

**REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**EXECUTIVE OFFICER SUMMARY REPORT
March 13, 2024**

ITEM 4

SUBJECT

Cleanup and Abatement Order Directing Citizens Development Corporation, City of San Marcos, City of Escondido, Vallecitos Water District, and County of San Diego to Clean Up or Abate Effects of Waste Discharged to Lake San Marcos and San Marcos Creek, San Diego County (Tentative Order). (*Lara Quetin*)

STAFF RECOMMENDATION

Staff recommends adoption of Tentative Cleanup and Abatement Order No. R9-2024-0009.

KEY ISSUE

Tentative Order No. R9-2024-0009 (**Supporting Document No.1**), if adopted, would require Citizens Development Corporation (CDC), City of San Marcos, City of Escondido, Vallecitos Water District, and County of San Diego (collectively, Dischargers) to submit work plans, reports, and associated documents to identify and control the source(s) of waste discharged to San Marcos Creek (Creek) and Lake San Marcos (Lake). These entities have discharged various waste constituents originating from runoff within the Upper San Marcos Creek Watershed (Watershed) to Creek and Lake waters and sediments where waste causes a condition of pollution, nuisance, and potential threat to human health, and impairs beneficial uses. The Tentative Order includes detailed directives to protect and restore water quality, sediment quality, and beneficial uses of the Creek and Lake.

PRACTICAL VISION

This item is consistent with the goals of the “Strategize for Healthy Waters” and “Recover Stream, Wetland, and Riparian Land” Chapters of the Practical Vision. The “Strategize for Healthy Waters” chapter advocates developing biological goals for freshwater algae to protect the San Diego Region’s waters from harmful algal blooms. These blooms have occurred in Lake water each year since monitoring began in 2012 and constitute a nuisance and potential threat to human health. The “Recover Stream, Wetland, and Riparian Land” chapter supports and encourages wetland restoration to achieve a meaningful net gain of wetlands. Parties named in the Tentative Order may elect to restore/enhance the Creek’s wetlands to filter Creek water, prevent waste from reaching the Lake, and restore Creek and Lake water and sediment quality as ways to comply with the Order.

DISCUSSION

The purpose of this item is to provide the Board with information to help in its consideration of the Tentative Order. The site described in the Tentative Order is the approximately 42-square-mile Watershed that contains the Creek and Lake (**Supporting Document No. 2**). The Creek and Lake are on the California 303(d) list of impaired water bodies. The State Water Resources Control Board listed the Creek as impaired for benthic community effects, bifenthrin, dichlorodiphenyldichloroethylene, indicator bacteria, nitrogen, phosphorus, pyrethroids, selenium, total dissolved solids, and toxicity, and listed the Lake as impaired for ammonia as nitrogen, copper, nutrients, and phosphorus. Discharges of waste in the Watershed impact the warm freshwater and wildlife habitat beneficial uses for the Creek and Lake. The presence of pollutants in Creek and Lake sediments poses a risk to benthic communities, and excessive algae growth has triggered fish kills and degrades the quality of aquatic life habitat. In addition, discharges of waste impact contact water recreation use for the Lake because some algae present in Lake water release microcystin that can be harmful to humans and animals through direct contact and/or inhalation. The Lake non-contact beneficial use is also impacted by excessive discharge of sediments that create seasonal navigational issues in the northern part of the Lake.

CDC and the four public agencies named in the Order (San Diego County, Cities of San Marcos and Escondido, and Vallecitos Water District) have been voluntarily performing investigation and cleanup work with oversight from Site Cleanup Program staff since 2015. This work culminated in preparation of a Remedial Investigation/Feasibility Study Report¹ (RI/FS Report) in 2016, which the five parties finalized in 2017. The five parties jointly submitted a corrective action schedule to the Board in conjunction with Resolution No. R9-2017-0038.² The parties submitted revised schedules in July 2018 and January 2019; however, cleanup work at the site has slowed considerably since 2019, and multiple actions, pilot tests, and deliverable deadlines included in the revised schedule have been significantly delayed or not completed. In addition to the delays, the five parties have altered the scope of the cleanup work since Board staff accepted the RI/FS Report in 2017 and have failed to respond to staff requests to address data gaps, refocus the cleanup work on the Watershed and Creek, and update the feasibility analysis. Board staff have prepared the Tentative Order to:

- Avoid continued delays in the implementation of cleanup actions,
- Provide an enforceable timetable for cleanup work implementation, and

¹ Daniel B. Stephens & Associates, Inc. September 2016. Remedial Investigation/Feasibility Study Report, Upper San Marcos Creek Watershed and Lake San Marcos, Prepared for Citizens Development Corporation and Public Agency Defendants. The Public Agency Defendants are the City of San Marcos, the City of Escondido, Vallecitos Water District, and the County of San Diego.

² The San Diego Water Board adopted Resolution No. R9-2017-0038, *A Resolution Supporting the Path Forward for Nutrient Load Reductions in Lake San Marcos and the San Marcos Creek Watershed*, in 2017.

- Require modes of accountability that are not available under a voluntary cleanup arrangement.

The Tentative Order requires the Dischargers to:

- Supplement the 2016 human and ecological risk assessments (Directives A.1 and A.2),
- Identify sources of waste within the Watershed and recommend mitigation measures as appropriate (Directives A.3 and A.4),
- Identify and implement Creek and Lake remedies and implement Watershed mitigation (Directives B, C and D), and
- Verify that selected remedies have resulted in achievement of cleanup goals (Directives E, F, and G).

Source control will help Dischargers limit re-contamination of the Creek and Lake waters and sediments after implementing cleanup remedies and support long-term improvement of water quality. The supplemental human and ecological risk assessments will help address public health concerns raised by Lake residents since August 2019 and provide a baseline of current conditions, used to assess remedy effectiveness. Remedy identification and selection will help Dischargers shift the focus of the cleanup project back to the Watershed in addition to addressing impacts in the Lake. Remedy implementation and post-implementation monitoring events will help achieve Creek and Lake water quality objectives and restore Creek and Lake beneficial uses.

PUBLIC NOTICES

The agenda notice for today's meeting was posted on the San Diego Water Board's website and sent to subscribers to the email lists for Board meetings and the Lake San Marcos cleanup project. This satisfies the Bagley-Keene Open Meeting Act requirements to publish the meeting notice and agenda. Board staff solicited comments on the Tentative Order and extended the comment period twice. Board staff posted the first Notice of Public Hearing and Written Comment Period on the San Diego Water Board website on September 11, 2023, the second notice on September 22, 2023, and the final notice on October 24, 2023 (**Supporting Document No. 3**). Board staff also sent the notices to subscribers to the email list for the Lake San Marcos cleanup project. Board staff accepted comments through November 3, 2023.

SUPPORTING DOCUMENTS

1. Tentative Cleanup and Abatement Order No. R9-2024-0009
2. Site Map
3. Notice of Public Hearing and Written Comment Period

4. Request for Comments Regarding Tentative Cleanup and Abatement Order
5. Comments Received during Written Comment Period
6. Responses to Comments