

Listed Waterbody: Las Tablas Creek and Lake Nacimiento

Listed Condition: Mercury

Progress Report: Year-End Status of Project Activities: FY 03-04

This progress report describes the status of this project at the end of fiscal year 2003-2004 (FY 03-04). In FY 02-03, the Regional Board approved a TMDL for Mercury in Las Tablas Creek and Lake Nacimiento (TMDL). Subsequent to Regional Board approval, the State Water Resources Control Board (SWRCB) staff and legal counsel indicated the TMDL would not meet state legal requirements due to an Implementation Plan that did not demonstrate reasonable assurance that the TMDL would be implemented and beneficial uses restored.

During FY 03-04, Regional Board staff conducted multiple conversations with various stakeholders to explore possible means of developing an Implementation Plan which could provide reasonable assurance of successful implementation (as required by state law). Also during FY 03-04, the USEPA Region 9 Superfund staff notified the Regional Board staff and the SWRCB that it intended to propose the Buena Vista Mines, Inc. site (BVMI site) be added to the "Superfund" list. According to the USEPA website, the Superfund listing process includes:

- a proposal - published in the Federal Register - by USEPA to add the site to the "Superfund" or National Priorities List (NPL),
- a time period for public comment,
- USEPA response to comments, and,
- a final determination to add a site to the NPL or not.

In February 2004, Regional Board staff coordinated with State Board staff and the Department of Toxic Substances Control to encourage the Governor to concur with USEPA's recommendation to list the site. The Governor did, indeed, support the proposal for listing. At present (July 1, 2004), the USEPA proposal to list the BVMI site has not yet appeared in the Federal Register. Therefore, it is uncertain what public comments may be received on the proposal or how long the listing process may take.

In addition to the NPL listing process, the Superfund clean-up process itself includes several steps. Per the USEPA website, this process includes steps of:

- Remedial Investigation/Feasibility Study
- Record(s) of Decision
- Remedial Design/Remedial Action
- Construction Completion
- Post Construction Completion

If USEPA lists the site, it would take perhaps two or more years to issue a Record of Decision. Until the Record of Decision is filed, the opportunity to achieve the TMDL via a Superfund cleanup remains too uncertain to be able to approve an Implementation Plan (per state administrative law). However, once the Record of Decision is issued, we will schedule presentation of the TMDL to the Regional Board. Once the Record of Decision is issued, the State will be consulted again for its willingness to share financial obligation for the site. After the remediation plan is developed, funds will have to be appropriated. Once construction is complete, the State would be responsible for 100% of the operation and maintenance of the site.

Due to the uncertainty remaining regarding timing and funding of the cleanup, we do not plan to work on this TMDL until the Record of Decision is issued.

Project Progress to Date:

Problem Definition and Data Analysis – completed, described in the TMDL presented to the Regional Board for adoption in FY 02-03.

Source Analysis – completed, described in the FY 02-03 proposal to the Regional Board

Selection of Numeric Target – completed, described in the FY 02-03 proposal to the Regional Board

Target Linkages- completed, described in the FY 02-03 proposal to the Regional Board

Loads and Allocations – completed, described in the FY 02-03 proposal to the Regional Board

Project Completion Plans

Implementation and Monitoring Plan – As described in the introductory text above regarding activities in FY 03-04, it is not possible for the SWRCB to take Regulatory Action on this project until there is an Implementation Plan which offers reasonable assurance that the TMDL will be successfully implemented. Until the BVMI site (the estimated source of roughly 80 % of the total mercury load in Las Tablas Creek) is formally listed on the NPL and a Record of Decision detailing the appropriate remedy is agreed upon, the Regional and State Boards are unable to proceed.

Planned Timeline for Completion of the TMDL with Implementation Plan that meets State requirements – At this time, the uncertainty of the USEPA processes to add sites to the NPL and to determine anticipated remedial action for the site preclude the Regional Board from being able to schedule adoption of the TMDL or estimate the time to complete the TMDL. Assuming completion of the NPL listing, the attached draft Implementation Plan using estimated timeframes for site investigation, the Record of Decision, and implementing the remedy will be proposed for approval.

Questions about this project, its' progress, conclusions presented in this Progress Report, or anticipated future work planned or scheduled for this project should be addressed to Douglas Gouzie at the Regional Board. Dr. Gouzie may be contacted by telephone at: (805)- 542- 4762, or by e-mail at: dgouzie@rb3.swrcb.ca.gov

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