
San Francisco Bay Regional Water Quality Control Board

TO: Bruce Wolfe
Executive Officer

DATE: January 4, 2016

FROM: Dyan Whyte
Assistant Executive Officer

On September 11, 2015, you issued Cleanup and Abatement Order (CAO) No. R2-2015-0038, pertaining to unauthorized levee construction on Pt. Buckler Island, a 51-acre island in Grizzly Bay. The CAO included findings that the unauthorized construction had adversely impacted tidal marshlands and numerous beneficial uses present at the site, including estuarine habitat, fish migration, preservation of rare and endangered species, fish spawning, and wildlife habitat. The CAO required Pt. Buckler LLC to develop a workplan for restoring tidal circulation and marsh habitat to the island. The (amended) deadline for the workplan was January 1, 2016.

As you are aware, on December 23, 2015, Pt. Buckler LLC filed a petition for writ of mandate and a complaint for injunctive and declaratory relief in Solano Superior Court, including several claims related to due process and challenges to the Regional Water Board's ability to issue a CAO in these particular circumstances. In order to address the procedural due process claims, the Prosecution Team recommends that you rescind the CAO at this time. We plan to draft a revised CAO and recommend that the matter be heard by the full Board in the April or May timeframe. To the extent that prosecution staff chooses to pursue enforcement for any unauthorized discharges or activities, we propose that the Board consider both matters at the same time.

Cc: Larry Bazel, counsel for Point Buckler LLC
Marnie Ajello, Advisory Counsel to the Regional Water Board