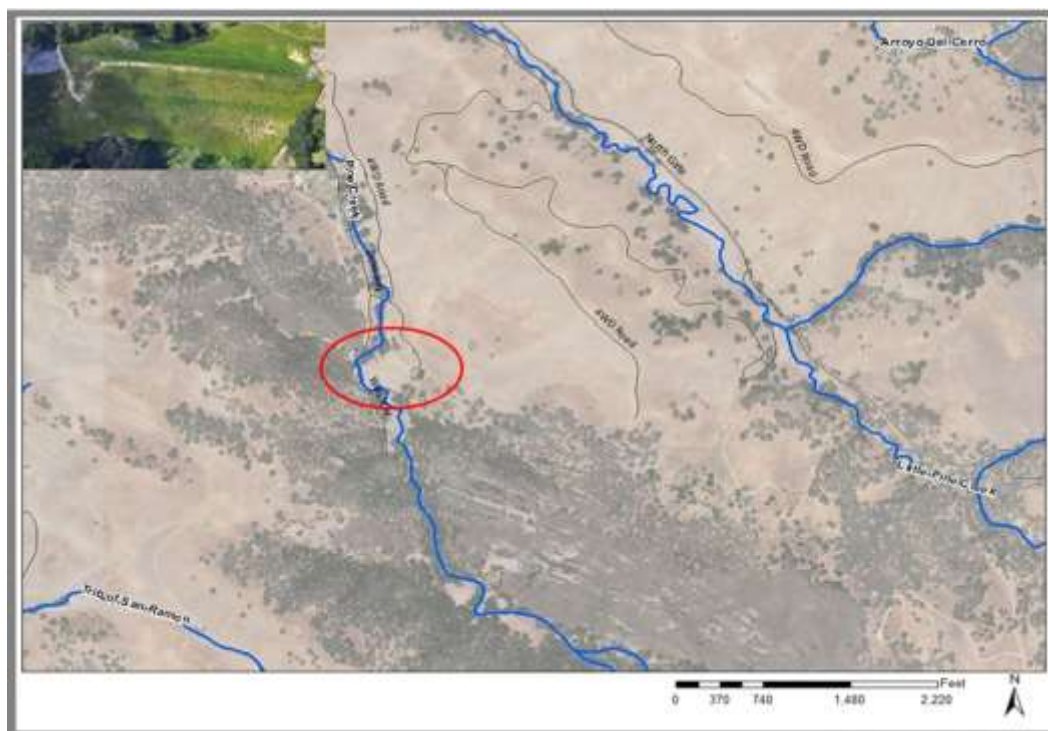
FUNDING SOURCE(S): Flood Control Zone 3B

TOTAL PROJECT COST: \$300,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$110,000	\$190,000	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 3B	\$0	\$0	\$0	\$110,000	\$190,000	\$0	\$0

AFFECTED AREA: Walnut Creek, Unincorporated County



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Pine Creek Reservoir Functional Assessment

WORK ORDER: WO TBD ID: 123

PROJECT DESCRIPTION: Conduct a assessment of the existing Pine Creek Dam to ensure it meets DSOD standards and still provides the proper hydraulic performance. Verify hydrologic design assumptions and compare to current development plans of the watershed. Determine if the downstream Kubicek Basin can hydraulically handle a situation where the Pine Creek Dam is removed and not replaced.

PROJECT NEED: Pine Creek dam is an older facility; need to ensure it meets current safety standards and rehabilitate if needed. This project would cover assessment only, and will be revisited if significant rehabilitation is found to be necessary.

SUPERVISOR DISTRICT: IV

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 3

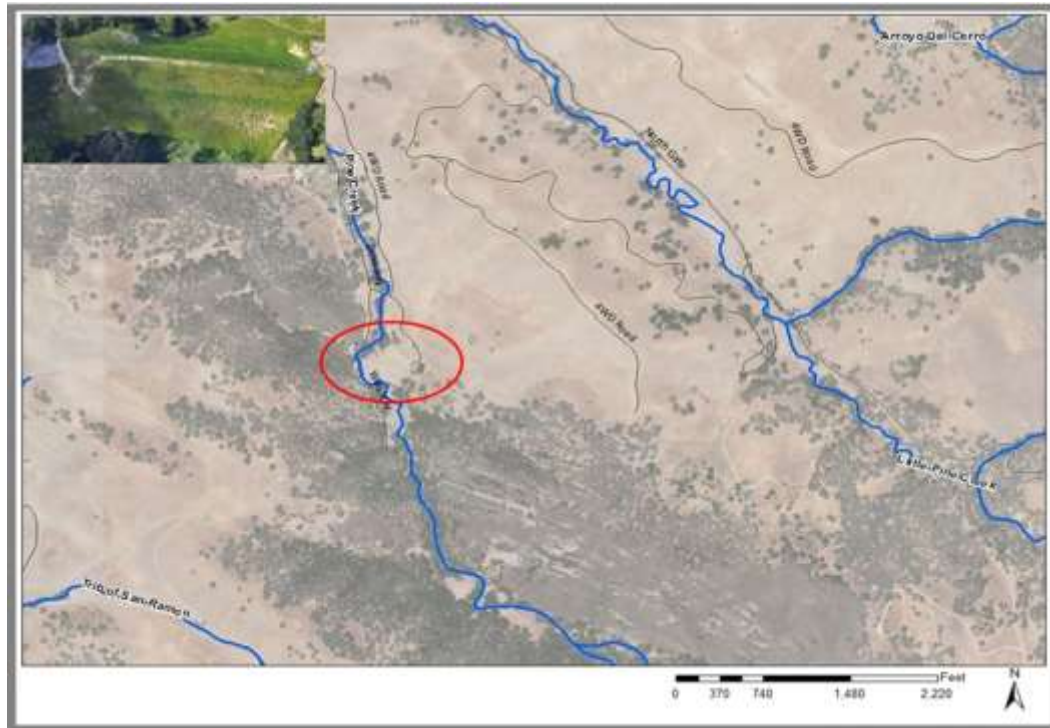
FUNDING SOURCE(S): Flood Control Zone 3B

TOTAL PROJECT COST: \$143,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$143,000	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 3B	\$0	\$0	\$143,000	\$0	\$0	\$0	\$0

AFFECTED AREA: Walnut Creek, Unincorporated County



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: Assessment only; rehabilitation not included. Seismic evaluation is covered under a separate CIP entry because seismic work will likely be combined with other dams.

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Galindo Creek Improvements

WORK ORDER: WO TBD ID: 127

PROJECT DESCRIPTION: Participate with City of Concord and USACE to construct a stormwater detention basin on Galindo Creek upstream of Ygnacio Valley Road (CSU East Bay Campus). Basin will be created with a modification to the existing headwall.

PROJECT NEED: This project would reduce flood risk to properties in the floodplain between Ygnacio Valley and the start of the concrete channel portion of Galindo Creek in the City of Concord. USACE and Concord have completed a federal reconnaissance study.

SUPERVISOR DISTRICT: IV

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 5

FUNDING SOURCE(S): Flood Control Zone 3B and the City of Concord

TOTAL PROJECT COST: \$500,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$20,000	\$480,000
FUNDING SOURCE(S):							
Flood Control Zone 3B	\$0	\$0	\$0	\$0	\$0	\$20,000	\$40,000
Unfunded	\$0	\$0	\$0	\$0	\$0	\$0	\$440,000

AFFECTED AREA: Concord



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: Assume Concord will be the lead agency for CEQA/permits. Expect larger total project with additional funding by other partners. \$500k is max FC Zone 3B contribution.



## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Flood Control Zone 3B Channels and Structures Conditions Assessment

WORK ORDER: 8353 ID: 130

PROJECT DESCRIPTION: Hire specialized consultants to assess conditions of existing facilities. Two-phase approach: start with initial assessment, and proceed to more detailed assessment as warranted.

PROJECT NEED: Need to identify deficiencies and conduct a retrofit plan, if needed.

SUPERVISOR DISTRICT: IV & V

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 1

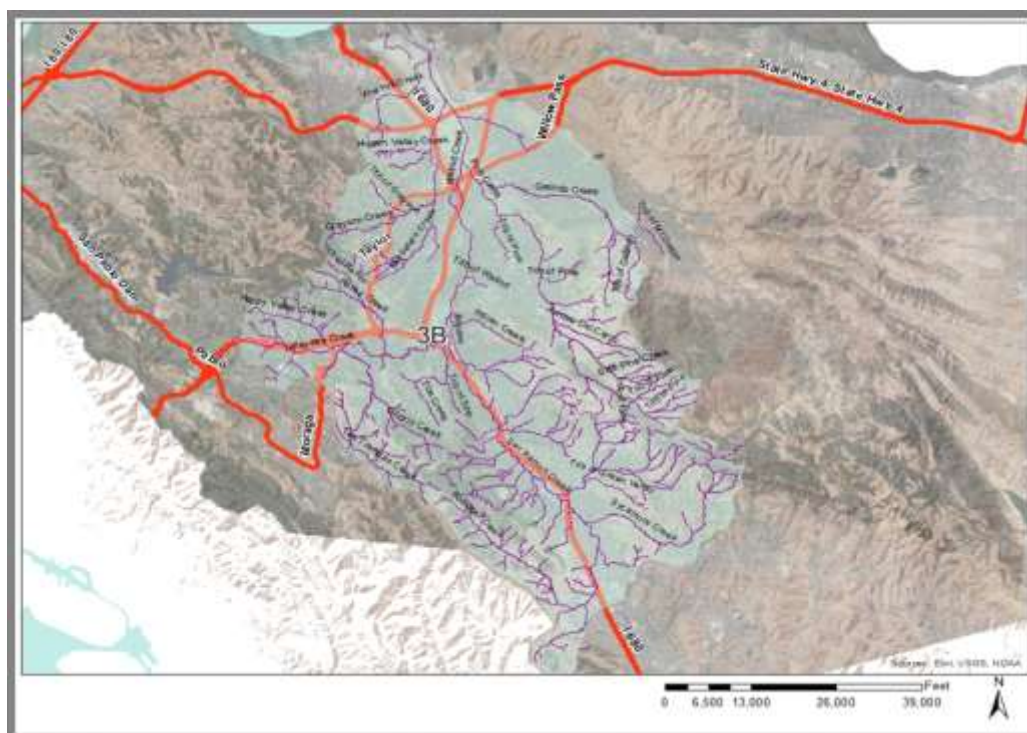
FUNDING SOURCE(S): Flood Control Zone 3B

TOTAL PROJECT COST: \$915,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$375,000	\$400,000	\$140,000	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 3B	\$375,000	\$400,000	\$140,000	\$0	\$0	\$0	\$0

AFFECTED AREA: Pleasant Hill, Walnut Creek, Concord, and unincorporated.



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Canyon Lakes Facilities Conditions Assessment

WORK ORDER: 8361 ID: 132

PROJECT DESCRIPTION: Hire specialized consultants to assess conditions of existing facilities. Two-phase approach: start with initial assessment, and proceed to more detailed assessment as warranted.

PROJECT NEED: Need to identify deficiencies and conduct a retrofit plan, if needed.

SUPERVISOR DISTRICT: II

PROGRAM TYPE: System Preservation

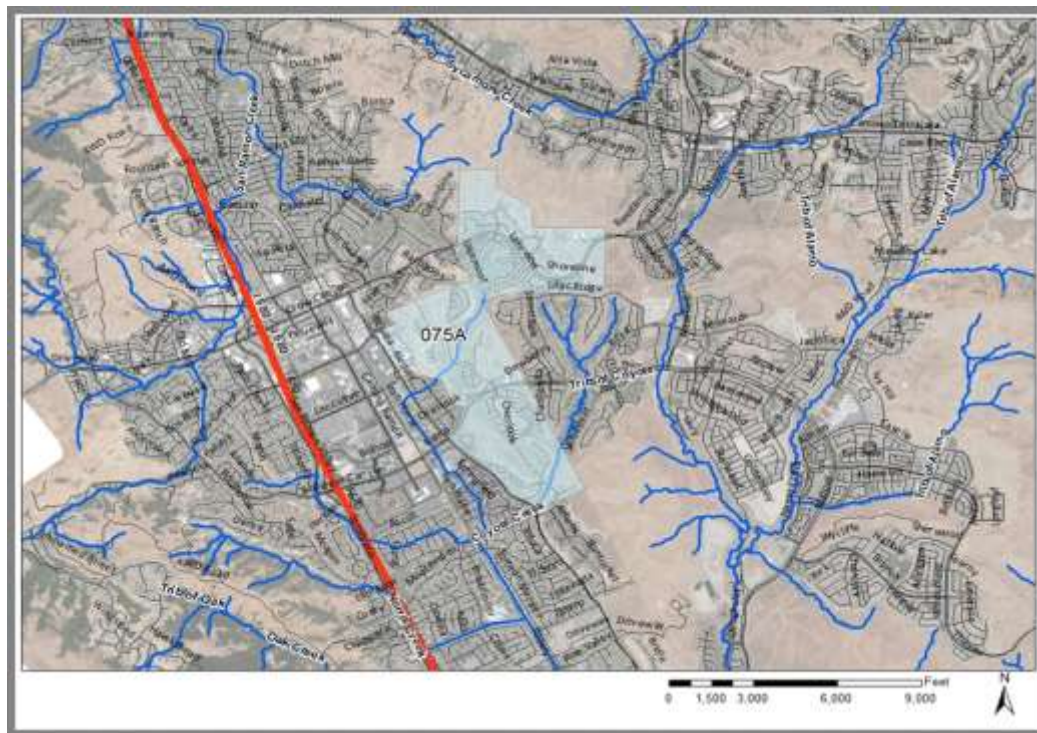
PROJECT PRIORITY: 1

FUNDING SOURCE(S): DABA 75A

TOTAL PROJECT COST: \$100,000

	<u>PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)</u>						
	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$10,000	\$90,000	\$0	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Drainage Area 75A	\$10,000	\$90,000	\$0	\$0	\$0	\$0	\$0

AFFECTED AREA: The City of San Ramon



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Rassier Ranch Basin Conditions Assessment

WORK ORDER: 8362 ID: 134

PROJECT DESCRIPTION: Hire specialized consultants to assess conditions of existing facilities. Two-phase approach: start with initial assessment, and proceed to more detailed assessment as warranted.

PROJECT NEED: Need to identify deficiencies and conduct a retrofit plan, if needed.

SUPERVISOR DISTRICT: II

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 1

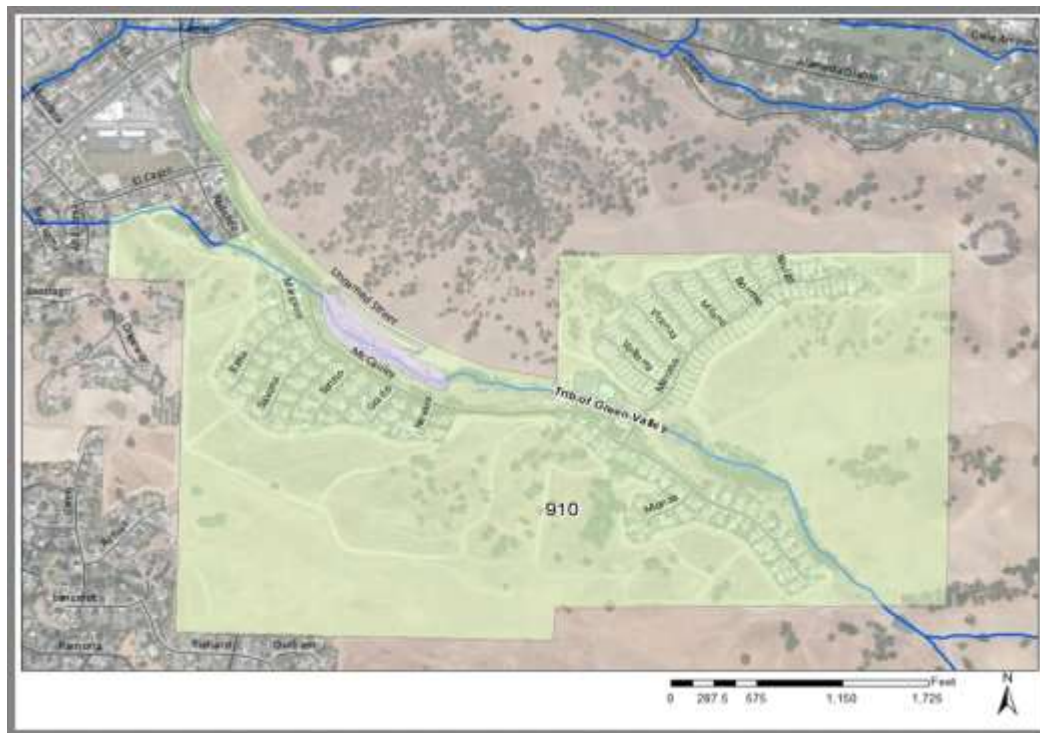
FUNDING SOURCE(S): DABA 910

TOTAL PROJECT COST: \$26,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$26,000	\$0	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Drainage Area 910	\$0	\$26,000	\$0	\$0	\$0	\$0	\$0

AFFECTED AREA: Danville



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: See #130.



## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME:	Shadow Creek Basin Conditions Assessment	
WORK ORDER:	WO TBD	ID: 136
PROJECT DESCRIPTION:	Hire specialized consultants to assess conditions of existing facilities. Two-phase approach: start with initial assessment, and proceed to more detailed assessment as warranted.	
PROJECT NEED:	Need to identify deficiencies and conduct a retrofit plan, if needed.	
SUPERVISOR DISTRICT:	III	
PROGRAM TYPE:	<u>System Preservation</u>	
PROJECT PRIORITY:	1	
FUNDING SOURCE(S):	DABA 1010A	
TOTAL PROJECT COST:	\$30,000	

	PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)						
	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$30,000	\$0	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Drainage Area 1010A	\$0	\$30,000	\$0	\$0	\$0	\$0	\$0

AFFECTED AREA: Blackhawk



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: West Antioch Creek - DA55 Culverts at 10th Street

WORK ORDER: 8399 ID: 202

PROJECT DESCRIPTION: Fund construction of quadruple box culverts on West Antioch Creek at 10th Street by the City of Antioch.

PROJECT NEED: As reported by the City, this section of West Antioch Creek floods annually because of lack of capacity under 10th Street and through the old Ford Dealer. This project would help alleviate this flooding by constructing culverts with sufficient capacity and will connect to the previously widened channel downstream. The improvement of the channel upstream of 10th Street is a separate project in this CIP.

SUPERVISOR DISTRICT: V

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 2

FUNDING SOURCE(S): Local Funds (Drainage Area 55, City funds 50%), State Grants (IRWMP Prop 1E: 50%)

TOTAL PROJECT COST: \$1,800,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$827,000	\$280,000	\$0	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Drainage Area 55	\$827,000	\$280,000	\$0	\$0	\$0	\$0	\$0

AFFECTED AREA: Antioch



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): YES

NOTE: City of Antioch is functional lead. DA55 contribution capped at \$1.8 million per 2012 agreement with Antioch. (Prior year expenditures not shown.)

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Trembath Detention Basin

WORK ORDER: 8532 ID: 207

PROJECT DESCRIPTION: Design and construct Trembath Detention Basin. Trembath Basin is a new facility. Trembath Basin will be regulated by State Division of Dam Safety.

PROJECT NEED: This project is needed to provide flood protection in the lower watershed of East Antioch Creek in accordance with the adopted Drainage Area 56 (DA 56) plan.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 2

FUNDING SOURCE(S): Drainage Area 56 (Org 7566)

TOTAL PROJECT COST: \$11,690,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$90,000	\$225,000	\$1,050,000	\$450,000	\$0	\$0	\$0
FUNDING SOURCE(S):							
Drainage Area 56	\$90,000	\$225,000	\$1,050,000	\$450,000	\$0	\$0	\$0

AFFECTED AREA: Antioch



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): YES

NOTE: Prior and future year expenditures not shown.



## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Lindsey Basin Finalization Tasks & R/W Transfer

WORK ORDER: 8126 ID: 208

PROJECT DESCRIPTION: Develop an Operations & Maintenance manual and convey basin right of way to the City of Antioch for perpetual ownership and maintenance. Generate legal description of property to be conveyed to separate basin from developable remainder parcels.

PROJECT NEED: This is a completed non-regional facility and needs to be conveyed to the local city for ownership and maintenance.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 5

FUNDING SOURCE(S): DA 56 funds (Org 7566)

TOTAL PROJECT COST: \$258,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$11,000	\$33,000	\$16,000	\$6,000	\$0
FUNDING SOURCE(S):							
Drainage Area 56	\$0	\$0	\$11,000	\$33,000	\$16,000	\$6,000	\$0

AFFECTED AREA: Antioch



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO (predates HCP adoption)

NOTE: Basin substantially completed in 2006 as part of Segment 1 of the SR4 Bypass. Still need to construct spillway across future Slaten Ranch Road.(Prior year expenditures not shown.)

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Develop Revenue Generating Sites at Lindsey Basin

WORK ORDER: WO TBD ID: 209

PROJECT DESCRIPTION: Prepare conceptual plans and a cost estimate for the development of the two District-owned remainder parcels near the Lindsey Basin. Market the parcels to generate maximum long-term revenue for the Drainage Area and / or the District.

PROJECT NEED: The Lindsey Detention Basin was designed for future re-use of spoil disposal sites as revenue-generating development. This project will facilitate this long-planned development. Project timing is a rough estimate; actual development depends on the commercial real estate market.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 5

FUNDING SOURCE(S): Drainage Area funds (Org,7566)

TOTAL PROJECT COST: \$593,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$17,000	\$17,000	\$99,000	\$102,000	\$102,000
FUNDING SOURCE(S):							
Drainage Area 56	\$0	\$0	\$17,000	\$17,000	\$99,000	\$102,000	\$102,000

AFFECTED AREA: Antioch



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: Future year expenditures not shown.

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Marsh Creek Reservoir Seismic Assessment

WORK ORDER: 8355 ID: 210

PROJECT DESCRIPTION: Hire specialized consultant to assess seismic performance of existing dam and recommend retrofit improvements, if needed. Two-phase approach: start with hazard assessment, and proceed to more detailed geotechnical analysis if warranted.

PROJECT NEED: Need to identify deficiencies and conduct a retrofit plan, if needed.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 3

FUNDING SOURCE(S): Flood Control Zone 1

TOTAL PROJECT COST: \$330,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$130,000	\$160,000	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 1	\$0	\$130,000	\$160,000	\$0	\$0	\$0	\$0

AFFECTED AREA: Brentwood



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): YES

NOTE:



## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Dry Creek Reservoir Seismic Assessment

WORK ORDER: WO TBD ID: 211

PROJECT DESCRIPTION: Hire specialized consultant to assess seismic performance of existing dam embankments and recommend retrofit improvements, if needed. Two-phase approach: start with hazard assessment, and proceed to more detailed geotechnical analysis if warranted.

PROJECT NEED: Need to identify deficiencies and conduct a retrofit plan, if needed.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 3

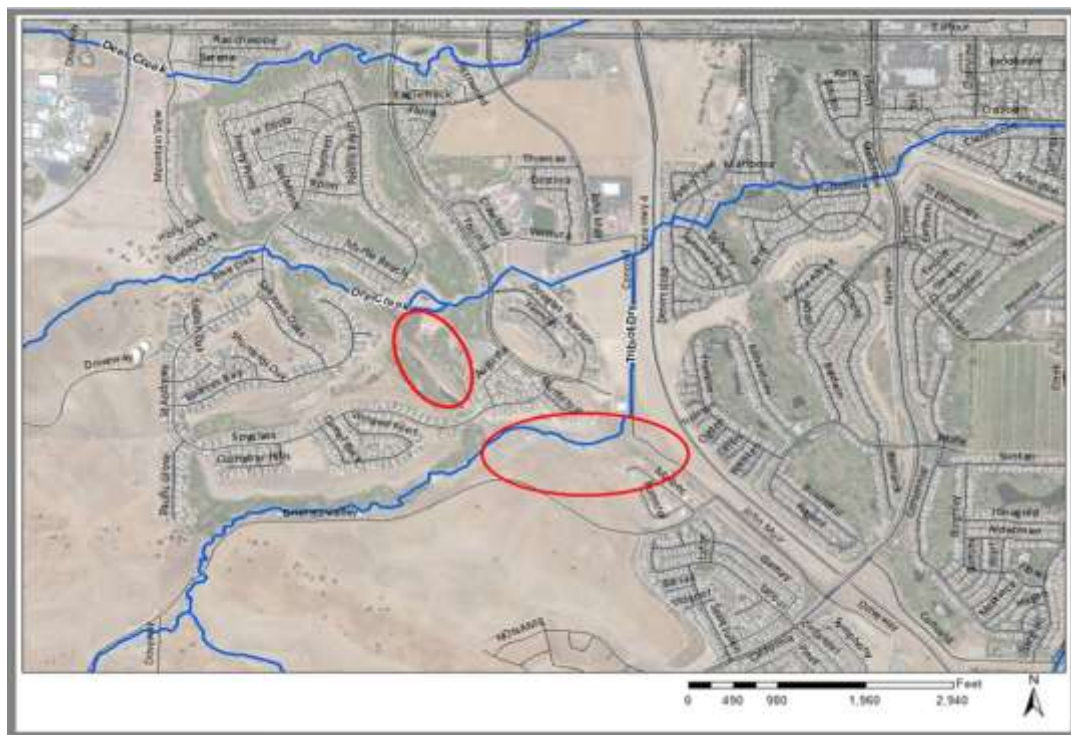
FUNDING SOURCE(S): Flood Control Zone 1

TOTAL PROJECT COST: \$360,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$140,000	\$210,000
FUNDING SOURCE(S):							
Flood Control Zone 1	\$0	\$0	\$0	\$0	\$0	\$140,000	\$210,000

AFFECTED AREA: Brentwood



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): YES

NOTE:

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Deer Creek Reservoir Seismic Assessment

WORK ORDER: 8355

ID: 212

**PROJECT DESCRIPTION:** Hire specialized consultant to assess seismic performance of existing dam and recommend retrofit improvements, if needed. Two-phase approach: start with hazard assessment, and proceed to more detailed geotechnical analysis if warranted.

**PROJECT NEED:** Need to identify deficiencies and conduct a retrofit plan, if needed.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 2

FUNDING SOURCE(S): Flood Control Zone 1

TOTAL PROJECT COST: \$200,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$90,000	\$160,000	\$0	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 1	\$90,000	\$160,000	\$0	\$0	\$0	\$0	\$0

AFFECTED AREA: Brentwood



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): YES

NOTE:

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Marsh Creek Reservoir Capacity and Habitat Restoration

WORK ORDER: 8495 ID: 213

PROJECT DESCRIPTION: Assess reservoir condition and habitat condition of impoundment area. Develop restoration plan that: maintains or improves level of flood protection, improves surrounding habitat, is compatible with surrounding state park uses, deals appropriately with accumulated mercury and accommodates mercury that will arrive at the basin in the next 50 years. After proper approvals and CEQA analysis, implement the preferred alternative.

PROJECT NEED: Marsh Creek Reservoir was constructed in 1964 as a single-purpose facility and has reduced flood risks. Now nearing a half-century of use, the reservoir has poor water quality (impacted by mercury). With the opening of the state park on surrounding lands, there is an increased pressure to allow public access. A comprehensive restoration plan is needed to guide operations of this facility and development of future projects for the next 50 years.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 3

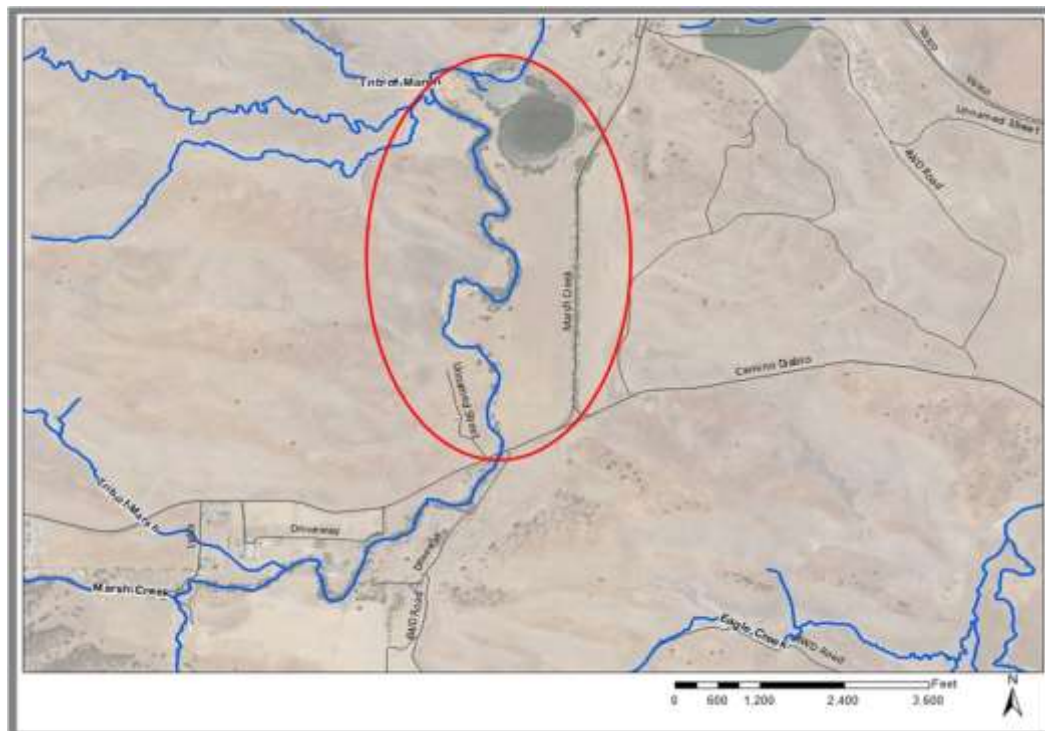
FUNDING SOURCE(S): Flood Control Zone 1, future grant funds

TOTAL PROJECT COST: \$5,500,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$55,521	\$0	\$129,000	\$109,000	\$468,000	\$4,480,000	\$210,000
FUNDING SOURCE(S):							
Flood Control Zone 1	\$55,521	\$0	\$129,000	\$109,000	\$468,000	\$1,500,000	\$210,000
Unfunded	\$0	\$0	\$0	\$0	\$0	\$2,980,000	\$0

AFFECTED AREA: Oakley, Brentwood



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): Yes

NOTE: Plan implementation may be delayed depending on other priorities for FC Zone 1 funds, (Future year expenditures not shown.)



## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Marsh Creek Supplemental Capacity

WORK ORDER: WO TBD ID: 215

PROJECT DESCRIPTION: Raise channel banks, levees and construct floodwalls to improve flood protection

PROJECT NEED: A 2010 District study identified the need for additional channel capacity upon ultimate development of the watershed. This project is needed to ensure 100-year storms are contained in the channel without overtopping and flooding adjacent neighborhoods.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 3

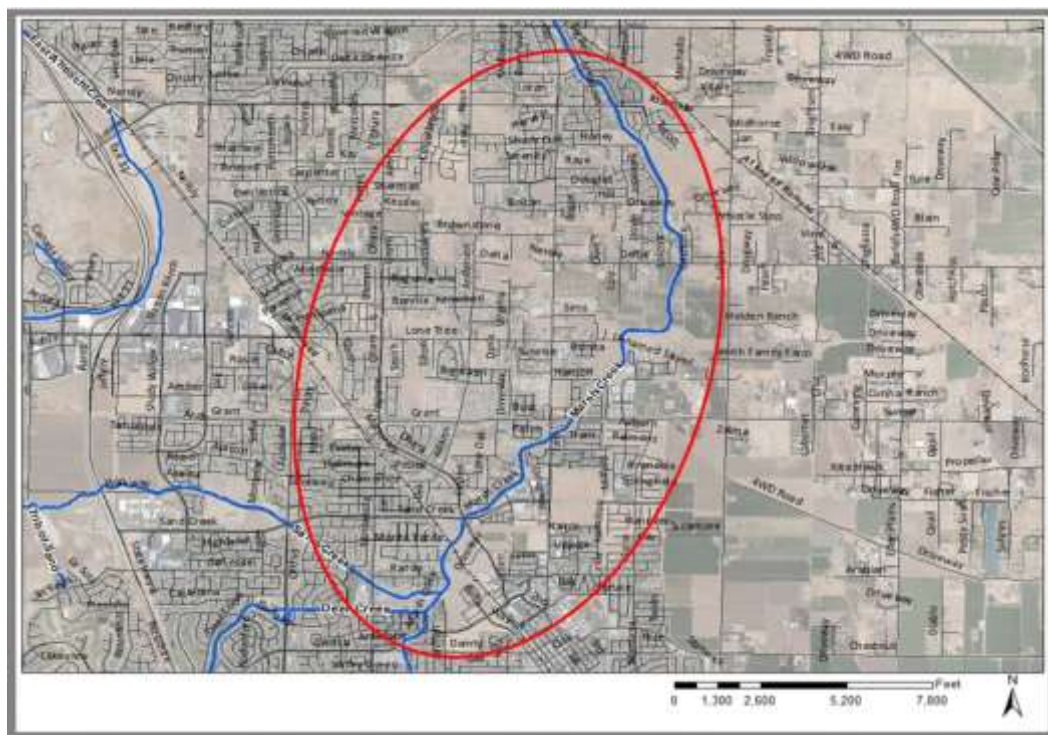
FUNDING SOURCE(S): Flood Control Zone 1, Drainage Area 130, future grant funds

TOTAL PROJECT COST: \$3,664,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$11,000	\$77,000	\$578,000
FUNDING SOURCE(S):							
Drainage Area 130	\$0	\$0	\$0	\$0	\$11,000	\$77,000	\$578,000

AFFECTED AREA: Oakley, Brentwood



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): YES

NOTE: See the 2010 study on file to contain 100-year flood flows and contain 50-year flood flows with freeboard. (Future year expenditures not shown.)

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Marsh Creek Widening Between Dainty Avenue and Sand Creek

WORK ORDER: 8466 ID: 216

PROJECT DESCRIPTION: Widen sections of the Marsh Creek Channel to improve peak flood capacity. Reconstruct access roads / trails, and construct a large retaining wall along the left bank

PROJECT NEED: Marsh Creek in this vicinity does not have capacity to contain the 100-year event, or the 50-year event with freeboard. Additional channel capacity is needed. This project is the second phase of the project at Dainty Road (and upstream) that was built in the late 1990s. This project is developed in collaboration with and is part of the larger Three Creeks Parkway Restoration Project.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 1

FUNDING SOURCE(S): Flood Control Zone 1 and Drainage Area 130

TOTAL PROJECT COST: \$2,564,800

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$52,100	\$200,000	\$1,734,000	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 1	\$26,050	\$100,000	\$867,000	\$0	\$0	\$0	\$0
Drainage Area 130	\$26,050	\$100,000	\$867,000	\$0	\$0	\$0	\$0

AFFECTED AREA: Oakley, Brentwood



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): YES

NOTE:

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Deer Creek Reservoir Expansion

WORK ORDER: 8447 ID: 217

PROJECT DESCRIPTION: Excavate the storage area of the existing Deer Creek Reservoir to increase stormwater holding capacity and reduce flood flows downstream

PROJECT NEED: This project would increase storage capacity of Deer Creek Reservoir to protect downstream properties from flooding. Work to date has established that it is more beneficial to expand the future storage volume behind the existing dam by selectively excavating the storage area rather than raising the dam.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 3

FUNDING SOURCE(S): Drainage Area 130, possible Flood Control Zone 1

TOTAL PROJECT COST: \$6,072,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$22,000	\$11,000	\$66,000	\$88,000	\$594,000
FUNDING SOURCE(S):							
Drainage Area 130	\$0	\$0	\$22,000	\$11,000	\$66,000	\$88,000	\$594,000

AFFECTED AREA: Oakley, Brentwood



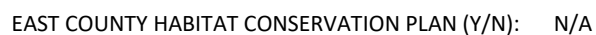
EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): YES

NOTE:



PROJECT NAME:	Deer Creek Reservoir Expansion - R/W Acquisition	
WORK ORDER:	8463	ID: 218
PROJECT DESCRIPTION:	Acquire additional land rights over area currently encumbered only by a flowage easement. This is needed for expansion of the storage area of the Deer Creek Reservoir, located south of Balfour Road in Brentwood.	
PROJECT NEED:	Need to retain additional stormwater in Deer Creek Reservoir to protect downstream properties. Instead of raising the dam, the plan is to expand the storage volume behind the existing dam by selectively excavating the storage area. The existing flowage easement is insufficient to do so; need to upgrade flowage easement into a drainage easement.	
SUPERVISOR DISTRICT:	III	
PROGRAM TYPE:	<u>System Preservation</u>	
PROJECT PRIORITY:	3	
FUNDING SOURCE(S):	Drainage Area 130, possible Flood Control Zone 1	
TOTAL PROJECT COST:	\$214,000	

AFFECTED AREA: Brentwood



November 2018

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Upper Sand Creek Basin Surplus Material

WORK ORDER: 8517 ID: 220

PROJECT DESCRIPTION: Coordinate removal of Upper Sand Creek Basin material by others, separate from main USCB contract. Includes material removed in advance of construction as well as material removed post construction. Common customers include contractors, developers and other agencies needing high quality fill material.

PROJECT NEED: Brokering dirt removal in this way typically represents an excellent value (in cost/yard<sup>3</sup>) for the District. Interest in material (and thus cost) is highly dependent on the economy. Each cubic yard of material removed gets the basin incrementally closer to its ultimate volume at a reduced cost per cubic yard.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 2

FUNDING SOURCE(S): DA 130, FC Zone 1

TOTAL PROJECT COST: \$458,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$10,000	\$72,000	\$11,000	\$66,000	\$11,000	\$66,000	\$11,000
FUNDING SOURCE(S):							
Drainage Area 130	\$10,000	\$72,000	\$11,000	\$66,000	\$11,000	\$66,000	\$11,000

AFFECTED AREA: Antioch



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): YES

NOTE: Prior and future expenditures not shown.

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Lower Sand Creek Basin Construction

WORK ORDER: 8492 ID: 222

PROJECT DESCRIPTION: Construct a 300 ac-ft regional detention basin on Sand Creek. The existing 40 ac-ft basin will be converted into an 300 ac-ft offline basin with new intake structure, primary and emergency spillways, low flow channel and riparian mitigation area.

PROJECT NEED: In conjunction with the Upper Sand Creek Basin, this lower basin will reduce stormwater flows in Sand Creek and in Marsh Creek. With the upper basin in place, the 100 year 12 hour flow rate is 1230 cfs. Once completed, the lower basin will reduce this flow rate to 209 cfs, and provide improved flood protection for Brentwood and Oakley.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 3

FUNDING SOURCE(S): Drainage Area 130, possible future Federal, State and local grants, Flood Control Zone 1

TOTAL PROJECT COST: \$7,103,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$20,000	\$20,000	\$61,000	\$116,000	\$583,000	\$424,000
FUNDING SOURCE(S):							
Drainage Area 130	\$0	\$20,000	\$20,000	\$61,000	\$116,000	\$583,000	\$424,000

AFFECTED AREA: Oakley, Brentwood



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): YES

NOTE:



## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Marsh Creek and Sand Creek Structures Conditions Assessment

WORK ORDER: 8360 ID: 227

PROJECT DESCRIPTION: Hire specialized consultants to assess conditions of existing facilities. Two-phase approach: start with initial assessment, and proceed to more detailed assessment as warranted.

PROJECT NEED: Need to identify deficiencies and conduct a retrofit plan, if needed.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 1

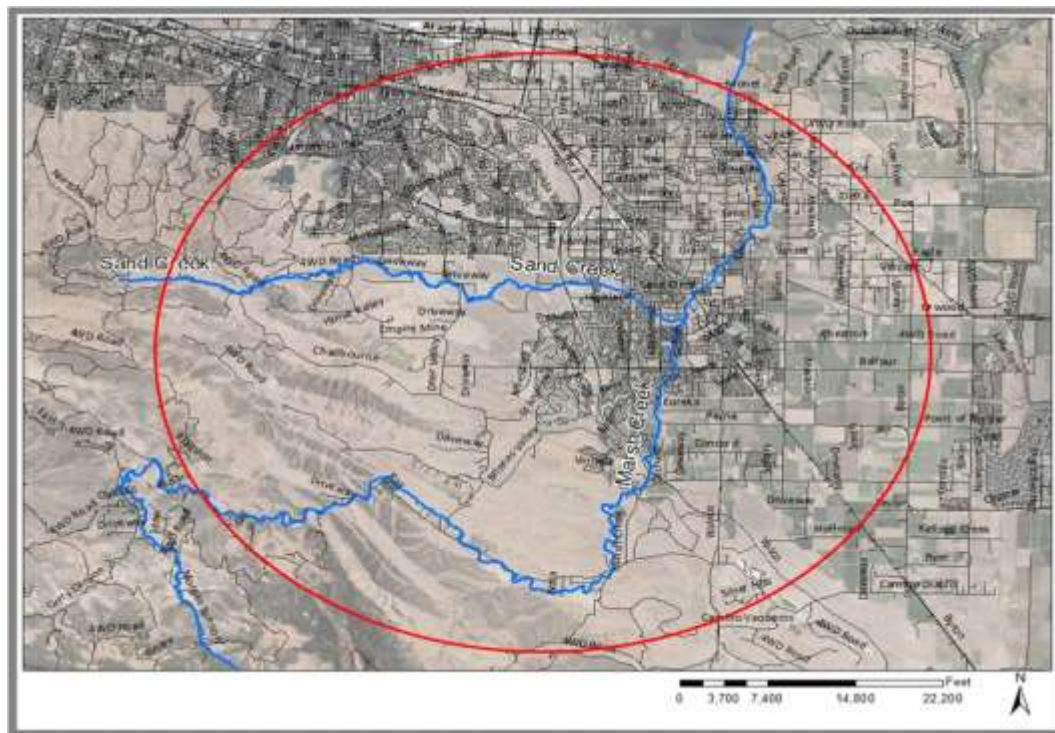
FUNDING SOURCE(S): Flood Control Zone 1

TOTAL PROJECT COST: \$510,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$310,000	\$200,000	\$0	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 1	\$310,000	\$200,000	\$0	\$0	\$0	\$0	\$0

AFFECTED AREA: The Cities of Brentwood and Oakley



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME:	Kellog Conditions Assessment	
WORK ORDER:	WO TBD	ID: 228
PROJECT DESCRIPTION:	Hire specialized consultants to assess conditions of existing facilities. Two-phase approach: start with initial assessment, and proceed to more detailed assessment as warranted.	
PROJECT NEED:	Need to identify deficiencies and conduct a retrofit plan, if needed.	
SUPERVISOR DISTRICT:	III	
PROGRAM TYPE:	<u>System Preservation</u>	
PROJECT PRIORITY:	1	
FUNDING SOURCE(S):	Unfunded	
TOTAL PROJECT COST:	\$23,000	

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$23,000	\$0	\$0	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Unfunded	\$23,000	\$0	\$0	\$0	\$0	\$0	\$0

AFFECTED AREA: The Cities of Byron and Discovery Bay



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Marsh Creek Reservoir Emergency Spillway Rehabilitation  
 WORK ORDER: TBD  
 PROJECT DESCRIPTION: Improve performance of spillway by extending concrete apron to Marsh Creek  
 PROJECT NEED: To avoid toe erosion upon use of spill way  
 SUPERVISOR DISTRICT: III  
 PROGRAM TYPE: System Preservation  
 PROJECT PRIORITY: 2  
 FUNDING SOURCE(S): Flood Control Zone 1  
 TOTAL PROJECT COST: \$1,100,000

ID: 232

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$0	\$0	\$150,000	\$950,000	\$0	\$0	\$0
FUNDING SOURCE(S):							
Flood Control Zone 1	\$0	\$0	\$150,000	\$950,000	\$0	\$0	\$0

AFFECTED AREA: Brentwood



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N):

NOTE:





## CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: DA 13 Line F-1 Storm Drainage in Alamo

WORK ORDER: 8303 ID: 139

PROJECT DESCRIPTION: Construct a drainage line that will connect with the existing drainage network and reduce local flooding issues. The newly created drainage line (Line F-1) will consist of a 30-inch pipe that will run parallel to the Iron Horse Trail Corridor from existing line "F" at Las Trampas Road (1300 ft.), to the intersection of South Avenue. From this point the pipe will extend another 150 ft. to the southwest, to the intersection of South Avenue and La Serena Court (Fig.1). Drainage inlet structures will be placed every 250 feet (as per the County criteria) including: 6 inlets on the Iron Horse Trail, 1 manhole on Las Trampas Road, and 2 inlets in the intersection of South Avenue and La Serena Court.

PROJECT NEED: To address recurring flooding complications at locations along South Avenue; the intersection of South Avenue and Wayland Lane, and the intersection of South Avenue and La Serena Court.

SUPERVISOR DISTRICT: II

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 2

FUNDING SOURCE(S): Drainage Area 13

TOTAL PROJECT COST: \$620,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
PROJECT EXPENDITURES:	\$20,000	\$300,000	\$300,000	\$0	\$0	\$0	\$0
FUNDING SOURCE(S):							
Drainage Area 13	\$20,000	\$300,000	\$300,000	\$0	\$0	\$0	\$0

AFFECTED AREA: Alamo



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## Appendix *B*    Unprogrammed Future Projects Details



## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Wildcat Creek Habitat Improvements (USACE 1135 Program)

WORK ORDER: 8619 ID: 7

PROJECT DESCRIPTION: Rehabilitate fish ladder, reconfigure and expand sediment basin and improve riparian habitat throughout the limits of the previous Army Corps of Engineers project.

PROJECT NEED: This project is needed to improve flood control protection and wildlife habitat at Wildcat Creek. The fish ladder at Wildcat Creek is inoperative and the sediment basin needs to be expanded. Sediment accumulates underneath riparian vegetation that makes its removal impossible. This has reduced the level of flood control protection and increased maintenance costs. The Corps' 1135 program is intended to address these concerns, but progress is slowed by variable levels of federal funding.

SUPERVISOR DISTRICT: I

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 2

FUNDING SOURCE(S): USACE 1135 Program (75% - \$5M limit)

TOTAL PROJECT COST: \$2,000,000

	PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)							
	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,000,000
FUNDING SOURCE(S):								
Unfunded	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,000,000

AFFECTED AREA: Richmond



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: see also <http://www.spn.usace.army.mil/projects/wildcatcreek1135.html>. Local match funding is not secured.

## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Wildcat / San Pablo Creeks Phase II

WORK ORDER: WO TBD ID: 9

PROJECT DESCRIPTION: Channel improvements in Wildcat Creek and San Pablo Creek in the City of San Pablo upstream of BNSF railroad tracks

PROJECT NEED: The previous Corps projects stopped at the BNSF railroad. Significant residual flood risk remains in the portions of San Pablo and Wildcat Creeks in the City of San Pablo upstream of the BNSF railroad. This project would consist of the coordination needed with the Corps for expansion of the system upstream.

SUPERVISOR DISTRICT: I

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 5

FUNDING SOURCE(S): City of San Pablo, US Army Corps of Engineers

TOTAL PROJECT COST: \$12,045,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$12,045,000
FUNDING SOURCE(S):								
Unfunded	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$12,045,000

AFFECTED AREA: San Pablo



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Pinole Creek Habitat Restoration (1135 Project)

WORK ORDER: 8493 ID: 12

PROJECT DESCRIPTION: Improve riparian habitat throughout the limits of the previous Army Corps of Engineers project. Remove possible fish barriers and improve habitat while preserving and expanding flood conveyance. Work within the USACE 1135 Program to ensure federal participation in this project.

PROJECT NEED: The Pinole Creek USACE project is dated and single purpose. Center for Ecosystem Management and Restoration has identified Pinole Creek as primary steelhead habitat in the west Contra Costa County. Habitat improvements are needed to ensure migrating steelhead pass successfully through the project area to habitat upstream.

SUPERVISOR DISTRICT: V

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 5

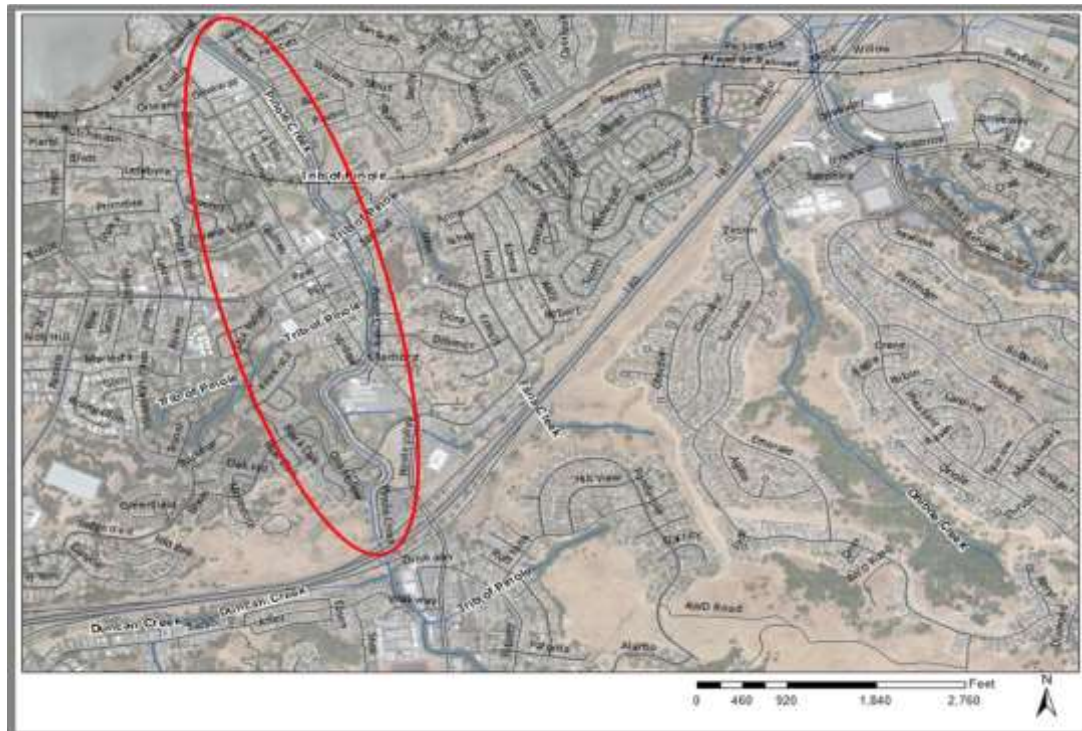
FUNDING SOURCE(S): City of Pinole, USACE 1135 Program (75% - \$5M limit)

TOTAL PROJECT COST: \$6,250,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,250,000
FUNDING SOURCE(S):								
Unfunded	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,250,000

AFFECTED AREA: Pinole



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:



## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Sustainable Capacity Improvement at Rodeo Creek

WORK ORDER: WO TBD ID: 17

PROJECT DESCRIPTION: Rehabilitate or replace concrete-lined portion of creek to improve conveyance, restore habitat

PROJECT NEED: Rodeo Creek is a 1960s era USACE channel, is devoid of most habitat, and is difficult to keep desilted, especially in the lowest reach. A new, more sustainable design of the creek is needed, and it has the potential to serve as a catalyst for further revitalization of the adjacent community. This project would also reduce long term dredging costs.

SUPERVISOR DISTRICT: V

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 3

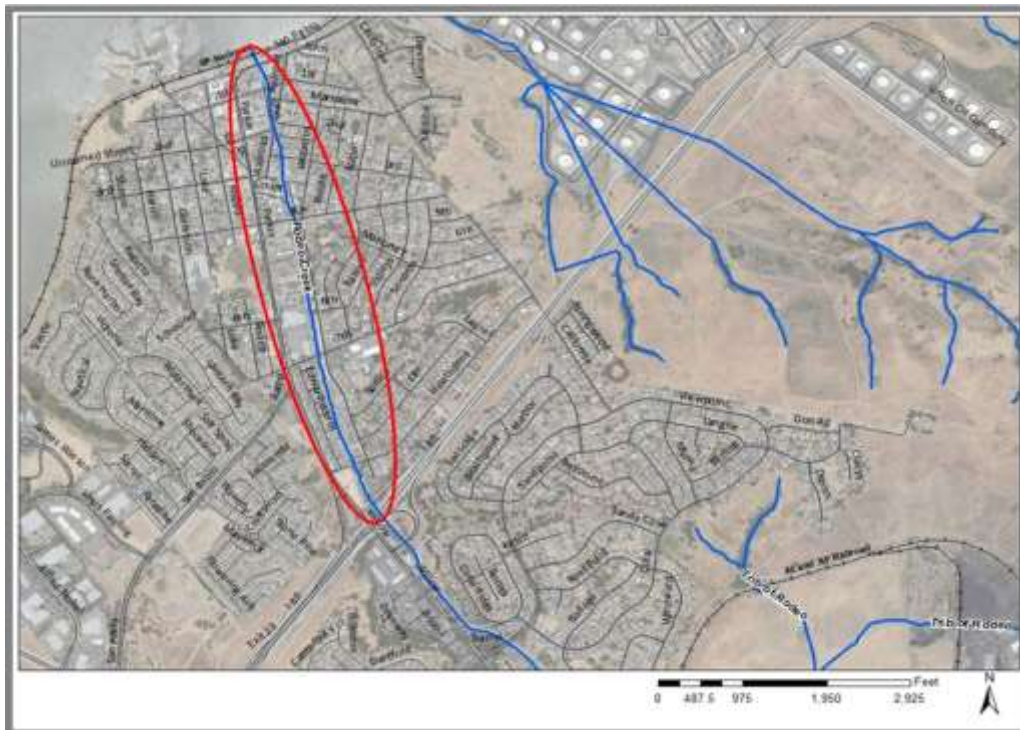
FUNDING SOURCE(S): Unfunded

TOTAL PROJECT COST: \$10,285,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$10,285,000
FUNDING SOURCE(S):								
Unfunded	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$10,285,000

AFFECTED AREA: Rodeo



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: DA 67 - Tice Creek Bypass

WORK ORDER: WO TBD ID: 117

PROJECT DESCRIPTION: Construct 66-inch bypass pipe in Tice Valley Boulevard, Meadow Road and Lancaster to provide a bypass for storm flows in Tice Creek

PROJECT NEED: The 2004 completion of the Rossmore Detention Basin significantly reduced flood risk for this area providing approximately a 20-year level of protection from Tice Creek. This long-planned bypass pipe would provide additional conveyance while allowing Tice Creek to remain in it's natural state.

SUPERVISOR DISTRICT: II

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 5

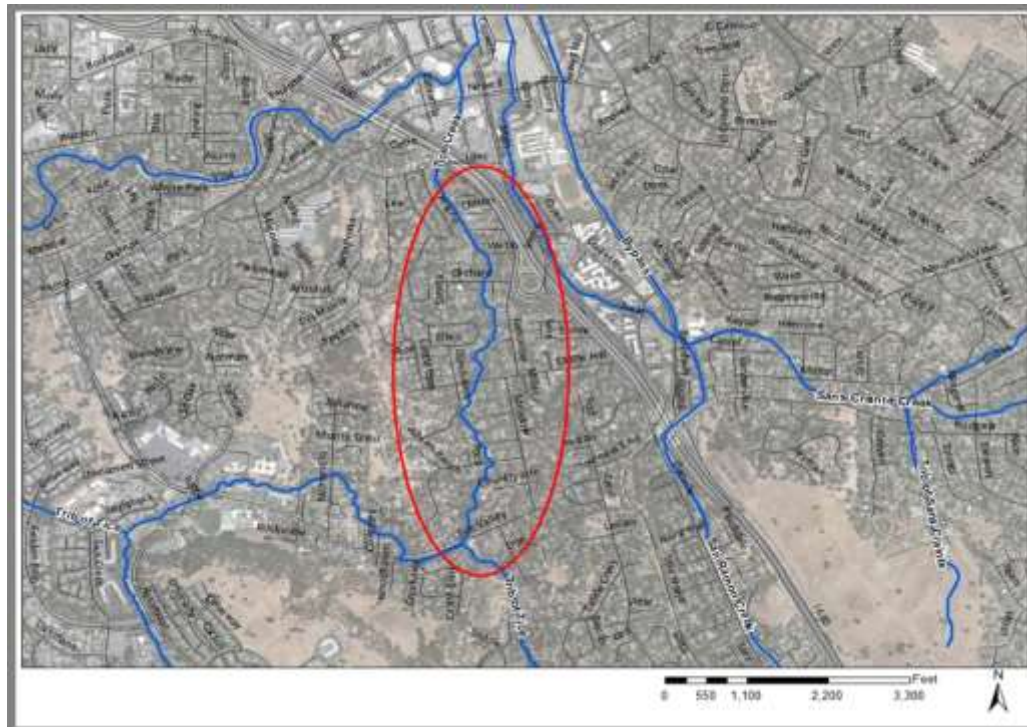
FUNDING SOURCE(S): Grant funds, City of Walnut Creek funds, other funds TBD.

TOTAL PROJECT COST: \$2,481,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,481,000
FUNDING SOURCE(S):								
Unfunded	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,481,000

AFFECTED AREA: Walnut Creek, Unincorporated County



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

**PROJECT NAME:** DA 33A Concord Boulevard Culvert Replacement  
**WORK ORDER:** WO TBD ID: 120  
**PROJECT DESCRIPTION:** Replace an undersized 60-inch culvert under Concord Blvd with a 117-inch by 79-inch arch culvert  
**PROJECT NEED:** The existing culvert is undersized and stormwater backs up and inundates Concord Blvd. The replacement culvert will be able to pass a 25-year storm event, lessening the risk of flooding on Concord Blvd. This is a cooperative project with the City of Concord. Per the 5-24-2005 JEPA, DA 33A will contribute a maximum of 90% of available funds which is currently approximately \$209k.  
**SUPERVISOR DISTRICT:** IV  
**PROGRAM TYPE:** System Expansion  
**PROJECT PRIORITY:** 4  
**FUNDING SOURCE(S):** Drainage Area 33A funds  
**TOTAL PROJECT COST:** \$297,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$297,000
FUNDING SOURCE(S):								
Drainage Area 33A	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$209,779
Unfunded	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$87,221

**AFFECTED AREA:** Concord



**EAST COUNTY HABITAT CONSERVATION PLAN (Y/N):** NO

**NOTE:**



## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Pine Creek Reservoir Sediment Removal and Capacity Restoration

WORK ORDER: WO TBD ID: 124

PROJECT DESCRIPTION: Remove accumulated sediment in Pine Creek Reservoir to restore design flood storage capacity. Create wetlands in new reservoir bottom as mitigation of impacts. Rehabilitate primary and emergency spillways to extend design life.

PROJECT NEED: Another CIP project will first perform a functional assessment to verify continued need for reservoir. If found to still be needed, then this project will restore design functionality and extend the design life.

SUPERVISOR DISTRICT: IV

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 4

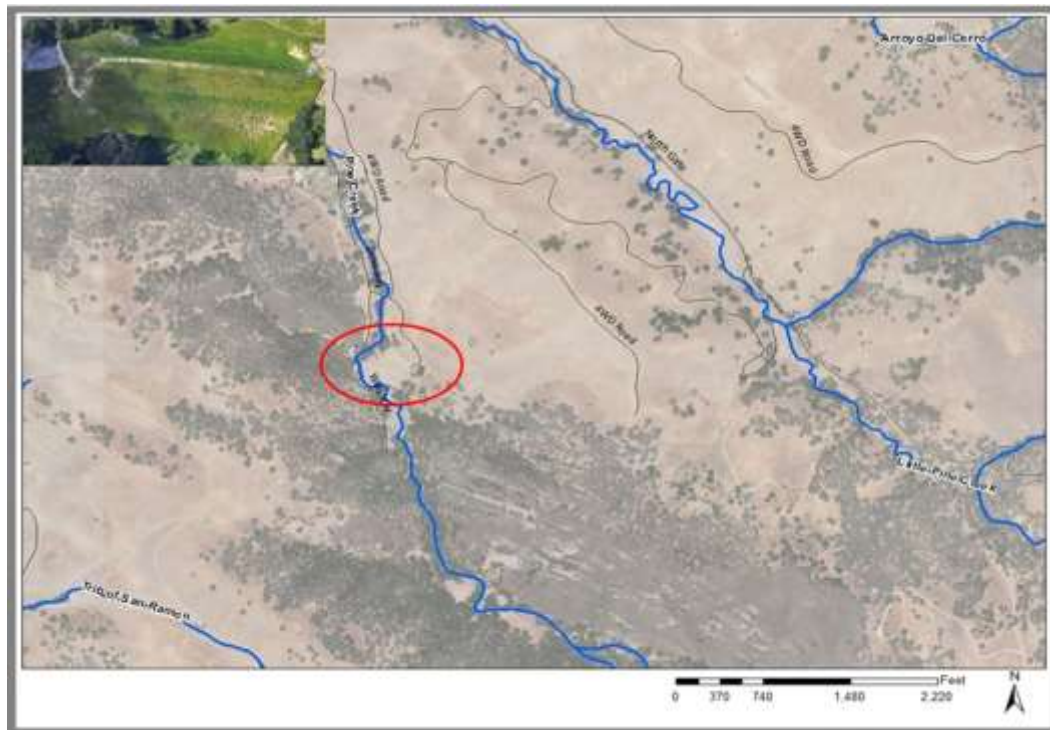
FUNDING SOURCE(S): Flood Control Zone 3B

TOTAL PROJECT COST: \$5,000,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,000,000
FUNDING SOURCE(S):								
Flood Control Zone 3B	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,000,000

AFFECTED AREA: Walnut Creek, Unincorporated County



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: Seismic evaluation is covered under a separate CIP entry because seismic work will likely be combined with other dams.

## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: San Ramon Creek Sediment Removal near San Ramon Bypass

WORK ORDER: WO TBD ID: 125

PROJECT DESCRIPTION: Desilt San Ramon Creek downstream of the San Ramon Bypass diversion structure in Alamo to the bypass channel at the San Ramon PP Corridor

PROJECT NEED: The San Ramon Creek Bypass Channel has a complex series of weirs allowing both low flows and high flows to continue down San Ramon Creek. Flows between those extremes are bypassed through the bypass system. The grades in San Ramon Creek downstream of the low flow pipe outfall prevent those low flows from passing into San Ramon Creek. This project would allow base flows to remain in the natural channel.

SUPERVISOR DISTRICT: IV

PROGRAM TYPE: system Preservation

PROJECT PRIORITY: 4

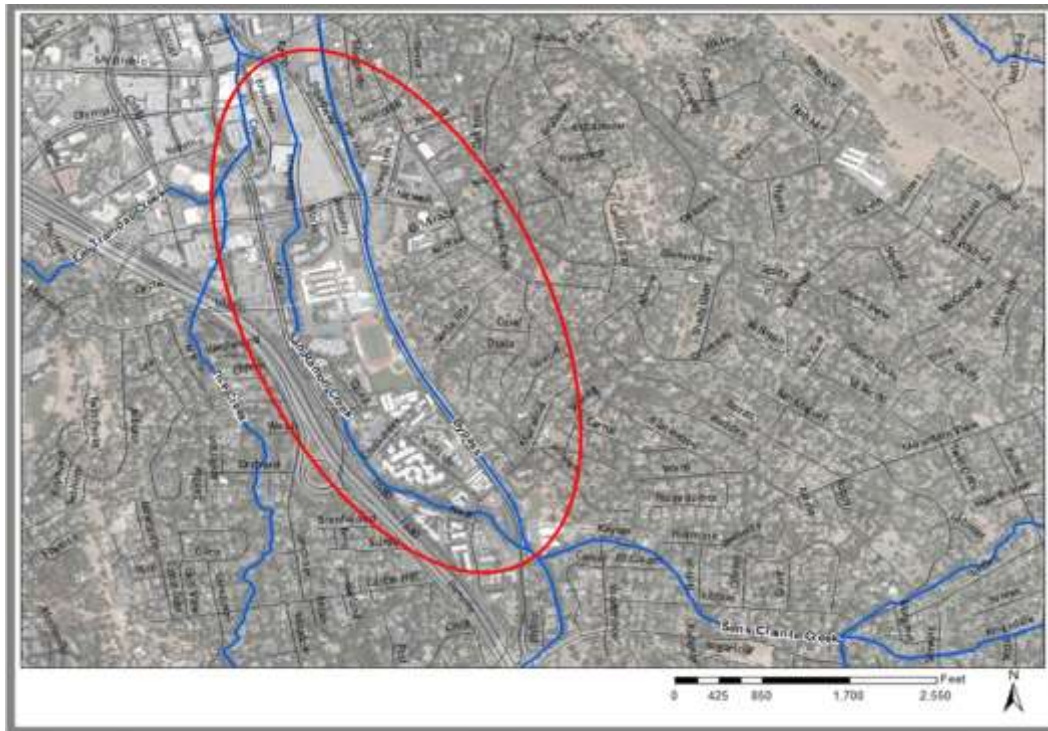
FUNDING SOURCE(S): Flood Control Zone 3B

TOTAL PROJECT COST: \$363,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$363,000
FUNDING SOURCE(S):								
Flood Control Zone 3B	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$363,000

AFFECTED AREA: District IV



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Green Valley Creek Improvements up to 1st Crossing of Diablo Road

WORK ORDER: WO TBD ID: 128

PROJECT DESCRIPTION: Hire specialized consultants to assess conditions of existing facilities. Two-phase approach: start with initial assessment, and proceed to more detailed assessment as warranted.

PROJECT NEED: The existing channel is incised and lacks the capacity to pass the 100-year flood event. The project is needed to lower the flood risk to the surrounding neighborhood.

SUPERVISOR DISTRICT: II

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 4

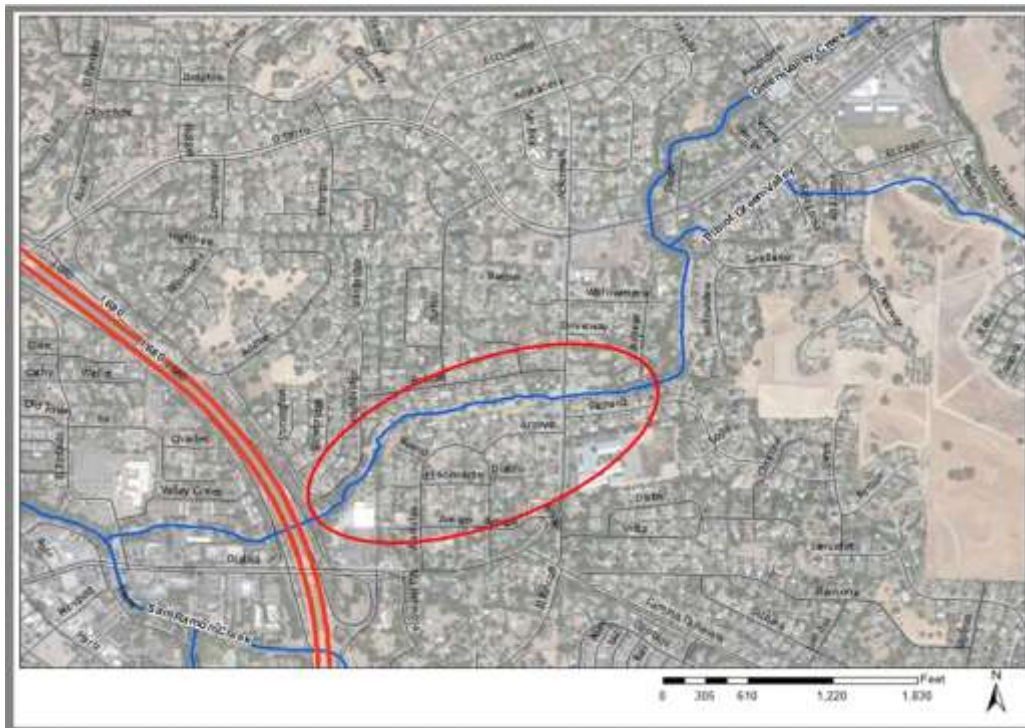
FUNDING SOURCE(S): Flood Control Zone 3B

TOTAL PROJECT COST: \$6,600,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,600,000
FUNDING SOURCE(S):								
Flood Control Zone 3B	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,600,000

AFFECTED AREA: Danville



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:



## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Green Valley Creek Improvements Upstream of 2nd Crossing of Diablo Road

WORK ORDER: WO TBD ID: 129

PROJECT DESCRIPTION: Hire specialized consultants to assess conditions of existing facilities. Two-phase approach: start with initial assessment, and proceed to more detailed assessment as warranted.

PROJECT NEED: Green Valley Creek at this location has erosion pressures and capacity issues. Past creek improvements stopped just downstream. This project will improve erosion and capacity conditions.

SUPERVISOR DISTRICT: II

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 5

FUNDING SOURCE(S): Flood Control Zone 3B & Town of Danville

TOTAL PROJECT COST: \$2,024,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,804,000
FUNDING SOURCE(S):								
Flood Control Zone 3B	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,804,000

AFFECTED AREA: Danville



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: DA 48B Line A at Port Chicago Highway

WORK ORDER: WO TBD ID: 201

PROJECT DESCRIPTION: Design and Construct 595 LF of 84-inch storm drain crossing Port Chicago Highway near Skipper Drive. This is a portion of DA 48B, Line A.

PROJECT NEED: The existing 60-inch pipe under Port Chicago Highway is undersized and in poor condition. Construction of the replacement 84-inch storm drain will extend the service life of the facility and reduce flood risk for the surrounding community.

SUPERVISOR DISTRICT: V

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 5

FUNDING SOURCE(S): Contra Costa County Redevelopment, DA 48B

TOTAL PROJECT COST: \$429,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$429,000
FUNDING SOURCE(S):								
Drainage Area 48B	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$429,000

AFFECTED AREA: Bay Point



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE:

## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: West Antioch Creek Improvements - L Street to 10th Street

WORK ORDER: WO TBD ID: 203

PROJECT DESCRIPTION: Design and construct channel improvements from the downstream end of "L" Street Crossing to the upstream end of the 10th Street culverts in conjunction with the City of Antioch

PROJECT NEED: The current channel was constructed only to an interim capacity and currently does not contain a 100-year storm event. Bottlenecks include the UPRR arch culvert and the narrow channel through the fairgrounds. This project will need to be constructed prior to constructing the third 10-foot pipe under Highway 4.

SUPERVISOR DISTRICT: V

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 5

FUNDING SOURCE(S): Drainage Area 55, City of Antioch, Grants, developer funds (upon development of the fairgrounds)

TOTAL PROJECT COST: \$4,906,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$4,906,000
FUNDING SOURCE(S):								
Unfunded	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$4,906,000

AFFECTED AREA: Antioch



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): NO

NOTE: Project needs to proceed before CIP#204.



## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: West Antioch Creek Improvements at Highway 4

WORK ORDER: WO TBD ID: 204

PROJECT DESCRIPTION: Complete the storm drain system between "L" Street and Fitzuren Road. Work includes a new headwall downstream of "L" Street, one 8' by 10' box culvert under "L" Street, a single 10' diameter storm drain up to and under Highway 4 to connect to the exiting 10' pipes just north of Fitzuren Road. This results in a complete, triple 10' storm drain system.

PROJECT NEED: Caltrans / CCTA has constructed a second bore under the highway as part of freeway widening in 2015. This CIP project completes the third bore between Fitzuren Road and "L" Street, and should not be constructed until downstream improvements (W. Antioch Creek at 10th Street, and W. Antioch Creek 10th Street to "L" Street) are constructed. See project #203.

SUPERVISOR DISTRICT: III & V

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 5

FUNDING SOURCE(S): Drainage Area 55, City of Antioch, Grants

TOTAL PROJECT COST: \$2,200,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,200,000
FUNDING SOURCE(S):								
Unfunded	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,200,000

AFFECTED AREA: Antioch



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): YES

NOTE: Project should follow construction of project #203.

## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Fitzuren Road Remainder Parcel

WORK ORDER: WO TBD ID: 205

PROJECT DESCRIPTION: Prepare conceptual plans and facilitate development of three District-owned parcels on Fitzuren Road. Market these parcels for a commercial use, such as a restaurant or neighborhood retail.

PROJECT NEED: These parcels were purchased in the 1980s to allow the construction of three large storm drains to carry West Antioch Creek. They were purchased with the intent of developing the unused portion once the storm drains were installed. The storm drain was designed to maximize the unused portion of the parcels and thus maximize the revenue generating potential for the District and DA 55. This project will follow the construction of the final 10' storm drain through the parcel.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 5

FUNDING SOURCE(S): Drainage Area 55, Flood Control District

TOTAL PROJECT COST: \$215,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$215,000
FUNDING SOURCE(S):								
Drainage Area 55	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$215,000

AFFECTED AREA: Antioch



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): YES

NOTE: Project should follow construction of project #204.

## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: East Antioch Creek Marsh Restoration

WORK ORDER: WO TBD ID: 206

PROJECT DESCRIPTION: Design and construct marsh and floodplain improvements on East Antioch Creek downstream of Cavallo Road. Includes marina outlet channel (or equivalent), hazardous material clean-up on affected portion of Hickmont site, and three new box culverts under Wilbur Avenue.

PROJECT NEED: Provide flood protection in the lower watershed of East Antioch Creek in accordance with the adopted Drainage Area 56 (DA 56) plan

SUPERVISOR DISTRICT: V

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 5

FUNDING SOURCE(S): Drainage Area 56

TOTAL PROJECT COST: \$7,585,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$7,585,000
FUNDING SOURCE(S):								
Unfunded	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$7,585,000

AFFECTED AREA: Antioch



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): Yes

NOTE:



## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: DA 109 - Kellogg Creek Project Development

WORK ORDER: TBD ID: 225

PROJECT DESCRIPTION: Re-analyze the Kellogg Creek (Drainage Area 109) Plan and develop projects for future implementation

PROJECT NEED: The current DA 109 plan is conceptual, and while sufficient to collect funds for improvements, the plan lacks the detail to develop and prioritize projects in the watershed. This effort will re-study the DA 109 plan to define specific projects for implementation, rank those projects, and then begin implementation in priority order.

SUPERVISOR DISTRICT: III

PROGRAM TYPE: System Expansion

PROJECT PRIORITY: 5

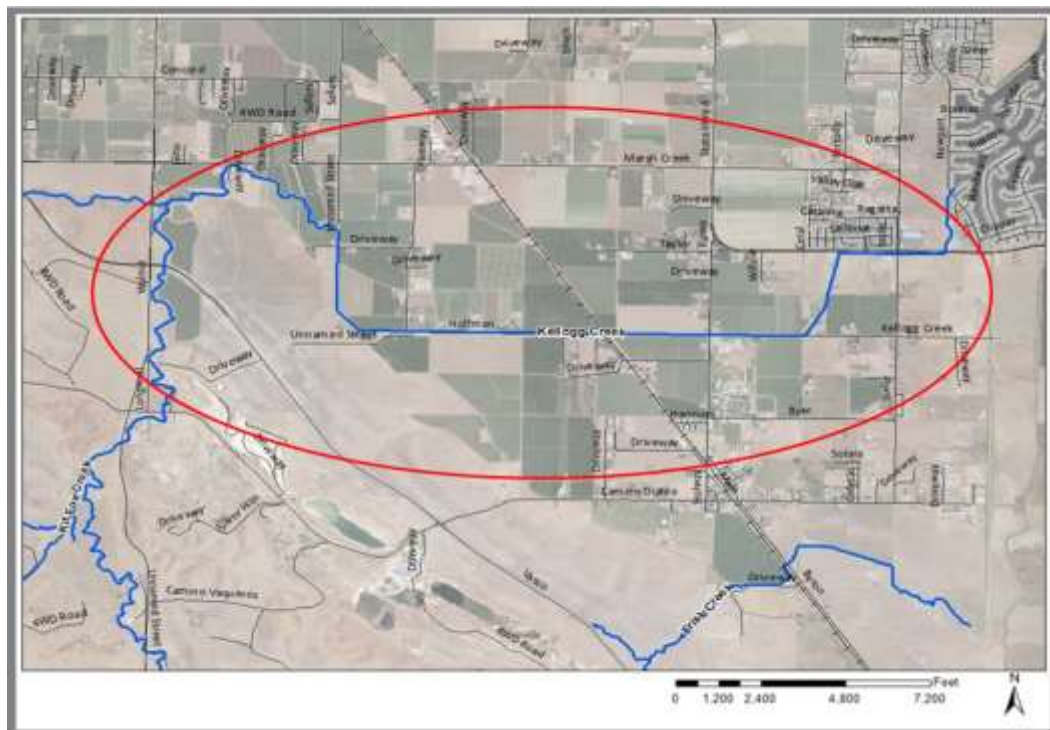
FUNDING SOURCE(S): DA 109 Funds

TOTAL PROJECT COST: \$270,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$270,000
FUNDING SOURCE(S):								
Drainage Area 109	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$270,000

AFFECTED AREA: Town of Discovery Bay



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N): YES

NOTE:

## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

PROJECT NAME: Canada di Cierbo Habitat Improvement

WORK ORDER: WO TBD ID: 23

PROJECT DESCRIPTION: Create a mitigation bank for County and District mitigation needs. Acquire right of way, develop restoration plan, implement plan and reap benefits.

PROJECT NEED: Public projects often have unavoidable habitat impacts. Often, the remedy is to 'buy in' to a bank which is often located outside of the county. While this provides habitat mitigation, it does little to actually offset the impacts locally. The west part of CCC is underserved for this type of bank. Canada di Cierbo seeks to remedy this and provide quality, local mitigation and habitat improvement.

SUPERVISOR DISTRICT: V

PROGRAM TYPE: System Preservation

PROJECT PRIORITY: 5

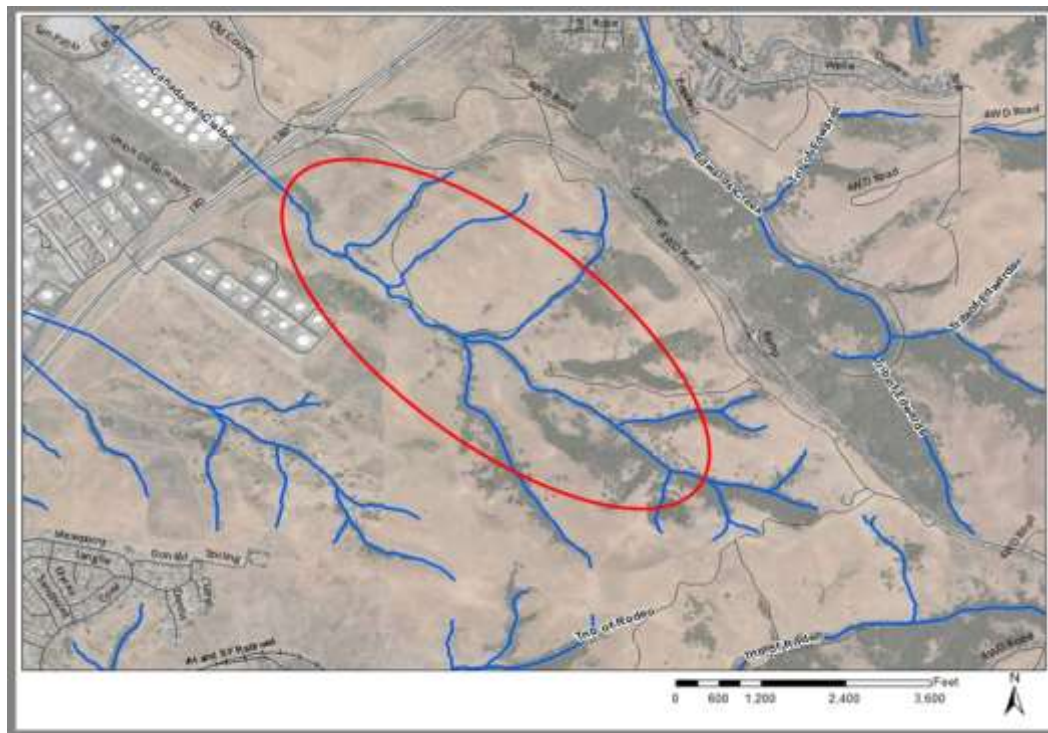
FUNDING SOURCE(S): TBD

TOTAL PROJECT COST: \$3,000,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$3,000,000
FUNDING SOURCE(S):								
Unfunded	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$3,000,000

AFFECTED AREA: Crockett, Unincorporated County



EAST COUNTY HABITAT CONSERVATION PLAN (Y/N):

NOTE:

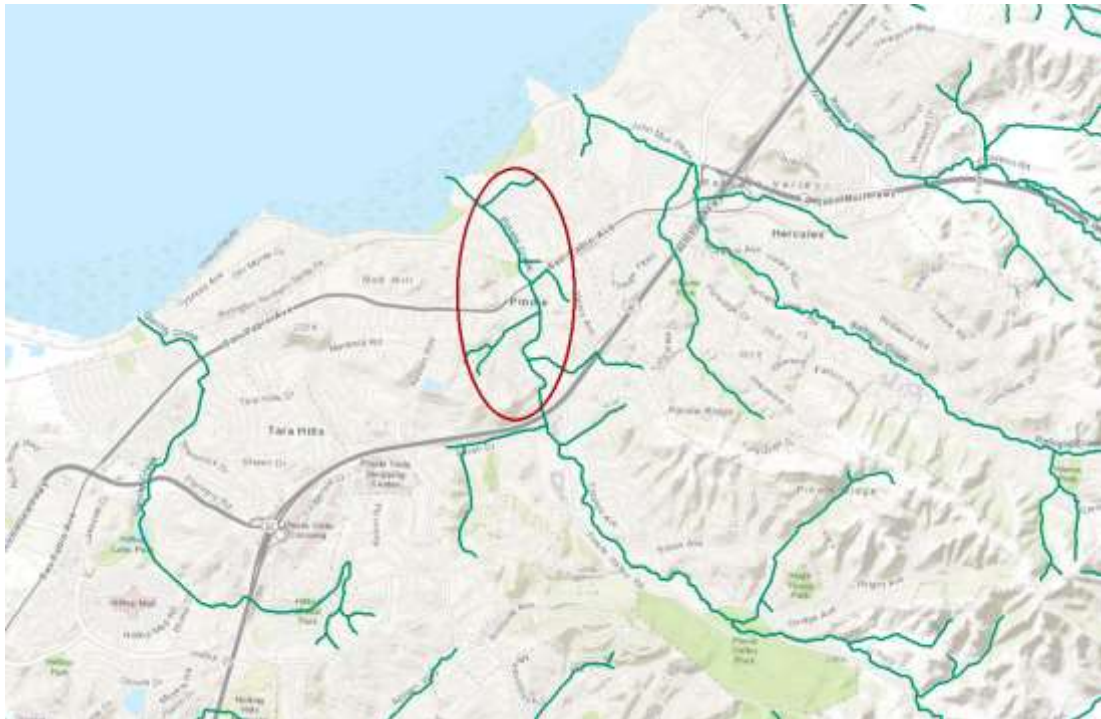
## UNPROGRAMMED FUTURE CAPITAL IMPROVEMENT PROJECT SUMMARY REPORT

**PROJECT NAME:** Pinole Creek Capacity Assessment  
**WORK ORDER:** TBD ID: 26  
**PROJECT DESCRIPTION:** Assess creek capacity and watershed conditions and develop alternatives for improving flood protection in the area.  
**PROJECT NEED:** Watershed conditions have changed significantly with land development projects decreasing flood protection in the area. This project is intended to study watershed and creek conditions and develop alternatives for improving flood protection levels.  
**SUPERVISOR DISTRICT:** I  
**PROGRAM TYPE:** System Preservation  
**PROJECT PRIORITY:** 5  
**FUNDING SOURCE(S):**  
**TOTAL PROJECT COST:** \$300,000

### PLANNED PROJECT EXPENDITURES AND FUNDING SOURCE(S)

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	<u>Future</u>
PROJECT EXPENDITURES:	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$300,000
FUNDING SOURCE(S):								
Unfunded	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$300,000

**AFFECTED AREA:** Cities of Hercules and Pinole



**EAST COUNTY HABITAT CONSERVATION PLAN (Y/N):** NO

**NOTE:** Zone 9 (Pinole Creek) is significantly underfunded. Funding for this item is very uncertain.



**CONTRA COSTA COUNTY PUBLIC WORKS  
RESPONSE TO CIVIL GRAND JURY REPORT  
No. 1907 Board Order**



**Contra  
Costa  
County**

To: Board of Supervisors  
From: David Twa, County Administrator  
Date: August 6, 2019

Subject: RESPONSE TO CIVIL GRAND JURY REPORT NO. 1907, ENTITLED "STORMWATER TRASH REDUCTION: ARE WE DOING ALL THAT WE CAN?"

### **RECOMMENDATION(S):**

1. ADOPT report as the Board of Supervisors' response to Civil Grand Jury Report No. 1907, entitled "Stormwater Trash Reduction: Are We Doing All That We Can?", and DIRECT the Clerk of the Board to transmit the Board's response to the Superior Court no later than August 21, 2019, as recommended by the County Administrator and Public Works Director.
2. REFER the Finance Committee identification of additional revenue sources to fully fund stormwater pollution reduction permit compliance by June 30, 2020.

### **FISCAL IMPACT:**

No impact to the General Fund, and minimal impact to the Public Works Department's budget. The County's stormwater trash reduction program is funded primarily with Stormwater Utility Assessments. The work necessary to meet most of the Report's findings and recommendations is already budgeted and included in the Department's program costs. The only additional item is a summary report, to be prepared each year and submitted to the Board outlining annual accomplishments, costs, challenges, and needs. This information is all readily available, so preparation of a summary report is a relatively minimal cost. There

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

Action of Board On: **08/06/2019** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

#### **VOTE OF SUPERVISORS**

A YE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: August 6, 2019

David Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Julie DiMaggio Enea  
(925) 335-1077

By: Stephanie Mello, Deputy

may be additional unknown costs to identify and/or develop additional revenue sources as directed by the



## FISCAL IMPACT: (CONT'D)

Board in the future. For example, the cost to develop a property-related fee and take it to election would be over \$1 million, which the Stormwater Utility Assessment cannot afford.

## BACKGROUND:

The 2018/19 Civil Grand Jury filed the above-referenced report, attached, on May 23, 2019, which was reviewed by the Board of Supervisors and subsequently referred to the County Administrator and the Public Works Director, who prepared the attached response that clearly specifies:

- A. Whether the finding or recommendation is accepted or will be implemented;
- B. If a recommendation is accepted, a statement as to who will be responsible for implementation and a definite target date;
- C. A delineation of the constraints if a recommendation is accepted but cannot be implemented within a six-month period; and
- D. The reason for not accepting or adopting a finding or recommendation.

The report, Grand Jury Report No. 1907, “Stormwater Trash Reduction” (Report), was addressed to the County Board of Supervisors and each of the City/Town Councils in the county. The subject of the Report is trash in the local creeks and waterways of the county that drain into, and thereby pollute, the Delta and San Francisco Bay. The State Regional Water Quality Control Board issues the County and cities/towns a permit to reduce pollutant levels in stormwater flowing through the county. Trash is considered a pollutant and the permit includes detailed requirements for reducing trash in the county’s waterways. The Report looked at the performance of the County and the cities/towns in meeting the trash reduction requirements, and how permit compliance information was communicated to citizens and elected officials. The Report concluded with nine findings and four recommendations, along with a table indicating which findings and recommendations apply to each jurisdiction.

Below are the proposed responses to the findings and recommendations applicable to the County’s unincorporated communities. The California Penal Code specifies that the Board of Supervisors must forward its response to the Superior Court no later than August 21, 2019 (90 days from receipt).

## *FINDINGS*

**F1. The 2015 Municipal Regional Stormwater Permit requires most of the cities, towns, and the County to take action to reduce trash discharges by 80%, from 2009 baseline levels, by July 1, 2019.**

*F1 Response. The respondent agrees with the finding. The County anticipates meeting the 80% trash reduction target by July 1, 2019 due to past compliance measures plus new full trash capture devices installed this year.*

**F2. Antioch, Brentwood, Oakley, and the eastern portion of the County were added to the Permit in February, 2019 and have a requirement to reduce trash discharges by 70%, from their 2016 baseline trash levels, by December 31, 2019.**

*F2 Response. The respondent agrees with the finding. The County does not treat unincorporated East County separately from the rest of the county. East County will therefore meet the 80% trash reduction target by July 2019, as discussed above, exceeding the 70% requirement.*

**F3. Using the formula prescribed in the Permit, Brentwood, Clayton, Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Orinda, Pittsburg, Richmond, San Pablo, San Ramon, and Walnut Creek report that they have already reached their July 1, 2019 trash reduction goals.**

*F3. No response required.*

**F4. In June, 2018, Hercules and Pinole were issued Cease and Desist Orders by the Water Board requiring them to improve their performance in meeting their trash reduction goals.**

*F4. No response required.*

**F5. The County estimates that it will need an additional \$1.2 million per year to meet all the Permit requirements.**

*F5 Response. The respondent agrees with the finding. The County will need an additional \$1.2 million each year for the last two years of the Permit (MRP 2.0) to meet all permit requirements (not just trash) within the timeline specified in the current Permit. The County estimated the total cost to comply with the Permit for each of the last two years is \$5 million. The County has identified about \$3.2 million each year in Stormwater Utility Assessment funds and about \$600,000 in Road Funds and Flood Control Funds, leaving a shortfall of \$1.2 million. The County will likely need additional funding to comply with additional requirements when the next Municipal Regional Permit is issued in late 2020 (MRP 3.0).*

**F6. Both the CCCWP and LAFCO report that unfunded federal and state mandated stormwater permit compliance programs are a challenge for cities, towns, and the County.**

*F6 Response. The respondent agrees with the finding. The Contra Costa County Board of Supervisors accepted a report from the Transportation, Water, and Infrastructure Committee on November 6, 2018, the last of several reports outlining the costs associated with current Permit compliance, the needed funding, the*

*funding shortfall, and funding challenges.*

**F7. Concord, El Cerrito, Hercules, Lafayette, Martinez, Pinole, Pittsburg, Richmond, San Pablo, and Walnut Creek have established ordinances banning Styrofoam food packaging in their communities.**

*F7. No response required.*

**F8. Caltrans reports that highways and ramps along portions of Highways 4 and 24, Interstates 80, 580, and 680 in Antioch, El Cerrito, Richmond, and in the unincorporated areas of the County are high trash generation areas.**

*F8 Response. The respondent agrees with the finding. The County is working with Caltrans on locating potential joint trash reduction projects that will reduce trash in and around freeway ramps in unincorporated communities.*

**F9. No narrative summary of the accomplishments, challenges, costs, and funds needed to fully comply with the Permit is provided in the required annual reports prepared by CCCWP, the County, and each city and town.**

*F9 Response. The respondent agrees with the finding. The structure of the Annual Report required by the Regional Water Board as part of the current Permit does not lend itself to providing a narrative summary and does not require a breakdown of costs, challenges, and funds needed for compliance. However, the County Board of Supervisors, on November 6, 2018, received a full report from the Transportation, Water, and Infrastructure Committee on the challenges, cost, and funding needed to comply with the Permit.*

## **RECOMMENDATIONS**

**R1. The City Councils of Hercules and Pinole should each consider directing their city manager to implement trash controls to bring them into compliance with the 80% trash reduction goal by December 31, 2019.**

*R1. No response required.*

**R2. The City/Town Councils of Antioch, Brentwood, Clayton, Danville, Moraga, Oakley, Orinda, Pleasant Hill, and San Ramon should consider limiting the use of Styrofoam containers in their communities by June 30, 2020.**

*R2. No response required.*

**R3. The Board of Supervisors and all City/Town Councils should consider directing staff to provide a concise summary of their Annual Reports, citing their**



**accomplishments, challenges, costs, and funds needed to fully comply with the Permit, by December 31, 2019.**

*R3 Response. The recommendation has not yet been implemented, but will be implemented in the future. The County Board of Supervisors, on November 6, 2018, received a full report from the Transportation, Water, and Infrastructure Committee on the challenges, cost, and funding needed to comply with the current Permit. Staff will develop a summary report to the County Board of Supervisors by December 2019 for the FY 2018/19 Annual Report.*

**R4. The Board of Supervisors and all City/Town Councils should consider identifying additional revenue sources to fully fund Permit requirements in order to comply with the Permit and avoid potential liability, by June 30, 2020.**

*R4 Response. The recommendation has not yet been implemented, but will be implemented in the future. The County Board of Supervisors will consider identifying additional revenue sources to fully fund Permit compliance and will refer this item to its Finance Committee to work with staff and develop recommendations by June 30, 2020.*

#### **ATTACHMENTS**

Civil Grand Jury Report No. 1907, entitled "Stormwater Trash Reduction: Are We Doing All That We Can?"

**2019 Grand Jury Report 1907**  
**"Stormwater Trash Reduction"**

Grand Jury

Contra  
Costa  
County

725 Court Street  
P.O. Box 431  
Martinez, CA 94553-0091



June 4, 2019

Clerk of the Board  
Contra Costa County  
651 Pine Street, Room 106  
Martinez, CA 94553

Dear Clerk of the Board:

Attached is a copy of Grand Jury Report No. 1907, "Stormwater Trash Reduction" by the 2018-2019 Contra Costa County Grand Jury.

Sincerely,

A handwritten signature in black ink, which appears to read "Richard S. Nakano".

Richard S Nakano, Foreperson  
2018-2019 Contra Costa County Civil Grand Jury

Enclosure



**A REPORT BY  
THE 2018-2019 CONTRA COSTA COUNTY GRAND JURY**  
725 Court Street  
Martinez, California 94553

Report 1907

# **Stormwater Trash Reduction**

**Are We Doing All That We Can?**

APPROVED BY THE GRAND JURY

Date MAY 22, 2019



RICHARD S. NAKANO  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING

Date MAY 23 2019



ANITA SANTOS  
JUDGE OF THE SUPERIOR COURT

Contact: Richard S. Nakano  
Foreperson  
925-522-6941

**Contra Costa County Grand Jury Report 1907**

**Stormwater Trash Reduction**

**Are We Doing All That We Can?**

**TO: Contra Costa County Board of Supervisors;  
City/Town Councils of: Antioch, Brentwood, Clayton, Concord,  
Danville, El Cerrito, Hercules, Lafayette, Martinez, Moraga,  
Oakley, Orinda, Pinole, Pittsburg, Pleasant Hill, Richmond,  
San Pablo, San Ramon, Walnut Creek**

**SUMMARY**

What is being done about the discarded paper, plastics, and other unwanted junk that ends up along our local streets, freeways, and public areas? This trash is polluting our local creeks, rivers, the San Francisco Bay, and the ocean itself. Is anything being done to fix this regional problem that has global implications? What more can we do as citizens, cities, and Contra Costa County (the County) to help keep our waterways clean?

The federal Clean Water Act, as amended by the Water Quality Act of 1987, requires permits for stormwater discharges from municipal systems to prevent stormwater from washing harmful pollutants into waterways. Under the Clean Water Act, these discharges are considered to be significant contributors of pollutants to waters of the United States. Discharges from stormwater systems operated by the County and each of its 19 cities and towns are also subject to the requirements of the Clean Water Act.

The Clean Water Act is enforced locally by the San Francisco Regional Water Quality Control Board (Water Board) through a Municipal Regional Stormwater Permit (Permit), issued in 2015. This Permit requires Contra Costa County and its cities and towns, along with other cities and the counties of Alameda, San Mateo, and Santa Clara, to reduce trash discharged from their storm sewers. Under the Permit, cities, towns, and counties are required to reduce their trash discharged by storm sewers by 80% from 2009 base levels by July 1, 2019. Cities and counties are required to prepare detailed

annual reports that document their trash abatement performance.

Cities, towns, and the County get credit toward their percent trash reduction by reducing the amount of trash discharged from their storm sewer systems. They accomplish this primarily by installing and maintaining trash capture devices which separate trash from entering a stormwater system and waterways. They can also take steps to control trash at its source by limiting businesses from providing plastic straws, plastic bags, and/or Styrofoam cups, bowls, plates, takeout containers, and serving trays. For these source control programs, there is a maximum of 10% credit available under the Permit.

The California Department of Transportation (Caltrans) also owns, operates, and maintains significant storm sewer systems within the County. Under a separate permit, Caltrans is also required to implement control measures in all of its high-trash-generating areas. These include freeways and ramps in high density residential, commercial, and industrial areas. The Water Board recently issued an enforcement order against Caltrans to increase its trash cleanup efforts on Bay Area highways, or face heavy fines.

This report examines how the County, its cities, and towns are performing with regard to the Permit's trash reduction goals. Our investigation revealed that most of the cities and towns in the County are on target to achieve the 80% trash reduction goal.

The cities of Hercules and Pinole are underperforming toward achieving this 80% goal. The Grand Jury recommends that the cities of Hercules and Pinole consider taking steps to improve performance to comply with required trash reduction goals by installing trash capture devices and instituting source control programs.

The Grand Jury also recommends that cities, towns, and the County consider publishing annual reports in summary form, citing accomplishments and challenges, including the costs and funds needed to comply with the Permit requirements. One solution is to prevent the generation of pollution at its source. This includes limiting the use of Styrofoam cups, bowls, plates, and takeout containers.

Cities, towns, and the County should consider identifying additional revenue sources to fully fund Permit requirements in order to comply with the Permit and avoid potential liability.

## **METHODOLOGY**

In the course of its investigation, the Grand Jury:

- Examined how the County and its cities and towns are performing with regard to their trash reduction mandates
- Explored how Permit compliance information is communicated to the citizens and elected officials in Contra Costa County



- Interviewed staff from: Contra Costa Clean Water Program, Contra Costa County Public Works, and selected cities
- Interviewed representatives from an environmental Non-governmental Organization, and the Water Board
- Reviewed stormwater permits, reports, and documents
- Reviewed information available on the Contra Costa Clean Water Program website ([www.cccleanwater.org](http://www.cccleanwater.org))
- Reviewed media reports

## **BACKGROUND**

### **Federal and State Stormwater Regulations**

The 1972 Federal Water Pollution Control Act (the Clean Water Act) regulates water quality standards for all public and private wastewater discharges into waterways. These water quality standards are set using National Pollutant Discharge Elimination System (NPDES) permits which regulate waste discharges into waters of the United States. In 1987, the Clean Water Act was amended and expanded to include stormwater discharges from municipal-owned/operated storm drains. In 1990, NPDES stormwater permit application requirements for municipal stormwater discharges were established by the U.S. Environmental Protection Agency.

In California, the federal NPDES permit program is administered and enforced by the State Water Resources Control Board through nine Regional Water Quality Control Boards. These water boards issue permits to prevent stormwater from washing harmful pollutants into waterways. Permits are updated and reissued approximately every five years. The first county-wide stormwater permits were issued in the early 1990s.

### **Contra Costa Clean Water Program**

In 1991, in response to the expanded Federal and State stormwater regulations, the County, its cities, and towns established the Contra Costa Clean Water Program (CCCWP). Its purpose is to provide a uniform approach to address Water Board permit requirements and implement activities jointly carried out by the cities, towns, and the County.

The CCCWP comprises Contra Costa County, 19 cities and towns, and the Contra Costa County Flood Control and Water Conservation District. These are:

- Contra Costa County Flood Control and Water Conservation District
- Clayton
- Hercules
- Orinda
- Pleasant Hill
- San Ramon
- Town of Moraga
- Oakley
- Concord
- Lafayette
- Pinole
- Richmond
- Walnut Creek
- Antioch
- Contra Costa County unincorporated areas
- El Cerrito
- Martinez
- Pittsburg
- San Pablo
- Town of Danville
- Brentwood

## **Current Stormwater Permit**

According to the Water Board, stormwater is a significant source of certain pollutants that cause or contribute to water quality pollution in the region. To address this problem the Water Board issued county-wide municipal stormwater permits in the early 1990s.

In 2015, the Water Board re-issued these county-wide municipal stormwater permits as one Municipal Regional Stormwater NPDES Permit (Permit) to regulate stormwater discharges from municipalities and local agencies in Alameda, central and western Contra Costa, San Mateo, and Santa Clara counties, and the cities of Fairfield, Suisun City, and Vallejo. In February, 2019, the cities of Antioch, Brentwood, and Oakley and the eastern portion of Contra Costa County were formally added to the Permit.

Under the Permit, cities, towns, and counties are required to prohibit the discharge of materials other than stormwater into storm drain systems and watercourses. Each city, town, and county is individually responsible for complying with the Permit requirements to meet their pollution reduction goals. The Permit allows cities, towns, and counties to collaborate in designing, developing, and implementing new solutions to reduce stormwater pollution.

The Permit includes stormwater management regulations for the following: trash reduction, new real estate development and redevelopment, illicit discharge, and public information and outreach. The Permit also regulates stormwater from industrial and commercial sites, construction sites, pesticides, mercury, PCB's, and copper.

According to the Water Board, the sources of trash include discharges from the storm drain system, windblown trash, and other discharges such as direct dumping and homeless encampments. This trash washes into San Francisco Bay and the ocean, where it becomes part of a global problem. It is unsightly, can cause storm drain blockage, decreases property values, and impacts recreational use and wildlife habitat in waterways. Trash such as plastic bags may harm wildlife through entanglement or ingestion. Trash may also contain hazardous materials such as heavy metals, toxic chemicals, oil and grease products, and other pollutants that are unhealthy and harmful to people and the environment.

Failure to comply with the discharge requirements constitutes a violation of the

California Water Code and the Clean Water Act. If there is a violation, the Water Board may impose fines and other civil liabilities. The Water Board may also refer violators to the State Attorney General who can seek civil monetary penalties and injunctive relief, or take other appropriate enforcement actions.

## **Preventing Trash at its Source**

A key element in any trash reduction program is to stop pollution before it harms the environment. Programs that prevent trash at its source (commonly referred to as "source control") include banning businesses from providing plastic bags, plastic straws, and Styrofoam cups, bowls, plates, and takeout containers.

Plastic bags are not biodegradable and take hundreds of years to decompose. This results in plastics littering the environment, degrading creeks and waterways, and adversely affecting wildlife. When bags decompose, toxins are released into the soil and water, harming land and marine wildlife. Plastic straws are hazardous to the environment because they settle in the landfills, clog storm drains, and collect in the ocean. Styrofoam is a plastic commonly found in packing and food packaging. It is rarely reused, is an abundant form of litter hazardous to land and marine life and can take 500 years to decompose.

On November 8, 2016, California voters approved Proposition 67 which bans the use of carry-out plastic bags that once were given at grocery stores and food marts. They now offer customers the option to purchase either recycled paper or reusable plastic bags. As an example, the City of San Jose implemented a successful source control program. Its 2011 plastic bag ban resulted in a litter reduction of approximately 89% in the storm drain system, 60% in the creeks and rivers, and 59% in city streets and neighborhoods. A state law (AB1884) limiting full-service restaurants in the state from handing out single-use plastic straws became effective on January 1, 2019.

## **DISCUSSION**

This report focuses on the trash reduction requirement of the Permit. The report examines how the County, cities, and towns are performing regarding reducing trash in creeks and waterways. It also explores how information can be better communicated to citizens in the County.

### **Trash Reduction Requirements**

Cities, towns, and the County are required to implement trash control actions in accordance with procedures and the schedule outlined in the Permit.

The trash reduction schedule in the Permit requires that each city, town, and the County reduce trash from their 2009 baseline levels, using requirements and accounting



procedures contained in the Permit. The trash reduction goals and schedule are as follows:

- 70% by July 1, 2017
- 80% by July 1, 2019
- 100% by July 1, 2022

The cities of Antioch, Oakley, Brentwood, and the eastern unincorporated areas of the County were added to the Permit in February, 2019. They have a modified goal to reduce trash by 70% from their 2016 baseline trash levels by December 31, 2019.

Cities, towns, and the County receive credit toward their trash reduction goal by reducing the amount of trash discharged from their storm sewer systems. They accomplish this by installing and maintaining trash capture devices which prevent trash from entering stormwater systems and waterways. The percent reduction in trash is calculated by applying a formula that compares current levels with 2009 baseline amounts.

Cities, towns, and the County can take additional steps to control trash at its source by limiting businesses from providing Styrofoam cups, bowls, plates, takeout containers, and serving trays. For these source control programs there is a maximum of 10% credit toward the trash reduction goal available in the Permit.

As explained below, some cities and towns have already instituted source control programs, which they expect will reduce the amount of trash released into the environment. Most have also implemented trash management actions, such as increased street sweeping; land, creek and shoreline cleanups; and homeless encampment cleanups.

Table 1 illustrates:

- The percent reduction in trash, from 2009 baseline levels, that each city, town, and the County unincorporated areas achieved in Fiscal Year (FY) 2017-18
- The number of trash capture devices installed
- Cities that have implemented a source control program

**Table 1  
FY 2017-18 Trash Reduction Achieved**

<b>City/Town/County</b>	<b>FY 2017-18 Total % Trash Reduction</b>	<b>Full Trash Capture Devices Installed</b>	<b>Source Control Programs</b>
<b>Antioch</b>	NA	1	NA
<b>Brentwood</b>	83.3 %	91	No
<b>Clayton</b>	99.5%	195	No
<b>Concord</b>	83.0%	451	No
<b>Danville</b>	100.0%	74	Yes
<b>El Cerrito</b>	84.5%	122	Yes
<b>Hercules</b>	69.0%	41	Yes
<b>Lafayette</b>	91.7%	38	No
<b>Martinez</b>	91.2%	118	Yes
<b>Moraga</b>	82.0%	121	No
<b>Oakley</b>	67.0%	68	No
<b>Orinda</b>	85.6%	5	No
<b>Pinole</b>	31.0%	113	Yes
<b>Pittsburg</b>	83.4%	127	Yes
<b>Pleasant Hill</b>	78.0%	123	Yes
<b>Richmond</b>	83.4%	170	Yes
<b>San Pablo</b>	87.7%	128	Yes
<b>San Ramon</b>	100.0%	81	No
<b>Walnut Creek</b>	95.9%	202	Yes
<b>County unincorporated areas</b>	75.0%	286	pending

Source: CCCWP Website <https://www.cccleanwater.org/resources/reports>

NA: data not available

Note: Antioch, Oakley, Brentwood and the eastern unincorporated areas of the County are required to achieve a trash reduction goal of 70% by December 31, 2019. All others are required to achieve a trash reduction goal of 80% by July 1, 2019.

Brentwood, Clayton, Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Orinda, Pittsburg, Richmond, San Pablo, San Ramon, and Walnut Creek indicate that they have already reached their July 1, 2019 trash reduction goal of 80% from 2009 levels.

The cities of Hercules, Oakley, and Pinole report achieving less than 70% trash reduction in their latest annual reports. In June, 2018, Hercules and Pinole were issued Cease and Desist Orders by the Water Board requiring them to improve their

performance in meeting the required trash reduction goals. The Orders set deadlines for implementing trash controls that will bring the cities into compliance with the 80% trash load reduction relative to 2009 baseline conditions, by July 1, 2019.

## **Source Control Programs**

One way for the County, cities, and towns to help achieve their trash reduction goals is to focus on source control programs. These programs can reduce the amount of litter that enters the stormwater system.

Danville, Pittsburg, Pleasant Hill, Richmond, San Pablo, and Walnut Creek implemented ordinances banning single-use plastic bags prior to the ban becoming law in California.

Ten cities also have established ordinances banning Styrofoam food packaging. They are: Concord, El Cerrito, Hercules, Lafayette, Martinez, Pinole, Pittsburg, Richmond, San Pablo, and Walnut Creek. The County is proposing an ordinance to ban Styrofoam container use by companies selling food and beverages, private care facilities, and County establishments in the unincorporated areas.

Brentwood, Clayton, Concord, Lafayette, Moraga, Oakley, Orinda, and San Ramon have not reported source control programs as part of their trash reduction goals.

## **Trash Reduction along Caltrans Freeways and Ramps**

Caltrans owns, operates, and maintains freeways and ramps within the County. In a separate permit issued by the State Water Resources Control Board in 2012, and amended in 2014 and 2015, Caltrans is required to implement control measures in all high trash generating areas. These areas include freeways and ramps in high density residential, commercial, and industrial areas in Contra Costa County.

Caltrans is a state agency outside the Grand Jury's jurisdiction. However, it acknowledges that its freeways and ramps are collectors of trash and debris. Caltrans developed a work plan in 2016 to "ensure maximum environmental benefit while also achieving mobility and safety benefits to the traveling public." (Caltrans, Trash Load Reduction Workplan for the San Francisco Bay Region, 2016). In the County, the Workplan indicated that high trash level stretches include portions of Highways 4 and 24, and Interstate 80.

Table 2 shows the ramps with high trash levels:



**Table 2**  
**Highway Ramps with High Trash Levels**

Highway	Ramps
<b>HWY4</b>	Loveridge Rd, Railroad Ave., Morello Ave., McEwen Ave., and Willow Ave.
<b>I-80</b>	Cutting Blvd, Potrero Ave., Carlson Blvd, Central Ave., Appian Way, Richmond Parkway, San Pablo Dam Road, San Pablo Ave., MacDonald Ave., and Buchanan St.
<b>I-580</b>	Regatta Blvd., Bayview Ave., and Central Ave.
<b>I-680</b>	Willow Pass Road

On November 7, 2018, a letter urging the Water Board to take enforcement action against Caltrans was signed by two Contra Costa County Supervisors, elected officials from the cities of Antioch, El Cerrito, and Richmond, and over 60 elected officials from Alameda, San Mateo, and Santa Clara counties. The letter urged the Water Board to order Caltrans to:

- Install trash capture devices in “very high” and “high” trash generation areas wherever feasible;
- Increase frequency of trash removal; and
- Collaborate with municipalities and local agencies to implement these solutions.

According to the Water Board, Caltrans has identified portions of its highways and ramps “that generate significant amounts of trash but has not identified an acceptable schedule for timely implementation of trash controls to meet [p]ermit” requirements. (Water Board, Cease and Desist Order No. R2-2019-0007). In February, 2019, the Water Board ordered Caltrans to install devices to capture roadway debris or otherwise clean up all 8,820 acres of land under its jurisdiction in the Bay Area identified as “significant trash generating areas” by 2026. Failure to comply with the directive could result in fines of up to \$25,000 a day.

### **Trash from Homeless Encampments**

Waste from homeless encampments close to creeks present an environmental hazard. The Contra Costa County Coordinated Outreach and Engagement Team (CORE) collects and removes over 6,000 pounds of trash each month at homeless sites. CORE regularly visits homeless encampments to identify needs of the homeless. CORE encourages the homeless to clean up after themselves by providing trash bags.

## **Permit Compliance Costs**

Stormwater permit compliance activities in most Contra Costa County cities, towns, and the County are funded by a Stormwater Utility Assessment (SUA) authorized in 1993. Rates range from \$25 to \$45 a year for single-family homes. In FY 2017-18 the revenues collected countywide totaled \$15.1 million. These funds are used to support the Permit compliance activities undertaken by each of the cities, towns, the County, and CCCWP.

The cities of Richmond and Brentwood do not have a stormwater utility assessment. Their stormwater pollution prevention activities are funded from other revenue sources, and the cities' general funds.

The authority to raise taxes or assessment fees to pay for governmental services, including stormwater related activities, is limited by voter initiatives such as Proposition 13 and Proposition 218. Stormwater assessment rates have maximum limits, established by each city, town, and the County in 1993. They all reached their maximum rates by FY 2009-10. Since then, cities, towns, and the County have been supplementing their SUA revenues with funding from other sources, including their general funds.

The County is responsible for complying with the Permit provisions only in the unincorporated areas. The County estimates its compliance costs to be \$5 million per year. Of that amount, \$2.2 million per year is budgeted for trash reduction related activities.

The County receives about \$3.8 million per year in SUA revenue, road, and flood control funding. The County estimates that it will need an additional \$1.2 million per year to meet all the Permit requirements.

Revenue shortfalls may prevent the County from meeting its stormwater trash reduction goals. Failure to comply with the Permit would leave the County liable for substantial fines from the Water Board. In order to achieve a trash reduction goal of 100%, the County may need to consider seeking additional sources of funding.

Both the CCCWP and the Contra Costa Local Agency Formation Commission (LAFCO) report that unfunded federal and state mandated stormwater permit compliance programs are a challenge for cities, towns, and the County. In its 2019 Municipal Service Review, LAFCO reports, "[s]tormwater control requirements mandated by regional and state agencies are increasing the cost of treating stormwater without providing compensating new revenue sources." To address this funding shortfall, the Grand Jury recommends that cities, towns, and the County consider undertaking efforts to identify additional funding sources to fully fund Permit requirements in order to comply with the Permit and avoid potential liability.

## **Public Awareness**

The required Annual Reports provide a detailed breakdown of performance toward complying with all the Permit provisions by the CCCWP, each city, town, and the County. The CCCWP 2017-18 Annual Report documenting permit compliance activities it conducted during the year totals 564 pages. Each city, town, and the County also prepared a similar report documenting its permit compliance performance. These reports each range in length from 58 to 177 pages. They are filled with forms and tables supplied by the Water Board, which document accomplishments for the year. No narrative summary is provided identifying accomplishments, challenges, costs, and funds needed to fully comply with the Permit. The Grand Jury recommends that to enable the public to understand these issues, CCCWP, each city, town, and the County should consider providing a narrative summary of their efforts to achieve Permit requirements.

## **FINDINGS**

- F1. The 2015 Municipal Regional Stormwater Permit requires most of the cities, towns, and the County to take action to reduce trash discharges by 80%, from 2009 baseline levels, by July 1, 2019
- F2. Antioch, Brentwood, Oakley, and the eastern portion of the County were added to the Permit in February, 2019 and have a requirement to reduce trash discharges by 70%, from their 2016 baseline trash levels, by December 31, 2019.
- F3. Using the formula prescribed in the Permit, Brentwood, Clayton, Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Orinda, Pittsburg, Richmond, San Pablo, San Ramon, and Walnut Creek report that they have already reached their July 1, 2019 trash reduction goals.
- F4. In June, 2018, Hercules and Pinole were issued Cease and Desist Orders by the Water Board requiring them to improve their performance in meeting their trash reduction goals.
- F5. The County estimates that it will need an additional \$1.2 million per year to meet all the Permit requirements.
- F6. Both the CCCWP and LAFCO report that unfunded federal and state mandated stormwater permit compliance programs are a challenge for cities, towns, and the County.
- F7. Concord, El Cerrito, Hercules, Lafayette, Martinez, Pinole, Pittsburg, Richmond, San Pablo, and Walnut Creek have established ordinances banning Styrofoam food packaging in their communities.



- F8. Caltrans reports that highways and ramps along portions of Highways 4 and 24, Interstates 80, 580, and 680 in Antioch, El Cerrito, Richmond, and in the unincorporated areas of the County are high trash generation areas.
- F9. No narrative summary of the accomplishments, challenges, costs, and funds needed to fully comply with the Permit is provided in the required annual reports prepared by CCCWP, the County, and each city and town.

## **RECOMMENDATIONS**

- R1. The City Councils of Hercules and Pinole should each consider directing their city manager to implement trash controls to bring them into compliance with the 80% trash reduction goal by December 31, 2019.
- R2. The City/Town Councils of Antioch, Brentwood, Clayton, Danville, Moraga, Oakley, Orinda, Pleasant Hill, and San Ramon should consider limiting the use of Styrofoam containers in their communities by June 30, 2020.
- R3. The Board of Supervisors and all City/Town Councils should consider directing staff to provide a concise summary of their Annual Reports, citing their accomplishments, challenges, costs, and funds needed to fully comply with the Permit, by December 31, 2019.
- R4. The Board of Supervisors and all City/Town Councils should consider identifying additional revenue sources to fully fund Permit requirements in order to comply with the Permit and avoid potential liability, by June 30, 2020.

## REQUIRED RESPONSES

	Findings	Recommendations
Contra Costa County Board of Supervisors	F1, F2, F5, F6, F8, and F9	R3 and R4
City of Antioch	F2, F6, F8, and F9	R2, R3, and R4
City of Brentwood	F2, F3, F6, and F9	R2, R3, and R4
City of Clayton	F1, F3, F6, and F9	R2, R3, and R4
City of Concord	F1, F3, F6, F7, and F9	R3 and R4
Town of Danville	F1, F3, F6, and F9	R2, R3, and R4
City of El Cerrito	F1, F3, F6, F7, F8, and F9	R3 and R4
City of Hercules	F1, F4, F6, F7, and F9	R1, R3, and R4
City of Lafayette	F1, F3, F6, F7, and F9	R3 and R4
City of Martinez	F1, F3, F6, F7, and F9	R3 and R4
Town of Moraga	F1, F3, F6, and F9	R2, R3, and R4
City of Oakley	F2, F6, and F9	R2, R3, and R4
City of Orinda	F1, F3, F6, and F9	R2, R3, and R4
City of Pinole	F1, F4, F6, F7, and F9	R1, R3, and R4
City of Pittsburg	F1, F3, F6, F7, and F9	R3 and R4
City of Pleasant Hill	F1, F6, and F9	R2, R3, and R4
City of Richmond	F1, F3, F6, F7, F8, and F9	R3 and R4
City of San Pablo	F1, F3, F6, F7, and F9	R3 and R4
City of San Ramon	F1, F3, F6, and F9	R2, R3, and R4
City of Walnut Creek	F1, F3, F6, F7, and F9	R3 and R4

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [ctadmin@contracosta.courts.ca.gov](mailto:ctadmin@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson  
 725 Court Street  
 P.O. Box 431  
 Martinez, CA 94553-0091

# **CA's Flood Protection Infrastructure Crisis**



# California's Flood Protection *Infrastructure Crisis*

Coyote Creek, San Jose



14,000 people evacuated  
1,300 homes with extensive damage  
479 homes yellow tagged  
Damages = \$75 million

Oroville Dam Spillway



188,000 people evacuated  
Significant environmental damage  
Facility age = 50 years  
Repair cost = \$100's of millions?

## Contra Costa County Flood Protection Facilities

\$1 billion asset value

79 miles of channels + 29 detention basins  
*protecting*  
\$25 billion community value

40% of facilities are 50+ yrs old

*How much longer will they function?* Capital replacement estimated at \$2.4 billion.  
Stormwater is a critical resource, yet we don't have funding to capture it for reuse.



Contra Costa County  
**Flood Control**  
& Water Conservation District

**Our Need:** Reliable funding sources and rate structures for stormwater and flood control services and projects, similar to the water and wastewater sector.



## Current Projects

**North Richmond Levee Improvements:** This project will increase the height of levees along Wildcat Creek in the disadvantaged community of North Richmond and will save 265 homes from being placed in the FEMA flood zone. The need is due to changed FEMA requirements, not levee failure.

**Lower Walnut Creek Restoration Project:** This project includes restoration of prime habitat along the 4.5 mile downstream reach of Walnut Creek and Pacheco Creek in Pacheco as well as improved flood protection and public access. This multi-objective, innovative project was the subject of a scientific paper on how to address the challenges of flood protection, sea level rise, and climate change in a single project.

**Three Creeks Project:** Collaboration with American Rivers, the City of Brentwood, and Friends of the Marsh Creek Watershed, brought \$3 million in outside funding to create a \$5.5 million project that will restore habitat value, improve flood protection, and add public access along  $\frac{3}{4}$  mile of Marsh Creek in Brentwood.

## Challenges

**Municipal Regional Permit 2.0:** The cost of complying with the County's new stormwater permit ranges from an artificially low \$19 million for the five-year permit term, up to a potential of \$200 million. The permit structure makes it impossible to control compliance within our own jurisdiction, however, the most likely scenario will cost about \$62 million. Our current revenue stream is \$3.5 million per year and raising revenue is unlikely due to lack of majority vote.

**Sustainable Maintenance Funding:** For the size of flood protection system in Contra Costa County, we should be spending about \$30 million per year to maintain our facilities. Unfortunately, we only have \$4 million per year to spend on maintenance leaving a \$26 million annual disinvestment in our infrastructure. Each year we continue in this disinvestment mode, the more it will cost to fix our facilities when they fail. And the longer we wait, the more likely that failure will be catastrophic rather than incremental.

**Aging Infrastructure:** About half of our flood protection system was built between 1955 and 1970, and the other half between 1980 and 1990. These facilities were built with a design life of 50 years, and almost 40% of the system has exceeded that age. We are currently in the process of conducting a conditions assessment of our systems to determine their remaining service life. No matter what the study shows, our revenue was locked in with passage of Proposition 13 in 1978 and is not enough to fund the planning work of a capital replacement program, let alone constructing the capital projects which are estimated at \$2.4 billion.

## Recent Accomplishments

**Pinole Creek Fish Passage:** A large concrete culvert under Interstate 80 in Pinole was modified to allow fish to pass safely under the freeway and up into miles of prime habitat. This project was led by the Contra Costa Resource Conservation District along with a host of partners.

**Giving the Natives a Chance:** This private/public partnership was created to replace non-native grasses in flood control channels with native species to reduce herbicide use. This was the second year that native grass plugs were planted along a reach of flood control channel in the Concord.

**Stay Out, Stay Alive!** In 2011, two young men from Las Lomas High School attempted to raft down Walnut Creek flood control channel during a heavy rain storm. They lost their lives in the turbulent waters and the Flood Control District initiated a safety program to educate kids and parents about the inherent dangers of flood control channels and creeks. We've now established an ongoing interactive safety program at two schools adjacent to that same flood control channel.

**Legislative Tours:** As part of our outreach effort to elected officials, we conducted several tours of our facilities with state legislators and local council members. We have interesting and valuable flood protection infrastructure in each district. We are looking forward to more tours.

**Flood Preparation and Warning:** The Flood Control District has developed flood preparedness and predictive warning programs for communities, now available on our web page for desktop and mobile devices. The information helps people become aware of their flooding potential and be able to better prepare their home and family in advance of heavy storms.

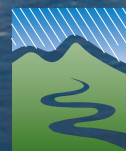
**CONTRA COSTA COUNTY FLOOD CONTROL**  
**A Balanced Approach to**  
**Funding Stormwater Services**



# The Answer to California's Stormwater Problem

## ONE-Water

A Balanced Approach  
to Funding Stormwater  
Services



Contra Costa County  
**Flood Control**  
& Water Conservation District



# Who We Are and How We've Evolved

The **Contra Costa County Flood Control and Water Conservation District** has served the community for 65 years. It covers all of Contra Costa County, including its cities, and owns property throughout the county for the purpose of constructing and maintaining regional flood control channels and creeks.

The District's primary job is to manage stormwater, protect local watersheds, and preserve our waterways and the surrounding environment.



Our original mandate was to provide flood protection infrastructure and improvements for a rapidly developing Contra Costa County in the most economical manner. However, today's communities desire a broader range of services.

Along with proper flood protection, residents today also want a healthy, natural-looking ecosystem, good water quality, and sustainable and rich plant and animal habitat. They also want opportunities to engage with their creeks and watersheds.

The District's **50 Year Plan** was first developed in 1999 with the goal of converting concrete and rip-rap lined flood control channels into more natural systems that safely convey the same flood waters.

Despite the fact that we have a plan and vision that is supported by the community, we are unable to meet this new demand. With proper funding the District would be able to transform stormwater services to meet today's needs.





# Cities, Counties, and Flood Control Districts Provide Four Essential Stormwater Services



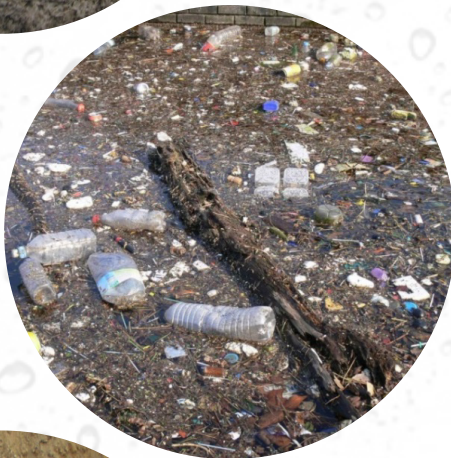
## Groundwater Supply

Helping increase stormwater infiltration by removing obstacles and enhancing recharge of groundwater basins.



## Regional Flood Protection

Managing large Flood Control District facilities that protect communities from dangerous flooding.



## Stormwater Quality Improvement

Removing pollutants and toxins from urban run-off before they enter local waterways to protect the environment and the water supply.



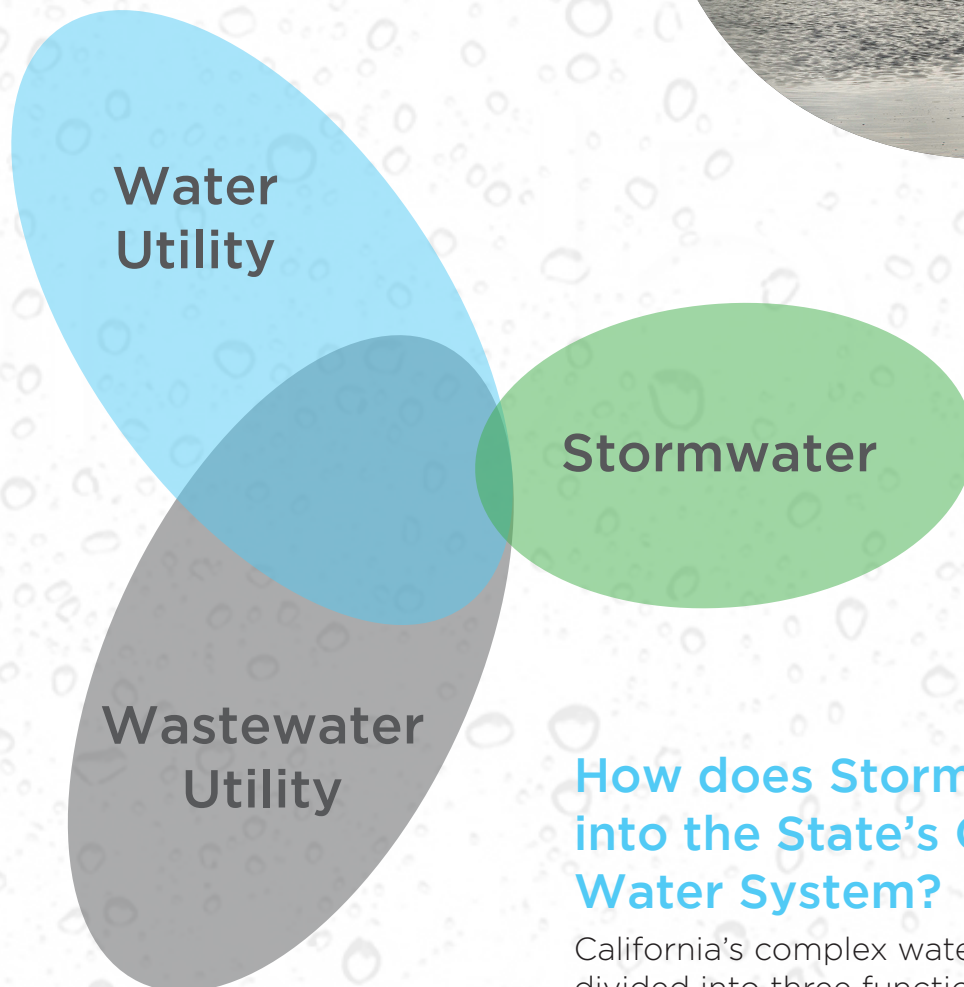
## Community Drainage

Maintaining local drainage systems that effectively move stormwater away from urban areas to prevent flooding.



## What is Stormwater?

Stormwater originates as rain or snow. Once it falls it can either infiltrate to recharge groundwater basins, be held on the surface and evaporate, or run-off into local waterways. In urban areas, which have high amounts of impervious surfaces, stormwater frequently ends up as run-off. This runoff also carries with it many pollutants from urban living.



## How does Stormwater Fit into the State's Overall Water System?

California's complex water system is divided into three functioning sectors: Water, Wastewater, and Stormwater. These three sectors work together, each one connected to the other, each segment providing water that is vital to the state's numerous ecosystems, industries, and residents.

# Funding for our Stormwater System is not meeting California's needs

## Chronic Funding Issues Are Prohibiting Progress

**Stormwater funding is reliant on funding mechanisms that were frozen in the 1970s**, while agencies responsible for Water and Wastewater Utilities have had the flexibility over the years to charge rates necessary to provide updated, reliable services.

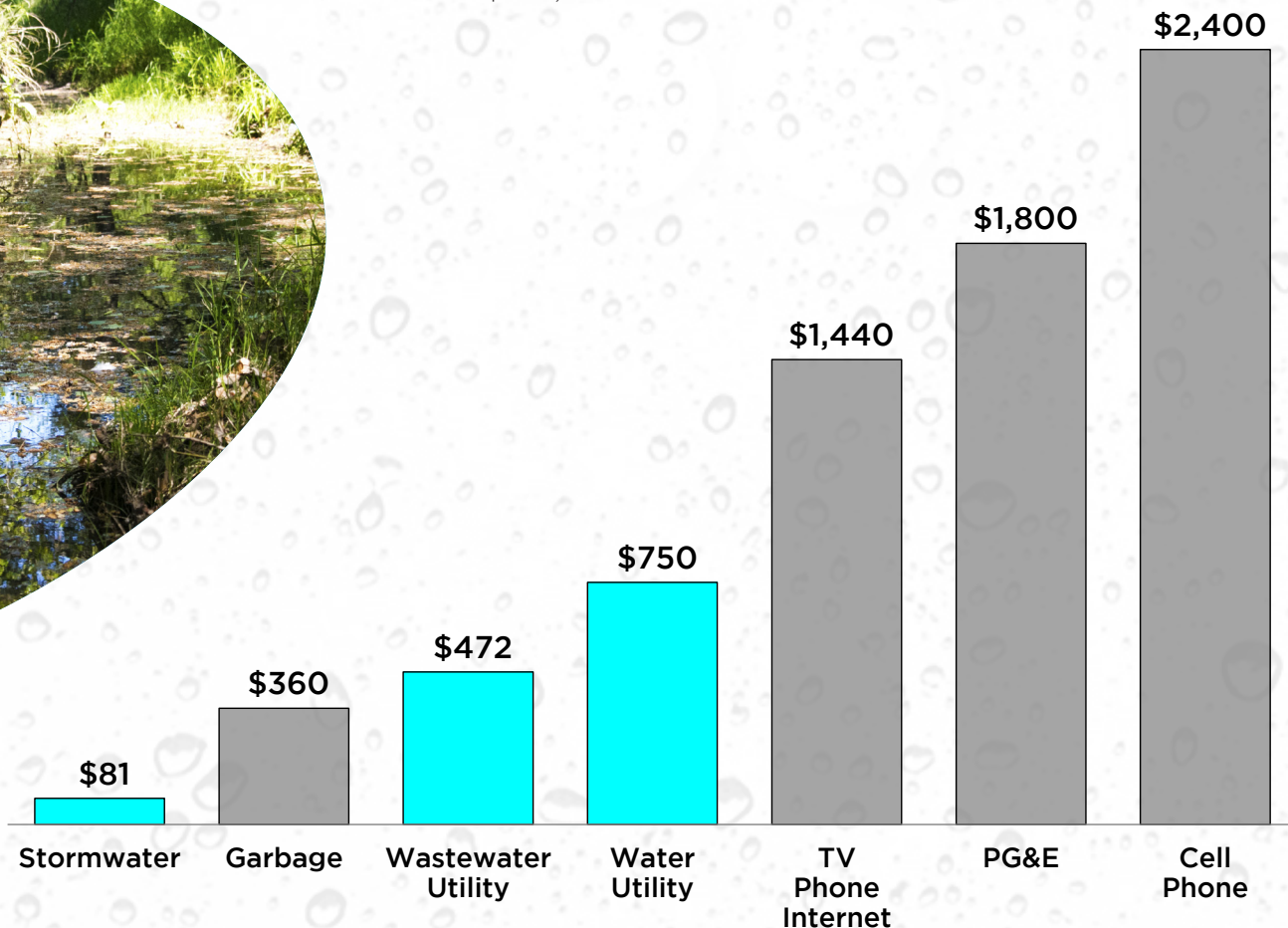
A fully invested stormwater program has sufficient financial resources to pay for maintenance and capital replacement.

Dis-investment is the shortfall between what the budget should be to cover maintenance and capital investment of a sustainable system, and what the budget actually is.

**Dis-investment in stormwater infrastructure and services has been growing every year since 1978.**

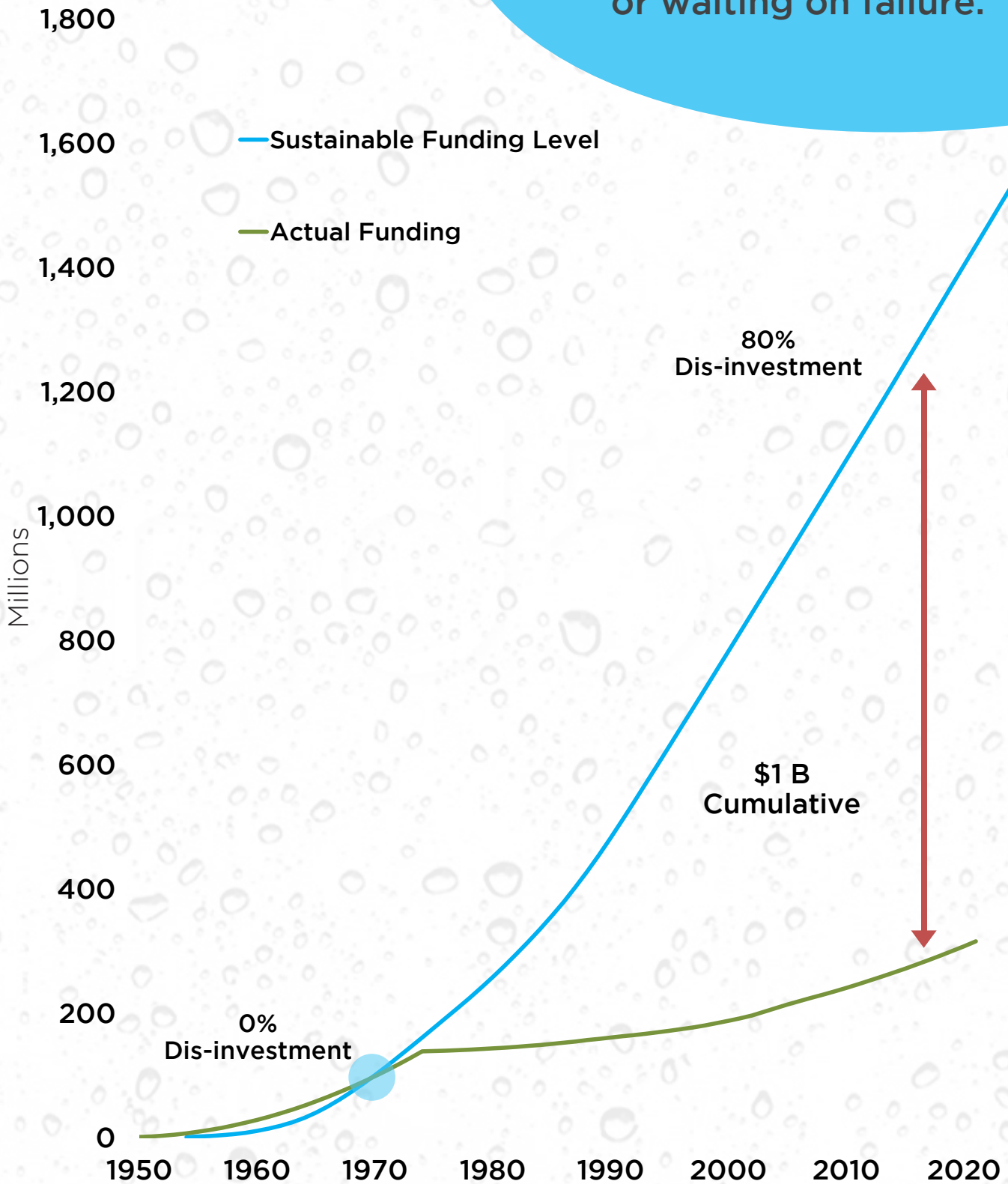
## Annual Household Expense Comparison

Based on a \$500,000 home in Walnut Creek





We are either investing in a sustainable system, or waiting on failure.



Dis-Investment growth for CCC Flood Control District

# The Solution Involves Replacing Fragmented Past Policies with a Unified ONE-Water Policy

Water is scarce in California, so we need to ensure that every drop of water meets its full potential. To achieve better management of all aspects of California's water system, each of the state's three water sectors needs to be properly funded so that each can function at its fullest. This is a unified ONE-Water approach.



A Venn diagram consisting of three overlapping circles. The top-left circle is light blue and labeled 'Water Utility'. The top-right circle is green and labeled 'Stormwater Utility'. The bottom circle is grey and labeled 'Wastewater Utility'. The intersections of the circles are shaded with darker tones of their respective colors, representing the integrated 'ONE-Water' approach.

**Water  
Utility**

**Stormwater  
Utility**

**Wastewater  
Utility**



Facing the reality of our changing climate means that the availability of water is changing, and we have to change with it. Finding ways to maximize our usage of available water is a vital step in averting a future crisis.



Fully funding stormwater services will close the loop and allow cities, counties, and flood control districts to do their part to preserve California's most precious resource, our water.



With better, more reliable funding, the Stormwater sector can function more effectively too, providing much-needed flood protection, recharging groundwater basins, increasing drinking water supplies, and providing a healthier environment for all.



# What are the Benefits of an Effective Stormwater System?

An effective, well-funded stormwater system would:

## Protect

communities from dangerous floods.

## Recharge

groundwater basins providing a vital reserve for our diminishing groundwater.

## Provide

healthy creeks for future generations by restoring healthy watersheds.

## Ensure

clean water for healthy ecosystems where plants, animals, and people thrive.

## Reduce

the strain caused by extended droughts.

## Meet

Federal and State guidelines for clean water.

## Transform

old concrete channels into natural streams.



To protect the future residents of California, we need to manage our water resources with great care. Climate change has put growing pressure on our entire water system, which has led to increased measures to protect our watersheds, ensure water quality, and provide updated flood protection. With proper funding Stormwater utilities can fulfill a critical role in preserving the State's water.

## There Is A Solution!

**We need a fully funded Stormwater system.**

That way, not just Water and Wastewater Utilities, but all sectors of California's water system will be operating at full capacity. Working together under a ONE-Water approach, all sectors can ensure every drop of water is utilized to its full benefit.

**The Legislature can play a role in getting the Stormwater sector fully funded.**

A ONE-Water integrated approach can lead to policy that will rectify the current inequities in water system funding.

**A Constitutional Amendment approved by the Legislature**

can establish a ballot measure that addresses the issue. This will allow California voters to decide on equitable stormwater funding.



[WWW.CCCOUNTY.US/FLOODCONTROL](http://WWW.CCCOUNTY.US/FLOODCONTROL)



Contra Costa County  
**Flood Control**  
& Water Conservation District