

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR MEETING OF July 31, 2014

Prepared June 20, 2014

ITEM NUMBER: 12

SUBJECT: Recommendation to Allocate \$950,000 of Guadalupe Enforcement Settlement Funds to the Groundwater Assessment and Protection Program.

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SUMMARY

This staff report summarizes the Central Coast Water Board's previous direction to staff regarding water quality priorities and the allocation of Guadalupe Enforcement Settlement Funds, and recommends that the Central Coast Water Board continue its previous direction by re-allocating \$950,000 from the unsuccessful Wild Cherry Canyon preservation project to the Groundwater Assessment and Protection (GAP) program. The Central Coast Water Board is not bound by its previous decisions or direction and has broad authority to allocate the Guadalupe Enforcement Settlement Funds.

The Central Coast Water Board affirmed its water quality priorities at public meetings in 2011¹, and 2013². The Central Coast Water Board's highest priority is preventing and correcting threats to human health. The greatest threat to human health is degradation of drinking water supplies (groundwater). The Central Coast depends on groundwater far more than any other area of the State. Groundwater provides 86% of the Central Coast's total water supply.

On May 3, 2012, the Central Coast Water Board adopted Resolution No. R3-2012-0024 (included here as Attachment A), which affirmed water quality priorities and directed Central Coast Water Board staff to do the following:

1. Establish the Groundwater Assessment and Protection Program (GAP).

¹ The Central Coast Water Board affirmed its priorities at its July 14, 2011 annual "big picture" meeting (agenda Item No. 18): http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2011/July/Item_18/index.shtml

² The Central Coast Water Board discussed priorities and staff resource limitations during its annual "big picture" meeting on October 9, 2013 (agenda Item No. 9): http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2013/oct/Item_9/index.shtml

2. Allocate all remaining Guadalupe Settlement Funds to GAP, including \$800,000 as an endowment and \$471,000 for initial projects.³
3. Obtain additional funding to increase the GAP endowment.
4. Implement the GAP work plan.
5. Allocate \$500,000 toward technical support for future Basin Plan amendments.

The purpose of GAP is to better manage and protect groundwater (drinking water) on the Central Coast. The GAP program work plan is included here as Attachment B.

When adopting Resolution No. R3-2012-0024 on May 3, 2012, the Central Coast Water Board noted that additional funding would be necessary to implement the GAP program and agreed with staff's goal to increase the GAP endowment to \$5 million over the next several years. The Central Coast Water Board also directed staff to leverage its efforts with the State Water Resources Control Board (State Water Board) and apply for additional funding from the State Water Board to implement projects. These extensive ongoing efforts are summarized later in this staff report.

Groundwater protection and the GAP program have become more important as additional data underscore the threat to regional drinking water supplies and human health (see Agenda Item No. 11 for this meeting). Also, the Governor issued two recent State of Emergency Drought Declarations emphasizing the importance of protecting groundwater.

The GAP program is leveraged with and designed to help implement many statewide initiatives regarding groundwater protection and human health:

1. The State Water Board Strategic Plan.
2. The State Water Board's Groundwater Workplan Concept Paper.
3. The Department of Water Resources (DWR) California Water Plan Update.
4. The California Water Action Plan.
5. The Senate Bill X2 1 report *Addressing Nitrates in California Groundwater*, and the resulting State Water Board recommendations to the legislature.
6. The Governor's Drinking Water Stakeholder Group Recommendations.
7. The State's Human Right to Water Policy (Assembly Bill 685, Water Code section 106.3).
8. The State Water Board's Environmental Justice goals.

In 2009, prior to the establishment of GAP, the Central Coast Water Board allocated \$950,000 from the Guadalupe Settlement Fund to the Wild Cherry Canyon conservation project. The Wild Cherry Canyon project did not succeed, and no funds were spent. Therefore, the Central Coast Water Board may consider allocating these funds to other projects. If the Central Coast Water Board chooses to consider increasing the GAP endowment, the availability of \$950,000 from the Wild Cherry Canyon project would be the first opportunity to do so since establishing the GAP program in May 2012.

³ Note: a starting balance of only \$271,737 operating funds were available for GAP implementation due to foundation withholdings associated with managing the Wild Cherry Canyon project funds.

There are many other possibilities for allocating these funds. The Land Conservancy of San Luis Obispo County is requesting that the Central Coast Water Board allocate up to \$800,000 to the Pismo Preserve conservation project. The Pismo Preserve project would purchase 900 acres of coastal land at a total purchase price of \$12 million (approximately \$13,333 per acre), as described in Attachment C (Memorandum to the Central Coast Water Board, with attachments). This project would provide local benefits, including social, economic, and environmental value. This project would likely meet the requirements of the court issued Consent Judgment that established the Guadalupe Enforcement Settlement Fund if adequate restrictions to protect ecological values are legally established, as with previous land and easement purchases funded by the Central Coast Water Board (discussed later in this staff report). The Pismo Preserve project is commendable for the local public benefit it would provide; however, staff is focused on the Central Coast Water Board's and State Water Board's highest water quality priorities as previously directed by the Central Coast Water Board and as described in this staff report.

In conclusion, staff recommends that the Central Coast Water Board allocate all remaining Guadalupe Settlement Funds of approximately \$950,000 to the GAP program endowment to implement the Central Coast Water Board's highest priority work, as previously described in Water Board Resolution No. R3-2012-0024.

DISCUSSION

Guadalupe Settlement Fund Background Information

The Guadalupe Enforcement Settlement Fund was established in 1998 as a settlement between the Central Coast Water Board and Unocal Corporation regarding unpermitted discharges at Unocal's Guadalupe Dunes Oilfield. A copy of the Superior Court's Settlement Agreement and Judgment (Consent Judgment) is available here:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/gap/docs/quad_settlement_agreement.pdf

The enforcement action and settlement also included the State Water Board, California Department of Fish and Wildlife, California Department of Toxic Substances Control, and California Coastal Conservancy, all of whom were represented by the California Attorney General. The total settlement amount was \$43.8 million, which was awarded to the various agencies via the Consent Judgment, as follows:

Agency	Amount
Central Coast Water Board	\$15,000,000
CA Department of Fish and Wildlife, Pollution Account	\$11,100,000
CA Department of Fish and Wildlife, Guadalupe Natural Resources Restoration Trust	\$ 9,000,000
CA Department of Fish and Wildlife, reimbursement of costs	\$ 4,840,000
California Environmental Enhancement Fund	\$ 375,000

California Oil Spill Prevention and Administration Fund	\$ 125,000
CA Department of Toxic Substances Control	\$ 700,000
State Water Board, Cleanup and Abatement Account	\$ 500,000
Attorney General's Office, settlement of various claims	\$ 700,000
Attorney General's Office, reimbursement of legal costs	\$ 160,000
County of San Luis Obispo, credit for previous payment	\$ 1,300,000
Total	\$43,800,000

The California Department of Fish and Wildlife allocated approximately \$8 million from their Guadalupe Natural Resources Restoration Trust to local organizations and projects, primarily through a group of local non-profit organizations and agencies referred to as the Guadalupe Dunes Collaborative.

The Central Coast Water Board's initial process to allocate its funds after the 1998 settlement was based on a "request for proposals" which resulted in hundreds of project proposals that had to be reviewed and evaluated by staff. The Central Coast Water Board selected 19 projects at a total allocation of approximately \$10 million. A simple list of these projects was included on page 5 of the February 2008 staff report regarding Guadalupe Enforcement Settlement Funds, available here:

http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2008/feb/item9/item9_staff_rpt.pdf

The majority of these funds were spent on local projects. The Central Coast Water Board projects combined with the CA Fish and Wildlife projects totaled about \$18 million for local organizations.

The "request for proposals" process and oversight of the projects created a problem for the Central Coast Water Board, which lacked the staff resources and budget for adequate oversight. In addition, the Executive Officer canceled some contracts due to poor performance or accountability problems, and some projects had questionable results. This oversight issue is even more significant today, as the Central Coast Water Board's staff numbers have decreased about 25% over the past ten years, and today the "fee-based" budget structure is far more restrictive regarding staff time. Also, the State Water Board's Enforcement Policy requires the Regional Boards to provide adequate oversight of any settlement funded projects. The Central Coast Water Board does not have the staff resources or budget flexibility to implement a "request for proposals" process at this time, or to adequately oversee multiple projects by multiple organizations.

Central Coast Water Board Priorities

In 2003, the Central Coast Water Board directed staff to prioritize water quality issues and actions, and to propose allocation of the Guadalupe Enforcement Settlement Funds to those priority actions. The Board directed staff to focus on "regional benefit" and "leveraging" when developing proposals for funding.

Over the next few years, the Central Coast Water Board and staff developed a vision for healthy watersheds, goals, and actions, and worked to align the organization to implement the actions. The Central Coast Water Board discussed its priorities at public meetings, as follows:

Preventing and Correcting Threats to Human Health
Preventing and Correcting Degradation of Aquatic Habitat
Preventing Degradation of Hydrologic Processes
Preventing/Reversing Seawater Intrusion
Preventing Further Degradation of Groundwater Basins from Salts

In February 2008, staff proposed funding for the Central Coast Low Impact Development Initiative (LIDI), the Central Coast Ambient Monitoring Program (CCAMP), and two land conservation projects (Paradise Beach and Wild Cherry Canyon). The Paradise Beach parcel is 143 acres located on the coast, just south of the Guadalupe Dunes, and the project was proposed by the Land Conservancy San Luis Obispo County. The Wild Cherry Canyon parcel is 2,400 acres located between Avila Beach and Montana De Oro State Park, and the project was proposed by the American Land Conservancy. During the February 2008 Board meeting, the Central Coast Water Board approved funding for LIDI (\$2.3 million), CCAMP (\$4.65 million), and the Paradise Beach conservation project (\$900,000).

At that time, the Central Coast Water Board did not approve funding for the Wild Cherry Canyon conservation project (\$950,000) due to concerns about fee title ownership, adequate conservation assurances, and overall project funding, but the Board invited the American Land Conservancy to address these issues and re-apply for funding. The February 2008 staff report is available here:

http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2008/feb/item9/item9_staff_rpt.pdf

In May 2009, the American Land Conservancy again requested that the Central Coast Water Board provide \$950,000 for the Wild Cherry Canyon conservation project. This project would have preserved 2,400 acres of land between Avila Beach and Montana De Oro State Park, at a purchase price of \$21 million (about \$8,750 per acre). The project was part of a larger conservation effort that totaled 4,000 acres and was to be added to Montana De Oro State Park. This time, staff recommended denial of the request due to the severe economic and budget crisis that began in late 2008 and early 2009. However, the Board approved the funding request conditional upon The American Land Conservancy obtaining all other necessary funding, assurance of adequate long-term conservation measures, and acquisition of the fee title. The Wild Cherry Canyon project was on hold for several years pending final funding approval from the CA State Public Works Board. The land owner subsequently opted out of the deal in 2013, and the American Land Conservancy informed the Central Coast Water Board that they were no longer seeking funding for this project. No funds were transferred or spent with the exception of about \$60,000 in Guadalupe Enforcement Settlement Fund management fees that occurred while the project was delayed for several years.

Creation and Funding of the Groundwater Assessment and Protection (GAP) Program

In May 2012, the Central Coast Water Board approved funding for the Groundwater Assessment and Protection (GAP) program via adoption of Resolution No. R3-2012-0024

(included here as Attachment A), which affirmed Central Coast Water Board water quality priorities⁴. Resolution No. R3-2012-0024 directed staff to do the following:

1. Establish the Groundwater Assessment and Protection Program (GAP).
2. Allocate all remaining unobligated Guadalupe Settlement Funds to GAP, including \$800,000 as an endowment and \$471,000 for initial projects.
3. Obtain additional funding to increase the GAP endowment.
4. Implement the GAP work plan (included here as Attachment B).
5. Allocate \$500,000 toward technical support for future Basin Plan amendments.

Regarding number 5, above, staff is working on a scope of work for the allocation of \$500,000 toward technical support for future Basin Plan amendments. The scope of work will be based on the results of the Central Coast Region's Healthy Watersheds Assessment, the Basin Plan Triennial Review Process, and Board direction. Staff will present the Healthy Watersheds Assessment results to the Central Coast Water Board at their September 2014 meeting. Staff will present the Basin Plan Triennial Review List of Priority Issues for Central Coast Water Board consideration and approval at the Board's November 2014 meeting. Following these Board meetings and Board direction, staff will finalize and implement the scope of work regarding the allocation of \$500,000 toward technical support for Basin Plan amendments. Currently, staff is evaluating concepts for basin plan amendments that would focus on integrated water resource management and protection in alignment with the many State Water Board initiatives and priorities discussed below, and in coordination with the GAP program.

The purpose of GAP is to better manage and protect groundwater (drinking water) on the Central Coast. Staff is focused on the following priority tasks:

1. Collaboration with the State Water Board, local water purveyors, and municipalities to create a comprehensive groundwater database and assessment tools.
2. Implementation of long-term groundwater monitoring and assessment to help manage groundwater resources.
3. Identification of high risk areas, and the implementation of domestic well sampling, and outreach and education to inform the public about health risks and solutions.
4. Defining Central Coast Water Board priority actions with respect to groundwater.
5. Identification of disadvantaged communities with contaminated drinking water and their specific needs (needs analysis).
6. Obtaining replacement water for disadvantaged communities with contaminated drinking water.

The "needs analysis" for disadvantaged communities (No. 5 above) is one of the most urgent tasks. Based on county and Central Coast Water Board staff estimates, there are about 2,000 small unregulated water systems in the Central Coast Region, and many of these communities have contaminated drinking water (see agenda Item No. 11 on this Water Board meeting

⁴ The staff report for the May 3, 2012 meeting is available here:

http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2012/may/Item_12/index.shtml

agenda). Assemblymember Luis Alejo worked with the Governor's office to procure \$500,000 in the current State budget for a needs analysis regarding disadvantaged communities in the Salinas Valley. Central Coast Water Board staff is working with Assemblymember Alejo's staff, State Water Board staff, and Environmental Justice organizations to implement this project effectively. GAP program resources could be used to leverage this effort beyond the Salinas Valley to the rest of the Region.

Obtaining replacement water for disadvantaged communities with contaminated drinking water (No.6 above) is another urgent task. The State Water Board is providing \$6 million in funding statewide as an initial effort to start addressing this issue. The funding is very limited relative to the tens of thousands of disadvantaged communities across the State. The \$6 million will likely be used to provide replacement water in the most at-risk communities (bottled water in most cases) while longer term solutions are developed. Central Coast Water Board staff is working extensively with State Water Board staff and Environmental Justice organizations on this funding effort. GAP program resources could also be used to leverage this effort in the Central Coast Region. The Central Coast Water Board approved \$118,000 for disadvantaged communities and individuals at its May 2014 Board meeting to address contaminated drinking water issues.

Central Coast Water Board Resolution No. R3-2012-0024 allocated all remaining Guadalupe Settlement Enforcement Funds to the Gap program. During the agenda item discussion, the Central Coast Water Board also noted that additional funding would be necessary to implement the GAP program and agreed with staff's goal to increase the GAP endowment to \$5 million over the next several years. The Central Coast Water Board also directed staff to leverage its efforts and apply for additional funding from the State Water Board to implement GAP projects. Central Coast Water Board staff has been working extensively with State Water Board staff and other Regional Board staff to leverage our efforts in the GAP program. In addition to participating in multiple statewide working groups and initiatives to better align our GAP efforts with statewide priorities, staff has leveraged State Water Board programs and funding as follows:

1. Coordinated with the State Water Board and U.S. Geological Survey (USGS) to sample 70 additional domestic wells in the Salinas and Pajaro Valleys as part of the GAMA Program's Priority Basin Project- Shallow Aquifer Assessment. The GAP program provided \$50,000 in funding and received \$20,000 in federal matching funds for this project. This project was implemented in 2012/2013 (a summary of this project and resulting data is contained within Agenda Item No. 11 for this meeting).
2. Received State Water Board approval for \$219,400 from the Cleanup and Abatement Account on May 29, 2014, for the implementation of a regional domestic well sampling project. Staff is working on the contract for this project now. Staff's goal is to sample approximately 1,000 domestic wells in high risk areas throughout the region.
3. Received State Water Board approval for \$150,000 from discretionary budget contract funds on February 24, 2014, for the implementation of an outreach and education project

in coordination with the domestic well sampling effort above, to inform the public about nitrate contamination in domestic wells. Staff is working with Gita Kapahi, State Water Board staff, to develop the contract for this project.

In addition, Central Coast Water Board staff continues to investigate ways to leverage and broaden the effectiveness of the GAP program (and the LIDI program) with other organizations. This includes considering ways to broaden and leverage future Special Environmental Project (SEP) settlement funding with other organizations. For example, the Central Valley Water Board (Region 5) recently adopted a Resolution that establishes a program to benefit disadvantaged communities through The Rose Foundation. The Central Valley Water Board pre-approved 14 projects identified by The Rose Foundation, and dischargers can choose to direct SEP funds to these projects as part of a settlement agreement with the Central Valley Water Board. This program is experimental and presents challenges to implement; however, Central Coast Water Board staff will follow the program and work with the State Water Board's Office of Enforcement on this and other ideas to broaden our SEP program. The Central Valley Water Board media announcement regarding their program (with links to the Central Valley Water Board Resolution) is available here:

http://www.waterboards.ca.gov/centralvalley/press_room/announcements/press_releases/r5_2014_0410_disadvntgcom_media.pdf

Aligning GAP with Statewide Priorities

Staff is participating in several statewide initiatives to leverage our groundwater protection and GAP program efforts. The GAP program is an implementing mechanism for many of these priority initiatives:

The State Water Board Strategic Plan (2008-2012): *The Strategic Plan (beginning on page 17) emphasizes the critical need to protect and restore groundwater quality, collect groundwater data, assess groundwater quality trends, map high risk areas, take regulatory action to reduce pollutant loading, and help develop regional strategies to protect groundwater basins and assure safe drinking water. The Strategic Plan is available here: http://www.waterboards.ca.gov/water_issues/hot_topics/strategic_plan/*

The State Water Board's Draft Groundwater Workplan Concept Paper (2013): *This Concept Paper would update the State Water Board's Strategic Plan regarding groundwater. Central Coast Water Board staff helped develop this Concept Paper, which emphasizes five key elements: Sustainable thresholds for water quantity and quality, monitoring and assessment, funding, and oversight and enforcement. The Concept paper also includes actions that Water Boards can take to improve groundwater management and protection. State Water Board staff is currently evaluating public comments on the Concept Paper. The Concept Paper is available here: http://www.waterboards.ca.gov/water_issues/programs/groundwater/workplan.shtml*

The Department of Water Resources (DWR) California Water Plan Update – 2013: The Water Plan is a collaborative assessment and planning document for making informed decisions about managing the State's water resources. The 2013 Update includes more robust groundwater supply and quality findings and recommended strategies to support the sustainable management of groundwater resources. A supporting DWR document (*Californians without Safe Water and Sanitation, California Water Plan, Update 2013, CA Department of Water Resources, April 4, 2014 DRAFT*) recommends filling data gaps associated with small water systems and private domestic wells, identifying and addressing the drinking water needs of small communities with an emphasis on disadvantaged communities, and developing performance measures to track progress in achieving safe drinking water for all Californians. Information about the DWR Water Plan Update 2013 is available here:

<http://www.waterplan.water.ca.gov/cwpu2013/index.cfm>

The California Water Action Plan (2014): The Water Action Plan emphasizes the need to provide essential data to enable sustainable groundwater management, conduct groundwater basin assessments, accelerate clean-up of contaminated groundwater and prevent future contamination, and provide safe drinking water for all communities. The California Action Plan is available here:

http://resources.ca.gov/california_water_action_plan/docs/Final_California_Water_Action_Plan.pdf

Recommendations Addressing Nitrate in Groundwater—State Water Board Report to the Legislature (2013): Central Coast Water Board staff helped develop these recommendations, which emphasize the need to prevent groundwater pollution before it occurs, monitor and assess groundwater quality, notify the public of health risks, assure safe drinking water for all communities, take appropriate regulatory action, and provide adequate funding to address these issues. The Report to the Legislature is available here:

http://www.waterboards.ca.gov/water_issues/programs/nitrate_project/docs/nitrate_rpt.pdf

The Governor's Drinking Water Stakeholder Group Recommendations (2012): The Drinking Water Stakeholder Group developed recommendations to the Governor that emphasize the need to establish, maintain, integrate, and improve data collection tools to help inform planning, prioritization and implementation of interim and long-term solutions to groundwater contamination, with an emphasis on disadvantaged communities. The Drinking Water Stakeholder Group Recommendations are available here:

http://www.waterboards.ca.gov/water_issues/programs/groundwater/drinkingwater_stakeholders.shtml

The State's Human Right to Water Policy (Assembly Bill 685, Water Code section 106.3): Water Code section 106.3 states: "It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation purposes." The success of this policy is predicated on the identification of high risk groundwater areas and wells, the implementation of projects addressing drinking water needs, and

ongoing assessment to inform programmatic actions addressing the sources of drinking water pollution.

The State Water Board's Environmental Justice Goals: *Consistent with legislative mandates, the Water Board's Environmental Justice (EJ) Program goals include:*

- 1. Integrating EJ considerations into the development, adoption, implementation and enforcement of Board decisions, regulations and policies.*
- 2. Promoting meaningful public participation and community capacity building to allow communities to be effective participants in Board decision-making processes.*
- 3. Working with the Office of Environmental Health Hazard Assessment to improve research and data collection in communities of color and low-income populations.*
- 4. Ensuring effective cross-media coordination and accountability when addressing environmental justice issues.*

Additional information on the Water Board's Environmental Justice goals is available here:

http://www.waterboards.ca.gov/water_issues/programs/outreach/education/justice.shtml

Initiatives such as those above only have significant value if they are implemented. Central Coast Water Board staff will continue to work directly with State Water Board staff and other organizations to leverage GAP efforts and implement these initiatives.

Staff's intent is to develop the GAP program in a manner similar to the Central Coast Water Board's Central Coast Ambient Monitoring Program (CCAMP). CCAMP is one of the most unique and comprehensive surface water monitoring and assessment programs of its kind. The data and analysis from CCAMP is unparalleled, and establishes an outstanding legal and scientific foundation for supporting the Central Coast Water Board's actions. The GAP program will provide the same service with respect to groundwater, as envisioned by the original scope of work for CCAMP almost twenty years ago. Together, CCAMP and GAP provide the fundamental agency infrastructure needed to achieve the Water Board's mission.

Central Coast Groundwater

The recent statewide focus on groundwater protection is unprecedented. As surface water supplies decrease and population increases, groundwater protection and management becomes more critical.

The Governor's Drought Declaration (January 2014) required the Department of Water Resources to produce the report, *Public Update for Drought Response: Groundwater Basins with Potential Water Shortages and Gaps in Groundwater Monitoring* (April 2014). This Drought Response report is available here:

http://www.water.ca.gov/waterconditions/docs/Drought_Response-Groundwater_Basins_April30_Final_BC.pdf

The Drought Response report summarizes declining groundwater levels in the State and the lack of groundwater data collection. It is important to note that the Central Coast is particularly vulnerable to groundwater level declines and pollution. Groundwater provides 39% of all water used in California; however, on the Central Coast, groundwater provides 86% of all water used. This is much higher than any other area of the State, as shown below (data excerpted from Drought Response report, page 7):

Hydrologic Region of California	Percentage of Total Water Supply Provided by Groundwater
North Coast	32%
San Francisco Bay	21%
Central Coast	86%
South Coast	34%
Sacramento River	30%
San Joaquin River	38%
Tulare Lake	54%
North Lahontan	32%
South Lahontan	66%
Colorado River	9%

With respect to the use of groundwater basins throughout the State, the Drought Response Report states the following (pages 2-3):

*A total of 36 alluvial groundwater basins have a high degree of groundwater use and reliance. As such, these basins may possess greater potential to incur water shortages as a result of drought. The basins exist in five hydrologic regions: North Coast (2), **Central Coast (17)**, Sacramento River (5), Tulare Lake (1), and South Coast (11). [Emphasis added]*

The Central Coast has 17 groundwater basins with a high degree of use, more than any other area of the State. The Central Coast Region's dependency on groundwater underscores the importance of the statewide initiatives listed above and the Central Coast Water Board's GAP program.

In addition to groundwater quantity, groundwater quality is also a major concern in the Central Coast Region. An update on groundwater quality with respect to nitrate is provided in agenda No. 11 for this Board meeting. Drought conditions exacerbate water quality conditions

The GAP program is designed to address the core issues emphasized in the initiatives and the Drought Response report.

Other Potential Projects

There are many other worthy projects that could be funded with the Guadalupe Enforcement Settlement Funds, and many organizations that could apply for the funds. The Central Coast Water Board could allocate funds to other projects or use a different process to consider how to allocate funds. The Central Coast Water Board is not bound by its previous decisions or criteria. The Central Coast Water Board may consider other processes for allocating Guadalupe Settlement Funds and funding for other projects. Major considerations would be staff budget limitations, and other priority work that would not be done if staff were overseeing projects.

Pismo Preserve Project

The Land Conservancy of San Luis Obispo County is requesting up to \$800,000 to fund the Pismo Preserve conservation project. The Pismo Preserve project would purchase 900 acres of coastal land at a total purchase price of \$12 million (approximately \$13,333 per acre), as described in Attachment C (Memorandum to the Central Coast Water Board, with attachments). Information is also available on the Land Conservancy website, including a video of the property: <http://lcslo.org/project/pismopreserve/>

Regarding land or easement purchases, the Consent Judgment for the Guadalupe Enforcement Settlement Fund mandates that the funds be used to acquire fee title or easements that directly protect or improve groundwater or surface water quality and the beneficial uses of groundwater and surface water. The Pismo preserve project is primarily upland grassland and oak woodland habitat. The Central Coast Water Board previously emphasized the preservation of wetlands, riparian areas, and groundwater recharge areas as high value in terms of water quality and beneficial uses.

The Pismo Preserve project will provide recreational benefits, including 10+ miles of trails for hiking, horseback riding, and mountain biking (The Land Conservancy plans to add 5 additional miles of trails). The major environmental benefits of the project include retiring of development rights and mineral rights, and protection of various habitat types and wildlife. Compared to previous land preservation projects considered by the Central Coast Water Board, this project emphasizes that the land will be used for “public benefit” and conservation rather than ecological preservation. Public access and recreation can cause environmental degradation, which may or may not be an issue with this project. Accordingly, if the Central Coast Water Board chooses to consider allocating funds to this project, the Central Coast Water Board may want to also consider legal restrictions that assure conservation. For previous land

conservation projects, the Central Coast Water Board wanted details and assurances regarding the following:

- Legal restrictions requiring permanent ecological protection (such as deed restrictions).
- Definition of the degree of environmental protection provided and how it will be measured and enforced.
- Definition of limits on recreational use, public access, and other uses such as grazing.
- Monitoring of environmental conditions against a baseline.
- Definition of long-term ownership and stewardship costs and responsible parties.
- Conditions on any transfer of Central Coast Water Board funds.

The San Luis Obispo County Land Conservancy has a Frequently Asked Questions document on its website for the Pismo Preserve project, located here: <http://lcslo.org/pismo-preserve-faq/>

Two of the questions and answers are as follows:

Question: Will I get my money back if Pismo Preserve falls through?

Answer: Currently, The Land Conservancy is requesting community donations to support its efforts to create the Pismo Preserve. This effort requires financial support to fund immediate costs of the project (like appraisals and surveys) and staff time (to secure \$10.3 million from State and local agencies, negotiate with the landowners, manage the real estate transaction, coordinate media outreach, etc.) Therefore, some of the funds raised have already been and will continue to be spent working to create the Pismo Preserve. Community donations are also being used to help fund the purchase of the property and endow its long-term management. If, for some extreme reason, The Land Conservancy does not go through with the purchase of the proposed Pismo Preserve, donors who contributed directly toward the acquisition effort will be contacted about re-directing their donations towards another similar project. Once a donor makes a voluntary, tax-deductible donation to The Land Conservancy in order to protect local land for people and wildlife, we are legally compelled to use that donation according to State and Federal Law. Donors that feel strongly about restricting a contribution specifically for a set purpose can establish a pledge of support or a MOU to accompany their financial gift. For more information, contact Director of Development, Wende David.

Question: How will the property be protected in Perpetuity and what's to keep The Land Conservancy from selling it to a private party someday?

Answer: The Land Conservancy is a 501(c)3 public benefit corporation and we are accountable to the public we serve per State and Federal laws. We must uphold our promises to our donors and funders. In addition, the State agencies who are assisting with the purchase require that we place restrictions on the deed that are recorded at the County-Clerk Recorders office that state that the land will be used for public benefit as defined by the funding sources. The deed restrictions will also state that the land shall

become the property of the State or designated similar conservation organization should The Land Conservancy cease to exist in the future.

If the Central Coast Water Board chooses to consider allocating funds to the Pismo Preserve project, the two answers above raise potential issues. Regarding the first answer, the Central Coast Water Board has never allowed the transfer of funds before all approval conditions were agreed to and legally established for a specific project, and funds have never been given as a gift that could roll over to another project. Regarding the second answer, there may be a conflict between the Central Coast Water Board's requirements for environmental preservation and other donor's requirements that the land be used for public benefit. In both of these cases, if there are issues, it may take a significant amount of time to resolve them before funds could be transferred.

The following are examples of previous land conservation projects considered by the Central Coast Water Board and associated conditions for approval:

Diablo Canyon Pecho Coast (a.k.a. Field's Ranch): This project would have provided permanent ecological conservation of 2,000 acres and 3 ½ miles of coastline north of Diablo Canyon Power Plant as part of a proposed settlement agreement in 2003. The Diablo Canyon Pecho Coast project was never completed due to the Central Coast Water Board's reconsidering of the settlement and subsequent delays in the development of new state and federal power plant regulations. The estimated value of the land at that time was between \$10 million and \$15 million. The Central Coast Water Board directed staff and legal counsel to assure ecological preservation through limited access and land use restrictions, establishment of an ecological baseline, long-term monitoring, enforcement of conditions, defined stewardship practices, and verification reporting, as described in the highly detailed draft *Grant Deed of Conservation Easement*, which is available here: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/gap/docs/pecho_coast_conservation_easement.pdf

The Nature Conservancy-- Land and Easement Purchase: This was one of the first Guadalupe Enforcement Settlement Fund projects approved by the Central Coast Water Board. The Central Coast Water Board allocated \$2 million to The Nature Conservancy to purchase land and easements in the Guadalupe Dunes area and the Black Lake Canyon area on the Nipomo Mesa. The Nature Conservancy purchased land and easements for ecological preservation totaling \$1.1 million. The remaining \$900,000 was subcontracted to the San Luis Obispo County Land Conservancy to purchase the Paradise Beach parcel (see below). These purchases were subject to a contract with specific requirements and deed restrictions. The Central Coast Water Board/Nature Conservancy contract is available here (including the *Conditions Precedent* as Attachment A to the contract, and the *Essential Deed Provisions* as Attachment C to the contract): http://www.waterboards.ca.gov/centralcoast/water_issues/programs/gap/docs/tnc_contract.pdf

Among other things, this Central Coast Water Board/Nature Conservancy contract required deed restrictions stating that:

The purpose of the grant is restoration and permanent preservation of the lands located within...to benefit water quality and to protect the beneficial uses of groundwater and surface water. For the sole benefit of the State of California...Grantee (The Nature Conservancy) agrees to the following:

- 1. Grantee and its successors shall not use or allow the use of the Real Property for any purpose inconsistent with the purposes of the grant as set forth above, except by specific act of the California legislature.*
- 2. Grantee and its successors shall not use or allow the use of any portion of the Real Property for mitigation (in other words, to compensate for adverse changes to the environment elsewhere). Notwithstanding the above, Grantee and its successors may accept and use mitigation funds for enhancement and restoration of the Real Property.*
- 3. The Real Property (including any portion of it or any interest in it) may not be used as security for any debt without the written approval of the California Regional Water Quality Control Board, Central Coast Region and National Fish and Wildlife Foundation or their successors in interest.*
- 4. The Real Property (including any portion of it or any interest in it) may not be transferred without the written approval of the California Regional Water Quality Control Board, Central Coast Region and National Fish and Wildlife Foundation or their successors in interest. The Grantee is obligated to use, manage, operate and maintain the Real Property in a manner consistent with the purpose of the grant from the Trust. The Grantee further assumes all management, operation and maintenance costs associated with the Real Property, including the costs of ordinary repairs and replacements of a recurring nature, and costs of enforcement of regulations. The State of California, the California Regional Water Quality Control Board, Central Coast Region, the United States government, and the National Fish and Wildlife Foundation shall not be liable for any cost of such management, operation or maintenance. The Grantee shall refrain from developing or otherwise using the Real Property in such a way as to interfere with or inconvenience the use, management, operations or maintenance of the property or to detract from the purpose of the Grant from the Trust. The Grantee shall be excused from its obligations hereunder, including for management, operation and maintenance of the Real Property, upon the transfer of the Real Property to a grantee who is a permitted grantee under paragraph 4 and who assumes the obligations hereof in writing.*
- 5. If the existence of the Grantee or its successors in interest cease for any reason or if any of the terms of the agreement stated above are violated, the National Fish and Wildlife Foundation and the Attorney General of the State of California acting on his own behalf or through the California Regional Water Quality Control Board, Central Coast Region or its successor in interest, shall have standing to take any and all actions authorized by law to enforce the terms of the agreement in order to promote the purposes of the grant from the Trust. Nothing in this instrument shall be deemed to create a lien or right of reverter in favor of any party.*

Paradise Beach: In 2008, the Central Coast Water Board approved the San Luis Obispo County Land Conservancy's request for \$900,000 from the Guadalupe Enforcement Settlement Fund for the Paradise Beach conservation project. The total purchase price was \$2.15 million, and the project preserved 143 acres of coastal habitat, including ½ mile of beach property, located south of Guadalupe Dunes and just north of Point Sal. The Central Coast Water Board directed the Executive Officer to make sure legal restrictions were established prior to the transfer of funds to "prevent degradation of the natural values and ecological functions of the property, restrict road development, and prohibit recreational off-road vehicle use." This project was part of a larger project previously approved by the Central Coast Water Board (see above).

Wild Cherry Canyon: This project is described in this staff report on page 5. The Central Coast Water Board allocated \$950,000 conditional upon the American Land Conservancy obtaining all other necessary funding, assurance of adequate long-term conservation measures, and acquisition of the fee title. This project was not successful and no funds were spent with the exception of about \$60,000 in Guadalupe Enforcement Settlement Fund management fees that occurred while the project was delayed for several years.

CONCLUSION

Staff recommends that the Central Coast Water Board allocate all remaining Guadalupe Settlement Funds of approximately \$950,000 to the GAP program endowment to implement the Central Coast Water Board's highest priority work, as previously described in Water Board Resolution No. R3-2012-0024. These additional funds will bring the Central Coast Water Board closer to its \$5 million GAP endowment goal and increase the long-term financial capacity of the GAP program to implement high priority work.

If the Central Coast Water Board chooses to consider allocating funds to the Pismo Preserve project, the Water Board may want to consider the type of restrictions they would require and the timing involved before any transfer of funds.

With respect to using a different process to allocate funds, such as a request for proposals, staff recommends that the Central Coast Water Board consider the staff and budget limitations and other priority work.

ATTACHMENTS:

- A. Central Coast Water Board Resolution No. R3-2012-0024
- B. GAP Program Work Plan
- C. Pismo Preserve Project