

# Highlighted Enforcement Cases for 2011

## Region 1: North Coast Regional Water Quality Control Board

### Environmental Impacts associated with Marijuana Plantations

Environmental impacts associated with production of marijuana on both public and private lands, and efforts to address those impacts, continue in the North Coast Region. Through federal and County task forces, staff of the North Coast Region have been working with a number of resource protection agencies in investigating complaints, identifying and participating in efforts and avenues to educate prospective marijuana growers about environmental protection requirements and pollution control practices, planning and implementing joint enforcement efforts, and overseeing cleanup/site restoration on a number of properties.

Over calendar year 2011, Region 1 staff inspected a number of sites with reported or alleged marijuana grow-related impacts or threatened impacts to State waters, and in several cases took followup enforcement action. Most of these sites were private parcels developed for medical marijuana grows; typical impacts we observed included buried or culverted watercourses, illegal tree removal, vegetation removal/clearing, construction and/or regrading of roads and landings, inappropriate water



Site overview, first task force inspection, July 2011

drafting practices, and/or construction of terraces or fill pads, often unengineered, on sloped parcels to provide level planting areas. A particularly significant case encountered during 2011 involved logging and grading at two locations on a parcel in Mendocino County, construction/development of steep access roads and driveways, and construction of two fill pads, comprising approximately 15,000 cubic yards and 2,500 cubic yards, respectively. Fill material was loose and unconsolidated, with soil placed atop trees, logs, vegetation, and slash, up to 25 feet deep in some areas.

As located and constructed, these fill pads threatened to fail into an adjacent watercourse and potentially to deliver earth and debris to Highway 101. Multi-agency task force responders include Cal FIRE, Cal. Dept. of Fish and Game, Cal Trans, CGS, NOAA NMFS, Mendocino County, and Region 1 staff. Agency staff agreed that the site posed a significant threat to public health, safety, and the environment, and deemed the situation an emergency due to imminent

winter rains (on average approximately 50 inches per year in the general vicinity of the site, with the heaviest average rainfall typically occurring in December). Responding agencies took separate, but coordinated enforcement response; Region 1 issued a Cleanup and Abatement Order. After an initial delay in responding, the property owner engaged a consultant to develop and implement site restoration efforts including removal and stabilization of the loose and unstable fill prisms. The unusually late start of the rainy season in 2011 provided a much needed break, accommodating the delayed site restoration efforts and likely helping to avert a catastrophic failure of the massive fill piles.

Multi-agency involvement with this case continues.

## **Region 2: San Francisco Bay Regional Water Quality Control Board**

### **Sewage Spills. City of Pacifica**

The Water Quality Control Board, San Francisco Bay Region Prosecution Team and the City of Pacifica have entered into a proposed Settlement Agreement and Stipulated Order. The adopted Settlement Agreement and Stipulated Order imposes an administrative civil liability against the City in the amount of \$1,700,000 for alleged permit violations. The Cease and Desist Order requires the City to correct the causes of these alleged violations. The proposed liability is based on allegations that the City violated its discharge permit by discharging 6.9 million gallons of partially treated wastewater in January 2008, discharging untreated wastewater on numerous occasions since December 2004, and discharging in violation of effluent and receiving water limits between February 2006 and July 2010. These violations occurred at the Calera Creek Water Recycling Plant, and at various points from the City's sewer collection system. The discharges entered Calera Creek and the Pacific Ocean.

### **Enforcement for Sanitary Sewer Overflows**

The San Francisco Bay Regional Water Board pursued enforcement against the Sonoma Valley County Sanitation District (SVCSD), East Bay Municipal Utility District (EBMUD), and City of Redwood City for SSOs.

- The San Francisco Bay Regional Water Board reached a \$383,000 settlement with SVCSD for 41 sewage overflows, many of which were the result of SVCSD's old and leaky sewer pipes that allow excessive inflow and infiltration. Of the \$383,000 settlement, SVCSD paid \$199,750 to the Cleanup and Abatement Account and is completing a Supplemental Environmental Project (\$183,250) for a Fryer Creek Habitat Enhancement Project designed to improve upland and aquatic wildlife habitats, preserve special status species (e.g. Western pond turtle and Steelhead), and to stabilize stream channels and banks with native species to reduce erosion and sedimentation.
- The San Francisco Bay Regional Water Board reached a \$209,851 settlement with EBMUD for wet weather discharges in violation requirements of a cease and desist order. EBMUD

discharged almost 200,000 gallons of untreated and partially treated sewage containing elevated concentrations of chlorine, and at other times coliform bacteria. Settlement of the matter resulted in EBMUD paying \$209,851 to the Cleanup and Abatement Account.

- Redwood City did not contest an Administrative Civil Liability that the San Francisco Bay Water Board issued for a 51,107-gallon sewage overflow from a burst pipe to a marina. The City paid \$95,600 to the Cleanup and Abatement Account.

### **Enforcement for Illegal Wetland Fill**

The San Francisco Bay Regional Water Board reached a \$1,927,000 settlement with owners and operators of the Palmaz Vineyard and Winery in Napa County. Vineyard operators allegedly filled two wetlands and associated streams with spoils from excavated caves to expand the vineyard. The settlement directs \$1,742,000 to restore the wetlands and streams, and \$100,000 to mitigate the temporal loss of habitat. That balance of \$85,000 was paid to the Cleanup and Abatement Account.

### **Enforcement Against Plastic Trash from Balloon Release**

The San Francisco Bay Regional Water Board reached a \$7,000 settlement with Trash TalkFCM following a balloon release during a publicity event in downtown San Francisco. Trash TalkFCM released 10,000 biodegradable, helium-filled, red-latex balloons with hundreds of the balloons allegedly ending up in San Francisco Bay and its tributaries. The San Francisco Bay Regional Water Board worked with the State Water Board's Plastics Task Force on the settlement with Trash TalkFCM,

## **Region 3: Central Coast Regional Water Quality Control Board**

### **Bradley Land Company**

In October 2011, Bradley Land Company paid a fine of \$60,000 to settle allegations by the Central Coast Water Board that it violated laws against filling waterways without a permit. In 2007, Bradley Land Company and its tenant graded and modified the channel of Green Canyon Creek, southeast of Santa Maria, Santa Barbara County, without first obtaining required permits. Federal and state laws prohibit this type of habitat degradation. The Central Coast Water Board probably would not have permitted the activity even if Bradley had applied for a permit.

Protecting riparian areas, wetlands, and their buffer zones is one of the Central Coast Water Board's highest priorities. Protecting this habitat is a critical part of protecting water quality, wildlife, and human health. While federal law does include some exceptions for agriculture, converting wetlands and watercourses to agricultural land is not allowed unless properly reviewed and permitted.

## **Region 4: Los Angeles Regional Water Quality Control Board**

### **City of Santa Clarita**

On December 17, 2010, the Chief Prosecutor issued a Complaint for Mandatory Minimum Penalty to the City of Santa Clarita (City) in the amount of \$816,000 for alleged violations of its NPDES Permit requirements. A Stipulated Order on Administrative Civil Liability Complaint was subsequently issued to the City on April 9, 2012. In accordance with the Order, the City, on May 4, 2012, paid \$816,000 in administrative civil penalties of which \$417,000 was contributed in support of a Supplemental Environmental Project for the Upper Santa Clara River Watershed Chloride Reduction Project.

### **City of South Pasadena**

On January 17, 2012, a Consent Judgment Pursuant to Stipulation of the Parties was issued to the City of South Pasadena in the amount of \$900,000 for failing to comply with the State Water Resources Control Board's SSO WDR. Of that total, \$675,000 will be suspended pending completion of the City's Capital Improvement Program and Sewer Repair Work obligations. The City paid the remainder of \$225,000 to the Regional Board on February 12, 2012. This case was prosecuted by the Attorney General's Office (AGO) and was referred to the AGO by the Executive Officer on March 3, 2011. The referral was made subsequent to a joint inspection of the City conducted by the Regional Board, USEPA, and the AGO on March 25, 2010.

### **City of Avalon**

On April 5, 2012, a Cease and Desist Order was issued to the City of Avalon (City) requiring the City to cease and desist discharging waste in violation of requirements in its NPDES Permit and the State Board's SSO WDR, and to implement actions to achieve waste load allocations assigned to the City's discharges of waste and pollutants. The CDO contains all the required elements of a TMDL and addresses the bacteria listing for Avalon Beach that studies have linked to failures in the City's sewer infrastructure. The CDO was the result of a multi-agency inspection by the Regional Board, the USEPA, and the State Attorney General's Office on October 28, 2010, conducted to determine compliance with the requirements of the SSO WDR.

## **Region 5: Central Valley Regional Water Quality Control Board**

Region 5 enforcement resources continued to be very active in issuing Mandatory minimum penalties for violations of NPDES requirements.

## Region 6: Lahontan Regional Water Quality Control Board

### **United States Forest Service Eagle Lake Wastewater Treatment Facility**

In 1985, the Lahontan Water Board adopted revised waste discharge requirements (permit) for United States Forest Service's (USFS) small wastewater treatment facility located approximately two miles south of the shores of Eagle Lake. The revised permit reflected the USFS's proposal to cease discharging its treated wastewater effluent on spray fields located in meadow and forested habitat, and to begin discharging effluent to three synthetically-lined evaporation ponds. After approximately 30 years of use, the liners were deteriorating faster than the USFS staff could repair them. In response to citizen complaints and Water Board staff observations, the USFS conducted a liner integrity study. The study's results showed that the synthetic liners had numerous holes in them that were releasing wastewater to the underlying soils and potentially to groundwater. At a minimum, the wastewater treatment facility was threatening to violate the Basin Plan prohibitions for the Eagle Lake basin.

USFS staff began to evaluate alternatives for rehabilitating the evaporation ponds and the existing two primary treatment ponds. Additionally, on November 16, 2010, the Lahontan Water Board adopted a revised permit requiring that the evaporation ponds meet all California Code of Regulations, title 27 (title 27) design requirements. To ensure that USFS staff continued to make timely progress towards complying with the revised permit, the Lahontan Water Board adopted Cease and Desist Order No. R6T-2011-0022 on April 13, 2011. The Cease and Desist Order established a compliance schedule requiring the USFS to comply with the revised permit by December 31, 2012, to submit quarterly status reports, and to conduct a groundwater investigation to determine the impacts of the leaking pond liners on groundwater quality. Adopting the Cease and Desist Order was also consistent with the Lahontan Water Board's approach to bringing other parties, largely individual property owners, within the Eagle Lake basin into compliance with the Basin Plan prohibitions for the Eagle Lake basin.

The USFS has returned to compliance with Lahontan Water Board waste discharge requirements and Basin Plan prohibitions approximately one year ahead of schedule. The USFS also now has a facility with enough capacity to allow it to take individual treatment and disposal facilities offline for maintenance, without any threat of discharging waste in violation of permit requirements or Basin Plan prohibitions.

Adopting and following through with Cease and Desist Order No. R6T-2011-0022 has been an effective enforcement approach that has returned the USFS's Eagle Lake Wastewater Treatment Facility to compliance with its Lahontan Water Board permit and Basin Plan prohibitions ahead of schedule. Taking such enforcement action also is consistent with how the Lahontan Water Board has been addressing ongoing violations and threatened violations of its Basin Plan prohibitions for the Eagle Lake basin. This consistent approach has resulted in all but a handful of small property owners coming into compliance with the Basin Plan's prohibitions in the Eagle Lake basin.

## **Adelanto Public Utility Authority Wastewater Treatment Facility**

The Adelanto Public Utility Authority (Adelanto) owns and operates (contract operator) a 1.5 million gallon per day (mgd) wastewater treatment facility that treats and disposes of domestic wastewater from the City of Adelanto in San Bernardino County. In spite of steady Lahontan Water Board direction to expand treatment and disposal capacity beginning in 2002, Adelanto found itself consistently violating its effluent limitations for flow and BOD starting in 2004, and violating minimum percolation pond freeboard requirements beginning in 2005.

These violations resulted in the Lahontan Water Board adopting Cease and Desist Order No. R6V-2007-0024, requiring Adelanto to expand its treatment and disposal facilities in order to return to compliance with the Lahontan Water Board's waste discharge requirements (permit) by December 31, 2008. Adelanto initially responded positively to the Cease and Desist Order, beginning working towards designing and implementing a wastewater treatment facility expansion project. However, Adelanto efforts stalled and it failed to comply with the December 31, 2008 compliance date. The results of this failure were continuing effluent limitation violations (flow and BOD) and freeboard requirement violations, a result of an average influent flow of approximately 2.2 mgd.

On November 1, 2010, the Lahontan Water Board issued Cleanup and Abatement Order to address quickly deteriorating conditions related to Adelanto's percolation ponds. Adelanto was creating unconsolidated berms and excavating trenches around the perimeter of its percolation ponds in an attempt to prevent them from overflowing. The high pond levels were a result of lack of maintenance decreasing percolation rates, average influent flows exceeding design capacity by approximately 0.7 mgd, and the accidental discharge of polymer into the ponds. On December 23, 2010, one of Adelanto's percolation ponds failed completely, discharging approximately 200,000 gallons of wastewater to an adjacent property.

Water Board staff began developing a new Cease and Desist Order that included a connection ban, intended to prevent any additional connections to the Adelanto wastewater collection system. The Lahontan Water Board conducted a public hearing at its March 2011 meeting, where it received testimony regarding the proposed Cease and Desist Order from multiple parties, including Water Board staff, Adelanto, developers, and the prison industry who had a number of projects under development or ready for development. The Lahontan Water Board adopted the Cease and Desist Order, but without the connection ban. Instead, the Lahontan Water Board withheld its final decision regarding the connection ban, and gave Adelanto additional time, until May 2011, to begin taking action to correct the multiple problems it faced with treatment and disposal capacity. Part of the Lahontan Water Board's decision to take this approach was based upon Adelanto's recent action to begin diverting up to 800,000 gallons per day of raw sewage to the regional wastewater treatment facility, which brought influent flows below the 1.5 mgd limitation and effluent BOD concentrations below the BOD effluent limitations.

The Lahontan Water Board held a second public hearing during its May 2011 meeting. Even though the connection ban was not included in the amended Cease and Desist Order, by maintaining the threat of a connection ban, the Lahontan Water Board effectively changed

Adelanto's approach to managing its wastewater treatment facility operations for the better. Since the Cease and Desist Order was amended in May 2011, Adelanto has created adequate disposal capacity by rehabilitating one of its percolation ponds, constructing and bringing a new percolation pond online, and constructing a second new percolation pond that will be available for use upon revising Adelanto's permit. Adelanto has also entered into a longer-term contract with the regional wastewater treatment facility to continue diverting raw wastewater flows for enough time to redesign, construct, and bring online an expanded wastewater treatment facility. Additionally, Adelanto has made staffing changes, and has contracted with a consulting firm to assist it with complying with the requirements of multiple Lahontan Water Board enforcement actions, and assisting it through the CEQA and permit revision processes. Adelanto has contracted with a wastewater operations contractor that is also providing design, construction, and project management services for expanding Adelanto's wastewater treatment facility. Adelanto has developed preliminary design plans for an expanded facility that should be fully operational by July 21, 2013. The combination of adopting Cease and Desist Order No. R6V-2011-0015, as amended, and maintaining the possibility of a connection ban if adequate progress towards compliance is not maintained, has effectively returned Adelanto to compliance with its permit requirements, and set Adelanto on a course to ensure compliance for years to come.

## **Region 7: Colorado River Basin Regional Water Quality Control Board**

### **Noncompliance at Wastewater Treatment Plants**

The Regional Water Board has adopted or revised a total of six Cease and Desist Orders (CDOs) with compliance schedules, requiring a return to compliance for Imperial County dischargers. These include the wastewater treatment plants for the cities of Brawley, Holtville, Imperial, Niland, and Seeley and one industrial discharger, Imperial Irrigation District El Centro Generating Station.

## **Region 8: Santa Ana Regional Water Quality Control Board**

### **Kirkhill-TA Co (Kirkhill-Elastomers Brea)**

The Regional Water Board settled a civil action filed by the California Attorney General's Office against Kirkhill-Elastomers (formerly Kirkhill Rubber Company), located in Brea, that included a penalty of \$1,589,000, along with investigation and litigation costs of \$149,338. It was alleged that Kirkhill had discharged pollutants, including oil, petroleum residuary products, grease, lead, copper and zinc, into a storm drain tributary of Fullerton Creek that conveyed runoff into Craig Regional Park, including Craig Lake. The Regional Water Board and Orange County Public Works believed that intermittent discharges of these pollutants had occurred from as far back as 1990. Kirkhill admitted to discharging these pollutants for at least 72 days in 2008, but did not admit to any discharges to the Regional Park prior to 2008.

The discovery of the source of pollutants being discharged into Craig Lake was the result of an investigation by the County of Orange Public Works Department and City of Brea staff following a cleanup effort in the Fullerton Creek from a discharge incident in 2008. County and

City staff conducted an inspection of the storm drain system and followed a trail of oil and grease residue that led them to two storm drain laterals serving Kirkhill's facility. Subsequent surveillance of the municipal storm drain pipe with a robot vehicle recorded an additional incident of a discharge of pollutants. , The pollutants discharged from Kirkhill were consistent with sampling in Fullerton Creek that was performed by the County. Once Kirkhill was informed of the County's discovery of the pollutant discharge, they took immediate steps to stop it.

### **Caltrans – District 8, MCM Construction, Inc, Skanska-Rados Joint Venture, San Bernardino Associated Governments**

In November 2010, the Regional Water Board issued an administrative civil liability complaint (R8-2010-0050) to Caltrans – District 8, two contractors, and a county transportation authority for alleged violations stemming from discharges of sediment laden runoff to waters of the United States, and storm water permit non-compliance on a construction site. Segments of Interstate 215 through the City of San Bernardino had been under construction for multiple rainy seasons. Based on several inspections by Regional Water Board staff during the 2009/2010 winter months, evidence to support the alleged violations was gathered. It appeared the violations were a result of Caltrans construction management staff's failure to perform due diligence to enforce provisions of its storm water construction permit, and the contractors' lack of fully implementing and maintaining the project's storm water pollution prevention plan. The combined penalty for all the parties was \$314,981.

### **Thirteen Dairies in Chino Valley and San Jacinto Valley**

In September 2011, the USEPA assisted the Regional Water Board in enforcement of the Regional Water Board's general NPDES dairy permit by issuing Administrative Orders (AOs) to thirteen dairies within the Region, requiring facility operators to make immediate corrections to return into compliance with the permit. The nature of the violations ranged from failure to construct or maintain best management practices (BMPs) designed to retain manured runoff and wastewater, to failure to conduct required inspections of BMPs on their facilities during rainstorm events. Maintenance of BMPs on dairy facilities to prevent or limit the discharge of dairy wastewater during winter rain storms is vital in protecting the water quality of the Santa Ana River. Issuance of the AOs helped to emphasize the importance of maintaining strict compliance with provisions of the general dairy permit.

Following issuance of the AOs, Regional Water Board staff facilitated interaction between the thirteen dairies and USEPA , conducted additional inspections, and assisted the dairies to achieve compliance with the permit.



## **Region 9: San Diego Regional Water Quality Control Board**

The San Diego Water Board enforcement prioritization process focuses effort on priority issues. Our objectives are to compel compliance and commitments from responsible parties and to deter future violations by those parties and others. Significant enforcement efforts in 2011 involved discharges of sewage to inland and coastal waters and resolution of a complex residential subdivision development case.

### **Sewage Spill Administrative Civil Liability**

In 2011, the San Diego Water Board adopted civil liability orders/settlement agreements totaling \$1,243,200 against two sewage collection agencies that spilled a combined 3.9 million gallons of raw sewage into inland and coastal waters. The San Diego Water Board's use of the penalty methodology in the 2009 Water Quality Enforcement Policy led to fair, firm, and transparent enforcement and demonstrated to the responsible parties that the Board based its decisions on sound evidence. Order No. R9-2011-0010 imposed \$353,200 on the Eastern Municipal Water District for a spill of 1.6 million gallons, and Stipulated Order No. R9-2011-0057 imposed \$890,000 on the Santa Margarita Water District for a spill of 2.293 million gallons.

Both cases represented progressive enforcement against parties that previously received administrative civil liability orders for significant sewage spills. Both actions also compelled each agency to implement improvements to infrastructure and operations that will prevent spills.

### **Sewage Spill Investigative Orders**

In 2011, the San Diego Water Board issued several Investigative Orders in response to two extraordinary events that resulted in large sewage spills across the region. The Investigative Orders serve several important functions. Most crucially, they force the responsible parties to critically review infrastructure, operations, and finances for shortcomings that create unacceptable risks of spills that cause public and environmental harm. Second, they provide the Water Board with information necessary to evaluate additional enforcement responses, including time schedule orders for repairs, administrative civil liability orders, and revised waste discharge requirements. Third, the Investigative Orders provide information to the public on the causes, effects, and responses to the spills.

The first event was a large precipitation event that occurred in late December 2010, causing numerous spills from inflow and infiltration, flooding of treatment infrastructure, and physical damage to infrastructure within creeks and floodplains. Water Board staff developed criteria to prioritize the spill events by cause and effect and issued Investigative Orders to the Cities of Oceanside, La Mesa, El Cajon that collectively spilled approximately 6.9 million gallons of wastewater (Orders No. R9-2011-0035, R9-2011-0040, and R9-2011-0045, respectively).

The second event was a regional power failure in September 2011 that resulted in spills totaling approximately 3 million gallons of wastewater and exposed collection facilities that lacked emergency power supplies. In response, Water Board staff issued Investigative Order No. R9-2011-0070 to the City of San Diego.

### **Administrative Civil Liabilities against Jack Eitzen**

The San Diego Water Board adopted two administrative civil liability orders (ACLs) against Mr. Jack Eitzen for numerous, chronic violations resulting from construction activities at a residential subdivision in Riverside County (Orders No. R9-2011-0048 and R9-2011-0049). The violations of the General Construction NPDES Storm Water Permit and Basin Plan Prohibitions led to significant environmental and personal property harm. Unmitigated erosion caused by extensive and poorly planned construction activities destroyed instream habitat, riparian habitat, and damaged downslope residential dwellings.

Numerous other agencies had threatened to pursue administrative or criminal complaints, yet were not able to compel compliance, partly due to the complexities of the case. Development and prosecution of the ACLs required unraveling complex regulatory, jurisdictional, and culpability issues; coordinating and interpreting information from many parties; and presenting solutions in effective ways to many stakeholders.

As a result of the San Diego Water Board efforts, corrective actions were implemented for the immediate threats to property and environment, regulatory pathways were developed in coordination with other agencies for less urgent threats, and future violations at these sites and others were deterred by the adoption of strong monetary penalties of \$301,950 and \$381,450. The collaborative investigation also improved channels of communication and awareness among agencies that have and will continue to promote efficiencies for protection of water resources in southwest Riverside County.

## **OFFICE OF ENFORCEMENT**

### **\$325,000 Civil Judgment Entered Against Tesoro Corporation**

The Office of Enforcement completed an investigation of Tesoro Companies, Inc. and Tesoro West Coast Company LLC. (Tesoro) which resulted in a civil judgment, filed in November 2011, of \$325,000. The judgment settled allegations of UST monitoring and testing violations documented at 12 gas stations owned and operated by Tesoro.

Tesoro is one of the largest independent refining and marketing companies in the Western United States, operating approximately 425 gas stations in California under the brands Tesoro, Shell, Mirastar and USA Petroleum. As an owner and operator of USTs, Tesoro is required to monitor, test, and maintain its gas stations to prevent the release of hazardous materials to the environment.

Over the past several years, investigators from the Office of Enforcement and local Certified Unified Program Agencies (CUPA) from Butte, Glenn, Imperial and Ventura counties documented UST monitoring, testing and construction violations. These violations included: failure to monitor the UST tank and product piping; failure to maintain secondary containment and spill containment; and failure to perform 10-year tank lining and corrosion protection certifications.

Under the terms of the judgment, Tesoro will pay \$239,000 in penalties to the State Water Board and \$86,000 for investigation and enforcement costs. The State Water Board's investigation was a result of the cooperation and assistance received from the Department of Toxic Substances Control, Imperial County CUPA, Butte County Environmental Health Department (EHD), Glenn County EHD, City of Oxnard Fire Department, Ventura County EHD and the Western States Project.

The State Water Board was represented by the California Attorney General's Office in this enforcement case. A copy of the complete judgment, which was entered by the Los Angeles County Superior Court, can be found on the State Water Board's website at: