

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

**STAFF REPORT FOR REGULAR MEETING OF NOVEMBER 13, 2014**  
Prepared October 21, 2014

**ITEM NUMBER:** 13

**SUBJECT:** Morro Bay National Estuary Program Consent Decree Funds Spend Plan

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**THIS ACTION:** Information/Discussion

This is an informational item to provide an update to the Central Coast Regional Water Quality Control Board (Central Coast Water Board) about the use of Morro Bay National Estuary Program (MBNEP) consent decree funds and to obtain Central Coast Water Board input on the MBNEP's proposal for future spending of the funds.

**BACKGROUND**

In 1997, the United States District Court – Northern District of California issued a consent decree to Pacific Gas and Electric Company (PG&E) for violations of National Pollutant Discharge Elimination System (NPDES) Permit No. CA0003751 and California Waste Discharge Requirements Order No. 85-101 for PG&E's Diablo Canyon nuclear power plant (Consent Decree).

The Consent Decree required PG&E to pay a \$14.04 million dollars civil penalty to the United States Attorney's office. As specified by the Consent Decree, \$3.66 million was distributed to the Bay Foundation of Morro Bay (Bay Foundation) and the remainder of the civil penalty was distributed to the State Water Resources Control Board Pollution Cleanup and Abatement Account, the United States Treasury, the San Jose State University Foundation Mussel Watch Endowment, the Land Conservancy of San Luis Obispo County, the State of California Department of Justice (fees and costs), and the Central Coast Water Board (fees and costs).

The Consent Decree requires the \$3.66 million provided to the Bay Foundation to be used for the sole purpose of implementing the final conservation and management plan for Morro Bay (per the Morro Bay National Estuary Program<sup>1</sup>) and/or implementing early action items pursuant to the Consent Decree's Memorandum of Agreement (MOA). Early action items were projects that would protect or enhance the Morro Bay Estuary, watershed, and nearby marine environment to be implemented before the MBNEP final conservation and management plan was finalized.

The Consent Decree's MOA is between four parties:

- US Environmental Protection Agency (USEPA);

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<sup>1</sup> The National Estuary Program was created under the Clean Water Act, is administered by the US Environmental Protection Agency, and includes 28 individual estuary programs in the US identified for their "national significance."

- Central Coast Water Board;
- Bay Foundation; and
- Local Policy Committee of the MBNEP (currently called the MBNEP Executive Committee).

As required by the MOA, the Bay Foundation created the Consent Decree Implementation Fund and has invested the funds. The Bay Foundation's investment strategy has resulted in significant investment earnings.

To date, the MBNEP has spent over \$4 million from the Consent Decree Implementation Fund pursuant to the terms of the MOA, as well as leveraged over \$9.3 million in matching grants for projects designed to protect and improve water quality in the Morro Bay Estuary. Central Coast Water Board staff, through our seat on the MBNEP Executive Committee, has participated in the decision process for fund allocation. As of July 31, 2014, the Consent Decree Implementation Fund (now referred to as the Restoration Fund by the MBNEP) contains approximately \$561,000 of obligated monies and \$1,260,000 of unobligated moneys, for a total of approximately \$1,821,000.

## **DISCUSSION**

The MBNEP approached Central Coast Water Board staff to discuss the possibility of expanding the use of the remaining unobligated funds to include staffing and other administrative purposes, in addition to implementation. Central Coast Water Board staff reviewed the Consent Decree and MOA and confirmed that funds can only be used for implementation. Central Coast Water Board staff also recommended that the MBNEP establish a spending plan in conjunction with the MOA parties to insure the future spending and implementation continues to be consistent with the goals of all parties and legal terms of the Consent Decree and the MOA.

In August, the four MOA parties met to discuss the future of the remaining money in the Consent Decree Implementation Fund. The MBNEP has drafted two options for the future, a 10-year Spend Plan, and 20-year Spend Plan. These options are described in Attachment 1, "Morro Bay National Estuary Program Proposal for PG&E Consent Decree Spending" (Proposed Spend Plan).

Central Coast Water Board legal counsel has reviewed the Proposed Spend Plan and finds that it is consistent with the Consent Decree. Section G of the MOA states that if all the moneys in the Consent Decree Implementation Fund have not been spent or obligated by 2009, that remaining monies shall be placed into an escrow and spent under the direction of the Central Coast Water Board in consultation with USEPA on projects benefitting the marine or estuarine environment along the Central Coast of California Coast. The original \$3.66 million of Consent Decree Implementation Funds was spent or obligated by 2009. The MOA does not specify terms for the remaining investment earnings.

Three of the four parties of the MOA (USEPA, Bay Foundation, and MBNEP Executive Committee) have stated support for the Proposed Spend Plan. As the fourth party to the MOA, the Central Coast Water Board is being asked to provide input on the Proposed Spend Plan.

## **ATTACHMENTS**

1. Morro Bay National Estuary Program Proposal for PG&E Consent Decree Spending containing:
  - Proposal for Consent Decree Spending;
  - Consent Decree and MOA;
  - 2009 Letter from Central Coast Water Board to Bay Foundation; and
  - Morro Bay National Estuary Program Comprehensive Conservation and Management Plan: The Snapshot Version
2. Letter from the US Environmental Protection Agency providing support for the MBNEP Proposal for PG&E Consent Decree Spending.