

**CALIFORNIA STATE LANDS COMMISSION**

100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202



**AUG 03 2009**

**PAUL D. THAYER**, Executive Officer

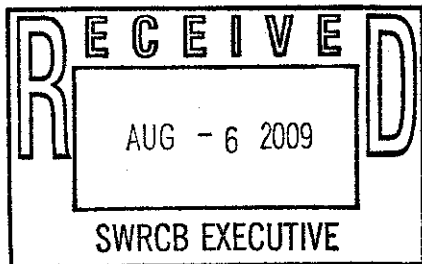
(916) 574-1800 FAX (916) 574-1810

California Relay Service from TDD Phone **1-800-735-2929**

from Voice Phone **1-800-735-2922**

Contact Phone: (916) 574-1227

Contact FAX: (916) 574-1324



File Ref: G02-04

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

Dear Ms. Townsend:

Subject: Review of Cleanup and Abatement Order No. R2-2008-0095 for City of Richmond and the U.S. Department of Defense, Department of the Navy regarding the Former Point Molate Naval Fuel Depot

Thank you for the opportunity to comment on the matter of the petition of Mr. Ken Berry and California Citizens for Environmental Justice on the Cleanup and Abatement Order No. R2-2008-095 (CAO) issued by the California Regional Water Quality Control Board, San Francisco Region for the Former Point Molate Naval Fuel Depot (Site).

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable waterways upon its admission to the United States in 1850. The CSLC also retains residual and review authority for tide and submerged lands legislatively granted in trust to local jurisdictions (Public Resources Code §6301 and §6306). All tide and submerged lands, granted or ungranted, as well as navigable rivers, sloughs, etc., are impressed with the Common Law Public Trust. The Public Trust is a sovereign public property right held by the State or its delegated trustee for the benefit of all the people. This right limits the uses of these lands to waterborne commerce, navigation, fisheries, open space, water-oriented recreation or other recognized Public Trust purposes.

The facts pertaining to the matter, as we understand them, are these:

The Site is a former Navy facility adjacent to San Francisco Bay in the City of Richmond. The Site covers approximately 413 acres and at one time had 20 underground storage tanks, each of which could store up to two million gallons of fuel and oil. Residual contamination has been found at concentrations that necessitate

remediation involving a combination of source removal, groundwater monitoring, and adoption of institutional controls to assure that the cleanup is consistent with any intended reuses of the Site and protective of human health and the environment. Because of the known releases of hazardous materials, the Site appears on the Cortese List. The Cortese List is a compilation by the State Water Board of certain sites "that concern the discharge of wastes that are hazardous materials."

The San Francisco Bay Water Board adopted the CAO at its meeting on November 12, 2008. The CAO requires the submission of a number of studies, plans and reports, but does not require any specific cleanup actions. The San Francisco Bay Water Board found that the adoption of the CAO was "categorically exempt" from the requirements of the California Environmental Quality Act (CEQA). It is this action that led to Mr. Ken Berry and California Citizens for Environmental Justice to petition the State Water Resources Control Board for a review of the CEQA determination. The Petitioners' sole contention is that the San Francisco Bay Water Board failed to comply with the requirements of the California Environmental Quality Act (CEQA). The Petitioners claim that the use of a categorical exemption is unlawful because CEQA prohibits the use of categorical exemptions for sites on the Cortese List.

Based on staff's review of our in-house records and maps, it appears that some of the Site is located within Rancho San Pablo. This rancho was confirmed into private ownership and patented by the Federal Government. The State is precluded from asserting that it acquired sovereign title interest by virtue of its admission to the United States in 1850 pursuant to the holdings in Summa Corporation v. California 466 U.S. 198 (1984). Other lands at the Site are located within sold and unfilled and/or partially filled Board of Tideland Commissioners Lots 1 through 13, Section 9. Any remaining State interest at this location has been granted to the City of Richmond, pursuant to Chapter 317, Statutes of 1913, no minerals reserved and Chapter 379, Statutes of 1935, with minerals reserved to the State.

This conclusion is without prejudice to any future assertion of State ownership or public rights, should circumstances change, or should additional information become available. This letter is not intended, nor should it be construed as, a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

If you have any questions, please contact Grace Kato, Public Land Management Specialist at (916) 574-1227 or via email at [katog@slc.ca.gov](mailto:katog@slc.ca.gov). Thank you.

Sincerely,

*for* *Colin Connor, Assistant Chief*  
Barbara Dugal, Chief  
Land Management Division

cc:

Eric Milstein  
Grace Kato