

# County Administrator

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**David J. Twa**  
County Administrator

# Contra Costa County



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March 12, 2014

Ken Landau, Assistant Executive Officer  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, California 95670

David Coupe, Senior Staff Counsel  
c/o San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, California 94612

RE: Cleanup and Abatement Order R5-2013-0701

Dear Ken Landau and David Coupe:

The Contra Costa County Flood Control and Water Conservation District (Flood Control District) fully supports the Cleanup and Abatement Order R5-2013-0701 (CAO) issued by the Central Valley Regional Water Quality Control Board (Regional Board) Executive Officer on April 16, 2013. The Flood Control District urges the Regional Board to not modify the CAO. The Flood Control District further urges the Regional Board to fully pursue the CAO and require the dischargers identified in the CAO to clean up the Mount Diablo Mercury Mine site.

The Mount Diablo Mercury Mine is a large, abandoned mercury mine located on the northeast side of Mount Diablo in the headwaters of the Marsh Creek watershed. The mine is located in unincorporated Contra Costa County (County) and the Flood Control District owns the Marsh Creek Reservoir and several miles of Marsh Creek channel downstream of the mine site. The mined area consists of a huge underground system of mine tunnels that collect rainwater which percolates out through cracks in the surrounding rock, showing up as seeps in the surface and bringing contaminants with it. The mined area also has remnants of an open pit mine and many piles of mine tailings. Rainwater falling on the piles of mine tailings drains down into two ponds and then overflows into Marsh Creek. This rainwater draining through the piles of tailings carries contaminants with it down through the watershed. Since the early 1990s the Flood Control District and the County have been interested in and actively working towards removal of mercury in the Marsh Creek Watershed.

There are several reasons why the Flood Control District and the County urge the Regional Board to not modify the CAO and instead require the dischargers to clean-up the Mount Diablo Mercury Mine.

- **Public Health.** Mercury washed into Marsh Creek and downstream into the San Francisco Bay-Delta Estuary system poses a health risk. Fish in the Marsh Creek Reservoir have been tested and exceed health standards for mercury. Modifying the CAO will only lengthen the time mercury in the watershed remains a health risk.
- **Water Quality.** The County's National Pollutant Discharge Elimination System Permit (NPDES) requires the County, and now the Flood Control District, to improve water quality in the Marsh Creek watershed. The Regional Board issues the County this NPDES permit and should not be taking actions to make permit implementation more difficult by modifying the CAO.
- **Pollutant Specific Requirements.** The Environmental Protection Agency (EPA) and the State Water Resources Control Board have established the Total Maximum Daily Load (TMDL) program to limit concentrations of specific pollutants discharging into receiving water bodies. The Regional Board approved a methyl-mercury TMDL for the Delta, which includes discharges from Marsh Creek into the Delta system. Modifying the CAO will make it harder for local government agencies to meet the policy goals established by the Regional Board in their own TMDL.
- **Downstream Public Property.** The Flood Control District owns the Marsh Creek Reservoir and several miles of Marsh Creek channel downstream of the Mount Diablo Mercury Mine. As a result, mercury has settled in various locations along Flood Control District owned property, most notably in the Marsh Creek Reservoir. Mercury washed downstream from the mine site will continue to settle in the reservoir and downstream reaches of Marsh Creek if the Regional Board modifies the CAO.
- **Impaired Water Body.** The Regional Board has identified the entire length of Marsh Creek from the mine site to the Sacramento-San Joaquin Delta as an impaired water body for mercury and heavy metals under Section 303(d) of the Clean Water Act. One of the key issues of concern in the Marsh Creek watershed is the presence of mercury and its toxic impact on fish and the people who consume them. In 1995, the County commissioned a comprehensive assessment of mercury contamination throughout the Marsh Creek watershed. The report established that about 90% of the mercury in Marsh Creek originated at the abandoned mine. Modifying the CAO would be counter to the Regional Board's own policy for impaired water bodies in the Sacramento-San Joaquin Delta.

The Flood Control District has been working with the Army Corps of Engineers (Corps), through their Remediation of Abandoned Mine Sites program, to develop the planning work necessary to reduce mercury in the Marsh Creek watershed. There are two components to this effort. The first is to clean up the source of mercury at the mine site. The second is to address mercury washed from the mine and deposited downstream of the mine site, primarily at the Marsh Creek reservoir. The planning efforts with the Corps have focused on the removal of mercury from the watershed as a whole, rather than focusing strictly on source control at the mine site. This is due to the actions taken by Regional Board staff to require past dischargers to clean up the mine site, which the County and Flood Control District fully supports. The research and information utilized by the Environmental Protection Agency and the Regional Board to identify Potential Responsible Parties was performed by the Corps as part of the early stages of the planning effort.

In early 2009, EPA formally named Sunoco a responsible party through a Unilateral Administrative Order and subsequently turned over follow up activities with Sunoco to the Regional Board. In June

2009, the Regional Board issued a Revised Order to Sunoco requiring them to submit technical reports on what areas of the site they mined and the volume of materials mined. The technical reports would determine if other potential responsible parties existed, what further site investigation efforts would be needed to identify the extent of impacts from the mine on the surrounding environment, and identify potential remedial actions. In February 2012, the Regional Board accepted a site characterization report submitted by Sunoco for the mercury mine. The report characterized the causes of mercury releases associated with mining wastes at the mine and provided the data necessary to design a remedial action plan for the site. In June 2012, the Regional Board accepted a preliminary site remediation work plan submitted by Sunoco for remediation of the mercury mine. The work plan provided an evaluation of water quality, a health risk assessment, the scope of work for the removal of the mine waste, management of water discharge and a long-term maintenance and monitoring program. The work plan outlined the remedial action approach and recognized that more detailed planning and design would have to occur at a later date. That would happen with the Regional Board's next step in their enforcement action, which would be an order to clean-up the mercury mine. This occurred on April 16, 2013 when the Regional Board's Executive Officer issued the CAO. After all this effort, it seems late in the process and difficult to justify that the dischargers are not responsible for carrying out the CAO as originally issued.

In conclusion, the County and Flood Control District are extremely interested and invested in reducing mercury in the Marsh Creek watershed and urge the Regional Board to not modify the CAO. Modifying the CAO would contradict policy and permit requirements established by the Regional Board for impaired water bodies, TMDL limits, and the stormwater discharge permit issued to the County. Thank you for the opportunity to provide these comments for your upcoming hearing on this CAO. If you have any questions concerning the above, please contact Mitch Avalon at 925 313-2203.

Very truly yours,



Karen Mitchoff, Board Chair  
Supervisor District 4

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c: Julia R. Bueren, Public Works Director  
Mike Carlson, Flood Control District  
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