



Los Alamos Creek under the bridge at Almaden Way Road

FRIENDS OF LOS ALAMITOS WATERSHED

Report to the Community Guadalupe River Watershed Basin Plan

Contents

Report Findings	Page 2
SWRCB's TMDL Amendment	Page 2
SFB RWRB's Statement of Responsibility	Page 2
SCVWD's Comprehensive Restoration	Page 3
SWRCB's Attorney's Statements	Page 3
DVD and CD Copies Available	Page 3
Where's the money?	Page 4

Inside this Issue

Info. You Must Know

- *Twenty Years From Now?*
- *SWRCB's Guadalupe TMDL Basin Plan Amendment is now LAW*
- *SWRCB's "Resolution" DVD*
- *What do you need to keep with your property records.*
- *SCVWD's Watershed Handbook*
- *SCVWD—Technical Lead*

FOLAW'S ACTIVITIES– Report Findings

THE PURPOSE OF THIS DOCUMENT VITAL INFORMATION

FOLAW provides this educational outreach document to inform watershed about the new 2009 water codes and goals that have been recently adopted by various water board agencies. We feel this information needs to be given to each to each resident and property owner so that they understand what is expected from them to protect their reach of the creek.

OBSERVATIONS

As part of our mission, FOLAW'S members working with community residents have observed the activities of several agencies responsible for the Los Alamitos Creek restoration and the mercury cleanup hot spots. Our members have attended conferences, board meetings and made community presentations to help report the latest news of the various water boards' decisions.

Our main emphasis for the last three years has been to observe the Guadalupe River Total Maximum Daily Load Basin Plan Amendment (BP) document adoption process.

GUADALUPE RIVER TOTAL MAXIMUM DAILY LOAD BASIN PLAN AMENDMENT –BP

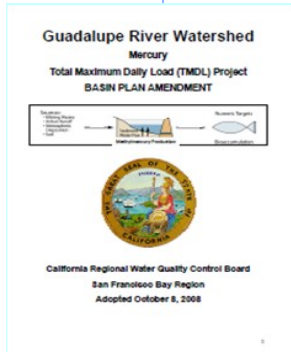
This important document affects all residents in our Los Alamitos Watershed, including creekside owners, non-creekside residents and public agencies. We have discovered that most residents in the watershed do not realize that the BP document enforces environmental water laws that protect water life and stream flow. Please note, the BP document affects other residents whose rain water flows through New Almaden Valley's street storm drains

or runoff from the various hillsides to the bay.

BASIN PLANS PROCESS NOT UNIQUE TO ALMADEN

The SWRB is required to produce a TMDL-BPA document for all water bodies, creeks and rivers that have been declared impaired throughout the state. This means that New Almaden's Los Alamitos Watershed is not unique to this process. The state requires all TMDLs to address various pollution, ero-

sion, or human health problems. Presently, the SWRCB is concerned about the high methyl-mercury level in the San Francisco Bay; therefore, the GUADALUPE TMDL BP was written to reduce the amount of mercury containing sediment that flows downstream to the bay. In another example, the SWRCB is also concerned about the



Mine Hill Calcine Deposits From Jacques Gulch

Photo by Ron Horii

amount of plastic debris that flows downstream to the SF Bay; therefore, a BP has been written to eliminate or clean up the plastic debris in various watersheds in the State.

REPORTING DEADLINES

The BP document directs various local water boards to meet clean water standards. This is achieved by having the local water board make sample water test result reports to the SFRWR Board on a regular schedule. If our local water board does not report tests that meet the clean water standards set by the SWRC Board then that local board may be penalized by huge monetary fines.

BP'S CONFUSING STATEMENTS RESPONSIBLE PARTIES

After a careful review of the Basin Plan Amendment process, FOLAW members were confused with the written TMDL's statement of responsibility for creekside property owners. We heard each governmental agency responsible for writing and approval of the BP document state orally that their intentions were to relieve the creekside property owner of legal responsibility, but they passed poorly written and confusing resolutions. FOLAW members were concerned that the BP contained statements that could have various interpretations allowing each lower water board agency the opportunity to create its own understanding of responsible parties.

SOLUTIONS TO END THE CONFUSION

We want to summarize the role of each agency, responsible parties and Los Alamitos Watershed property owners as stated in the BP. It is our recommendation that all watershed residents need to have a copy of the published Guadalupe River Watershed Basin Plan Report and a DVD copy of the SWRCB meeting that states that the intent of the SWRCB members is not to make the creekside property owners responsible for the cost of cleaning up. The SWRCB's legal counsel says that the official video transcripts of this meeting will show the intent of his board to any future court case.

Water Resources Board—Attorney's Statements

It was recommended that an attached "Resolution" to the Basin Plan be written to explain the role of the creekside property owners'. Their responsibility will be to allow access to the creek for restoration and mercury cal-cine removal.

He also stated that like other water bodies in the state, the Water Resource Board has the right to correct any water source that is polluted and affects the health of the public.

The attorney also explained that the Board was not allowed to change the Water Code Law so the board wrote a separate resolution to the BP document.

State Water Resources Control Board Resolution No. 2009-0082 Item #8 states:

*"It is the understanding and intent of the State Water Board that the San Francisco Bay Water Board will look to upstream responsible parties for removal and remediation in the deposition areas, and the only expectation for creekside property owners who are **not undertaking actions in the creek bed and banks***

is to provide reasonable access for bank remediation activities"



Water vending machine and debris removed from creek during River Cleanup.

DVD OF THE SWRCB MEETING

The SWRCB DVD shows the board members and their legal counsel orally discussing and explaining their intent in approving the BP is not to make the creekside property owners responsible parties. Watershed residents and other concerned county residents and public agencies may obtain a copy of this DVD from FOLAW's office volunteers.

FOLAW Information

Report To The Community Staff

Volume 1, Issue 1

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FOLAW

Board of Directors

Michael Boulland, President
Mike Cox, Vice President
William R. Jones, Treasurer
Roberta Lamons, Secretary
Fredrick Dill, Director
Kitty Monahan, Director
Ron Soto, Director
Clair Teel, Director

The Basin Plan Function

California State Legislation has required the State Environmental Protection Agency (EPA) to create a master plan for restoration and flood control for all State watersheds.

These plans are called Basin Plans (BP) and are written or revised every ten years.

In 2009, the Guadalupe River Basin Plan was scheduled for its ten year revision.

The Basin Plan has a second function and that it becomes a part of the California State Water Code. All parties that do not follow the plan are subject to fines and penalties.

This Basin Plan also sets up a defined schedule of goals, objectives, and standards that must be followed to improve the quality of water in the watershed.

Most standards and goals are set to be stringent to maximize the highest standard of purity of water for public health and safety.

The Guadalupe River Basin Plan is designed to be a working document and may be updated when new methods to restore the watershed are found.

DISCLAIMER

Our FOLAW—REPORT TO THE COMMUNITY does not give any legal advice. This document only summarizes current changes to the Guadalupe River Watershed Basin Plan. Readers will need to seek their own legal council's advice.

All quotes used in creating this document have been obtained from the State Water Resources Board, the Basin Plan's directions for Los Alamitos Watershed residents, creekside property owners, responsible parties and public agencies.

WHAT HAPPENS TWENTY YEARS FROM NOW? - Chairman of the SWRCB

At the November 11, 2009 SWRCB meeting on the Guadalupe TMDL Basin Plan Amendment the Chairman of the Board states, ***"It must be perfectly clear that when we look at mercury, we can't ignore mercury!"***...***"This TMDL might have some lofty goals. In the end of the day, the ability to achieve those goals can be limited by a number of factors. I am not concerned about some of those thresholds as are some of you (residents) ..."***

But the Chairman said, ***".. my intent in voting for this TMDL is that private landowners be resolved from the restoration and liability from an element that is no cause of their own."***

Where's the money? -***"We look towards our public agencies to find the funding. It is up to the creativity of our civil servants to figure out how to fund this. Do we look towards the park? Do we look towards the water district? Do we look to Sacramento? Do we look to Washington D.C.? The Basin Plan sets out our strategies to do this. And next, is the action to find the money and to find the appropriate entities to spend it."*** says a SFRWRB staff member.

Twenty Years from Now if Funds are not Available- The chairman's response to the staff comment is: ***"If ... there aren't funds available from Sacramento, and the water agencies, and all the entities you mentioned , if someone 'has the bright' idea of going after the landowners twenty years after the fact. After I finished my Cream of Wheat, someone may have to roll me in here with a blanket over my lap! But, that is not my intention if I vote for any of this (BP) and I appreciate SWRCB's legal counsel explanation that you (SWRCB staff members) made an exemption to your (SFRWR Board) authority in removing the liability of the property owners."***



Document Sources

1. SWRCB- Guadalupe TMDL Basin Plan Amendment - Nov. 2009
2. SCVWD- Creek Bank Stability and Habit Restoration Handbook - CD
3. SWRCB- Resolution No. 68-16-Nov. 2009
4. SWRCB- Nov. 11, 2009 Meeting Transcripts
5. SWRCB- Nov. 11, 2009 Meeting DVD
6. SWRCB- Comment Summary and Responses TMDL for Mercury in the Guadalupe River Watershed - Nov. 11, 2009 meeting
7. SFB RWRB-Oct. 8, 2008 Meeting Transcripts

Donations are Tax Deductible

FOLAW is a 501(c)3 non-profit tax exempt charitable organization. Your donations will help us make a difference in keeping the Los Alamitos Watershed healthy .

Please complete , tear off and mail the membership application found below to:

FOLAW
P.O. Box 122
New Almaden
California, 95042

MONTHLY MEETING INFORMATION

Join our FOLAW members at 6:30 pm on the last Wednesday night of each month at 21506 Almaden Road for our regular monthly meetings. Our meeting is a pot-luck and generally ends at 9 p.m. Join us at our next General Election meeting for board member officers that is held every year in March.

Join FOLAW Today

Membership Application

First and Last Name

Street address, City , Zip

Home Phone

Cell Phone

Email

Spouse 's Name



Part 2

State Water Resource Control Board Defines Roles



View of Los Alamitos Creek under the bridge at Almaden Way Road

FOLAW

General Meeting and Board Elections

March 31, 2010

New Almaden Community Club

Everyone is welcome

Contents

FOLAW's Activities—Report Findings	Page 2
SWRCB Resolution	Page 2
SFB RWRB's Statement of Responsibility	Page 2
SCVWD Technical Lead	Page 2
Creekside Residents Role	Page 3
Creek Bank Stability and Habitat Handbook	Page 3
DVD—CD Copies Available	Page 4

Inside this Issue

Info. You Must Know

- *SCVWD is Technical Lead*
- *SWRCB's Guadalupe TMDL Basin Plan Amendment - Law*
- *Creekside Property Owners Roles*
- *Expensive Actions in the Creek*

FOLAW's Report to the Community



We are excited to be able to present our "Report to the Community."

We feel that our report needs to be distributed to the community to show the intent of complicated water laws adopted in 2009 that affect all Guadalupe River Watershed / Los Alamitos residents and property owners.

Since the Los Alamitos Creek falls into the jurisdiction of several governmental agencies, each agency makes their own policies based on their interpretation of the new laws.

The articles written in this report are ranked according to the agency's authority and it's defined role for the



management of the Los Alamitos creek.

Articles in this report are organized to read from the highest state level authority to the local level and summarize their newly created policies.

The first agency is the State Water Resource Control Board (SWRCB)

2nd - SF Bay Regional Water Quality Control Board (SFBRWRB)

3rd - Santa Clara Valley Water District (SCVW)

4th - Responsible Parties

5th - Residents/Property Owners

All creekside residents need to also be aware of the new SCVWD - Creek Bank Stability and Habit Restoration - CD policy handbook if they plan to take any actions in their creek.

SWRCB-State Water Resource Control Board—Resolution—Sacramento



On November 11, 2009 the SWRCB adopted the Guadalupe Basin Plan Amendment. At the request of members of the New Almaden community and FOLAW the board adopted an additional Resolution.

This important resolution addressed the SWRCB'S expectations of creekside property owners along the Los Alamitos Creek: "It is the understanding and intent of the State Water Board that the San Francisco Bay Water Board will look to upstream responsible parties or willing volun-

teers for removal and remediation in the deposition areas, and the only expectation for creekside property owners who are not undertaking actions in the creekbed and banks is to provide reasonable access for remediation activities."

What is a SWRCB Basin Plan?

A Water Quality Control Plan for the San Francisco Bay Basin (BP) is the Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of

the State, including surface waters and groundwater. The BP also includes programs of implementation to achieve water quality objectives. Required by law, all BP's must be adopted and approved by the SWRCB, U.S. EPA, and the Office of Administrative Law. Periodically, the SWRCB considers amendments to the Basin Plan (BPA). Each amendment is subject to an extensive public review process. At a public hearing, the SWRCB may act to adopt the amendment

S F Bay Regional Water Quality Control Board (SFRWRB)– Oakland



In September, 2008 FOLAW helped organize several New Almaden community outreach meetings to educate the residents about the Guadalupe Total Daily Maximum Load BPA.

Our community expressed their concerns at these meetings. In response to the community concerns SFBRWQCB staff members revised the BPA Amendment document to include several important changes.

Our board members followed up by attending the SFBRWQCB meeting on October 8, 2009 where they approved a final draft of the Basin Plan.

At this meeting SFBRWRCB member Ram Singh requested the staff to add a statement that would clarify the role of the Creekside property owners' responsibility to the BPA.

The final BPA draft adopted was written

to include a statement of responsibility for Creek-side property owners:

"Creekside property owners are responsible to provide reasonable access to the creek for project studies, construction, and monitoring, and to not take actions on their property that worsen the discharge of mercury mining waste into the creek." - Oct 8, 2009

Santa Clara Valley Water District—Technical Lead— Local

The Basin Plan Amendment directs the Santa Clara Valley Water District to be the “Technical Lead” of the project.



The SFBRWQCB BPA-14 states: “The Water Board’s strategy for Alamitos Creek, which is highly polluted with mercury mining waste, is to encourage a cooperative effort among the District, local agencies and creekside property

owners to undertake a comprehensive creek bank stability and habitat restoration project. The Water board encourages the district to be the technical lead for this project and seek funding for it.”

The SWRCB staff affirms that the BPA does not impose responsibility on the SCVWD to cleanup Alamitos Creek nor for coordinating monitoring associated with the private property owners.

Guadalupe Watershed Boundaries



Creekside Residents– Los Alamitos Watershed– New Almaden

At the Sacramento SWRCB’s meeting, a written response to FOLAW’s community concern letter was printed. The document called, *Comment Summary and Responses Total Maximum Daily Load (TMDL) for Mercury in the Guadalupe River Watershed* was made available to the public. It stated:

“SWRCB defined its expectations regarding the roles of the various parties in the cleanup effort. If these



efforts fail, the SFBWB may apply whatever responsibility is appropri-

ate under applicable law to ensure the protection of the waters of the state. Defining those boundaries at this time is not necessary, and would be based on the facts of individual cases at the time SFBWB takes any further action. As stated in previous responses from the San Francisco Bay Board, the property owner can be considered a discharger (responsible party) under California Water Code §13304.”

SCVWD– Creek Bank Stability and Habitat Restoration Handbook

“The State Board (SWRCB) encourages the District (SCVWD) to take a crucial role in the restoration of the Guadalupe River Watershed. The language on page BPA-14 states: *However, given the District’s long track record and commitment to watershed stewardship, we too encourage a cooperative effort among the District, local agen-*

cies and creekside property owners to undertake a comprehensive creek bank stability and habitat restoration project for the Alamitos Creek.”

The SCVWD suggest creekside residents to read a copy of the **Creek Bank Stability and Habitat Restoration Handbook– CD** to understand the procedures to take when doing action or work in the Los Alamitos creekbed.





Earth Day Award

At San Jose City Hall Councilmember's Board Room, FOLAW Board members Bill Jones, Mike Cox, Mike Boulland, Robbie Lamons, and Kitty Monahan received the 2008's City of San Jose Commendation from Mayor Reed and Councilmember Nancy Pyle for their volunteerism and commitment to protecting the environment and cleanliness of the Los Alamitos Watershed.

National River Cleanup Day

Saturday, May 15, 2010

Mark your calendars to volunteer to do your part to keep the Los Alamitos Creek Watershed debris free. Come with your friends, family and lots of energy to the Hacienda Parking Lot in New Almaden. Registration starts at 8:30 am and the fun begins at 9:00 am. A hot dog lunch is provided free for all volunteers.



Debris collected from the last River Cleanup along Los Alamitos Creek.

FOLAW 's

Annual Spring Benefit

Dinner and Silent Auction

May 22, 2010

We are now accepting your donations for the silent auction baskets.

DVD and CD Copies Available

SWRCB MEETING DVD

The SWRCB DVD shows the board members and their legal counsel orally discussing and explaining their intent in approving the BP that does not make the creekside property owners responsible parties.

SCVWD CD

The SCVWD - Creek Bank Stability and Habit Restoration -CD policy handbook details the procedures for taking action in the creek.

Where to get copies

Watershed residents and other concerned county residents and public agencies may obtain a copy of this DVD from FOLAW's office volunteers or from the responsible public agency.

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