



BAY PLANNING
COALITION

Bay Coalition Briefs is a publication of the Bay Planning Coalition, a membership-based, non-profit organization which advocates a reasonable, prudent and balanced planning and permit process for uses and activities in the San Francisco Estuary and shoreline areas.

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BAY COALITION BRIEFS

BCDC HEARING ON DREDGING USER FEES

March 19 is the scheduled date for BCDC'S hearing on the assessment of dredging user fees of up to \$0.10 per cubic yard of material dredged from the Bay or disposed of into the Bay. Even though the fee has been authorized by legislation, it is a regulation, and can only be legally collected after the agency undergoes a hearing and review by the Office of Administrative Law.

The money will be used to fund BCDC's participation in the LTMS program. Key conditions in AB 1059 provide that the total amount of user fees recovered cannot exceed \$650,000; it also requires that the commission must seek alternative sources of funding before imposing the fees and, if funding is found, the amount is to be deducted from the \$650,000 total. Essentially the fee is what remained in AB 1059 after the other "problem" provisions were eliminated due to objections of BPC and other marine-related organizations.

BPC Director Johnck is working to find alternate sources of

funding to limit the impact of the new fees, and is investigating the possibility of an augmentation of the annual federal Coastal Zone Management Act grant to the state.

Affected members are urged to join Executive Director Johnck at the hearing and raise other points regarding this new fee:

1. BCDC should deduct \$75,000 (the amount improperly collected from dredging applicants by the State Lands Commission's \$.25 a cubic yard fee and which is now being given to BCDC for LTMS) from the cap of \$650,000. This correction could allow the fee to be reduced to something less than \$.10 per cubic yard.
2. Any excess fees should be apportioned and refunded across the board rather than refunded in chronological order as proposed.
3. The fee should be collected based on a yearly cap since BCDC's participation in LTMS will

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ANNOUNCEMENT

The Bay Planning Coalition is pleased to present its
6th Annual San Francisco Bay Decisionmakers Conference

Water Connections:

Charting a Course for the Public's Economic and Environmental Rights



Thursday, April 30, 1992

8:00 - 4:00 p.m.

**Fleet Admiral Nimitz Conference Center
Treasure Island**

**Keynote Luncheon Address by Dr. Dixy Lee Ray, Former Governor
of Washington and author of the best-selling book, Trashing the Planet**

**"Early-Bird" Discount for Registrations Received by April 1
(Official brochure and schedule will be mailed in March)**

"Early Bird" Registration Form

Deduct \$25.00 from each registration submitted before April 1

Name(s): _____
Title(s): _____
Organization: _____
Address: _____
City: _____ State: _____ Zip Code: _____

Fees (lunch included)

Bay Planning Coalition Member(s):

1st Registrant \$170.00
Each add'l. Registrant \$120 x _____

Non-profit organization personnel and all government personnel:

1st Registrant \$125
Each add'l. Registrant \$75 x _____

Non-Member(s):

1st Registrant \$ 190.00
Each add'l. Registrant \$140 x _____

Students

\$25 x _____
(Must submit copy of student I.D.)

Total \$ _____
Less "Early Bird" Discount (\$25 per registration) \$ _____
GRAND TOTAL \$ _____

Make Checks Payable and Mail to: Bay Planning Coalition, 303 World Trade Center, San Francisco, CA 94111

BPC NEWS

STAFF NEWS

Mark Bartolini joins the BPC staff on a part-time (3 days a week) basis to fill some of the responsibilities of the Assistant Executive Director position. This position has been vacant since last fall when John Malamut resigned to attend law school full time.

Mark is a graduate of U.C. Berkeley where he received his B.A. degree in Political Science and English. His work experience includes the construction industry (he built his own home on the Marin Coast so he has first-hand knowledge of the permit process), several years as a free-lance writer, and two years as Managing Editor of a local magazine. A native of the Bay Area, Mark has twenty years experience sailing San Francisco Bay and also worked for several years delivering sailing yachts around the world before he attended Cal.

BPC WELCOMES NEW MEMBERS

Florian Martinez Associates
Land Planning Consultants
Keith Fichtner

Keck, Mahin & Cate
Attorneys at Law
J. Dennis McQuaid

Tenera, Inc.
Full-Service Environmental Consultants
Jeff Root

BAY DREDGING ACTION COALITION

GENERAL MEMBERSHIP MEETING

Wednesday, March 11, 1992

4:00 - 6:00 p.m.

Joseph Bort Metro Center
8th & Oak Streets
Oakland

Items on the agenda are discussion of
Dredging White Paper and Strategic Next Steps

ment criteria for dredging. BPC objected to this fee particularly as it applied to dredging because dredgers would have to pay a possible 3 times: a flat fee, a dredging fee, and 100% tax surcharge for discharges into an impaired water body (e.g. S.F. Bay). We were able to secure some amendments covering exemptions for maintenance dredging of 30,000 cubic yards or less.

The fee covers all point and non-point dischargers who discharge directly into enclosed bays, estuaries, or adjacent waters in the contiguous zone or ocean. This fee is in addition to the fees required under Title 23, Section 2200, California Code of Regulations. The cap on total fees collected is \$4,000,000 and will expire Jan. 1, 1994.

Although the bulk of the \$4,000,000 will derive from NPDES Non-Chapter 15 permit holders, BPC members will also be affected by the other discharge categories such as dredging as identified on the schedule on page 10 of the Bay Briefs.

BPC Director Johnck is actively participating in the BPTCP work plan implementation being conducted by State Water Board staff to ensure a scientifically reliable program. July 1, 1992 is the scheduled date for the publication of the toxic hot spot list and July, 1993 is the program completion date. To receive copies of the official language adopted by OAL and rating digests, please call the BPC office or the State Water Board staff member in charge of the BPTCP, Craig Wilson at (916) 657-0941. ■

**INLAND COASTAL COMMISSION
PROPOSED FOR THE DELTA**

The State Lands Commission has spawned a new regulatory agency for the Delta that is

being introduced in legislation authored by State Senator Patrick Johnston, Chairman of the Senate Natural Resources and Wildlife Subcommittee on Sacramento/San Joaquin Delta Protection. "The Delta Protection Act of 1992" would establish a nineteen member Delta Protection Commission consisting of:

- 5 representatives from the board of supervisors of each county
- 3 city representatives from the Delta region
- 7 state government officials
- 4 public members who are residents of the Delta

The mandate of the Commission would be to essentially stop any "development" (defined as all activities except for agricultural use) in the "Primary Management Zone" of the Delta (as defined in Section 12220 of the Water Code, but not within either the urban limit line or sphere of influence, whichever is the less inclusive). "Development" in the Secondary Management Zone could be accomplished only after fulfilling specific findings:

- (a) the need for such use is demonstrated;
- (b) the development is necessary to support the orderly expansion of the urban limits after appropriate land within the city or county has been developed;
- (c) environmental impacts will be mitigated and losses compensated in full;
- (d) the public need for the development exceeds the value of continued agricultural use;
- (e) the development will not have a detrimental impact on the Primary Management Zone of the Delta.

At issue is whether a new agency is really needed, especially at a time when California is trying to cut its deficit by reducing the size and cost of its government. Further, to date the legislation has no language recognizing the economic benefits of development for navigation, commerce, and recreational boating. BPC has contacted Senator Johnston and outlined our concerns; affected members are urged to do the same. For more information contact Senator Johnston's Office at his office in the State Capitol (916) 327-4213 or his district office at (209) 948-7993. ■

SFEP UPDATE

Now that the final reports on Land Use, Wetlands, Dredging, and Biological Resources have been completed, the SFEP Management Committee (MC) has begun the process of drafting the final product—the Comprehensive Conservation and Management Plan (CCMP). This effort requires MC members to participate in 2 all-day sessions each month to complete the task by July.

The BPC Board debated whether or not to continue BPC participation due to the intensive time requirements of staff, and the continuing problems of lack of balance and attention to property owner concerns and economic issues within the committees and work products.

However, for the time being it was agreed that it was important for BPC to continue its representation through Executive Director Johnck as an important way to influence a proper direction for the project. It is hoped that through BPC efforts a rational, pragmatic and balanced CCMP will be the result. ■

EPA/CORPS WRITE MITIGATION GUIDANCE

The EPA recently released its Region IX wetlands "Mitigation Banking Guidelines". These appear to take a more reasonable approach to resolving some of the issues surrounding the banking concept. BPC is devoting a panel discussion at its April 30 Conference to "Mitigation Banking: Are We Making Progress?".

The Corps has also issued a document on "Habitat Mitigation and Monitoring Guidelines." For copies contact BPC or Sarah Gannett of the EPA Wetlands and Coastal Planning Staff at (415) 744-1978, or the Corp's office at 744-3036. ■

CAL/EPA ISSUES PERMIT STREAMLINING PROPOSALS

In keeping with its goal to develop a speedier environmental review process, Cal/EPA has released a report titled "Draft Recommendations for Consolidating and Streamlining the Cal/EPA Permit Process," which details how the new agency proposes to operate.

The proposals would affect primarily those projects needing permits within Cal-EPA, i.e. under the regulatory authority of the State Water Resources Control Board, Air Resources Control Board, etc. , but the report fails to address the subject of needed improvements in other resource permitting agencies.

The report recognizes the interdependence of both economic and environmental goals and the failure of the present system. "In California, the permit process no longer operates in a way that furthers our economic or environmental

Of the 560,000 cu. yd. project, about 20,000 is scheduled to be placed upland in a site yet to be determined.

The agency "go ahead" to the Corps to proceed with state Consistency Review applications initiates a 7-month process of final agency review before dredging, scheduled for September 1992, can begin. Completion of the first phase of the Oakland's Inner Harbor deepening to 38' is critical to the future of the Bay Area's maritime industry. This deepening is the first step in the Port's effort to establish itself as a first port of call and will start the process towards maximizing and recapturing trade opportunities which continue to be diverted to other West Coast ports. ■

LUNGREN STANDS BY LANDOWNERS ON WETLANDS ISSUE

Attorney General Dan Lungren came out on the side of property owner's rights when he decided that the state will not participate in the appeal of a federal wetland's case.

The case at issue is *Florida Rock Industries Inc. v. the United States*, where the U. S. Claims Court decided that the government should be required to pay just compensation under the takings' clause of the Fifth Amendment when it renders private property economically valueless by prohibiting its development. The court held that by denying a request for a permit to alter a wetland in conjunction with a mining operation on private land, the U. S. Army Corps of Engineers deprived the property owner of any viable economic use of the land. According to the court, the federal wetlands protection process "is geared to take into account only the public

interest in how property will be used; the owner's private interest is ignored when government takes land as if it were its own. By ignoring the interests of the property owner and rendering the property economically useless, it [the state] has worked a taking, and under our constitution compensation is due."

According to a January 19, *New York Times* article, 52 similar cases were filed last year and 200 are pending before the U.S. Claims Court. ■

REGIONAL MONITORING PLAN HEARING MARCH 18

The S.F. Bay Regional Water Board will consider adoption of a resolution to initiate a Regional Monitoring Plan and ask selected dischargers to pay for it. Monitoring requirements which are standard conditions to most waste discharge requirements will be suspended for the selected dischargers to enable a redirection of financial resources to implement the Plan.

The Plan is designed to provide information on concentrations of pollutants in water, sediment and biota in S.F. Bay waters.

There has been much discussion about the need for a monitoring strategy that will collect information to enable the existing water quality control program to be more effective. The Monitoring Plan is a requirement of the Bay Protection and Toxic Cleanup Act as well as a component of the SF Estuary Project.

Dischargers being asked to participate are primarily the POTWs and Bay Area refineries. BPC's Board will discuss this matter at its March 4 board meeting and will consider specific points for testimony at the March 18th hearing. ■

BAY PROTECTION AND TOXIC CLEAN-UP PROGRAM FEE SUMMARY (SELECTED PORTIONS)

- Each boat construction, repair facility or hull cleaning operation shall be subject to an annual fee of \$300.
- Marinas shall be subject to an annual fee based on the number of vessel slips or moorings, in accordance with the following schedule:

Slips/Moorings	Fee
Less than 300	\$ 0
300 to 499	\$ 300
500 to 999	\$ 500
1000 and greater	\$ 1,000

- Each harbor or port facility which is used for commercial shipping purposes shall be subject to an annual fee of \$5,000.
- Each dredging operation in waters described in Subsection (a) for which a water quality Certification (33 U. S. C. Section 1341) has been issued by the State Water Resources Control Board shall be subject to a fee based on the cubic yards of dredged material authorized in the Water Quality Certification, in accordance with the following schedule:

Cubic Yards Authorized in Certification	Maintenance Dredging	New Beach Dredging	Replenishment
Less than 30,000	\$ 0	\$ 0	\$ 0
30,000 - 99,000	\$ 1,500	\$ 1,000	\$ 0
100,000 - 299,999	\$ 4,500	\$ 3,000	\$ 1,000
300,000 and greater	\$ 15,000	\$ 10,000	\$ 3,000

Note: If the dredged quantity stated in the Water Quality Certification is less than the amount of the Section 404 (33 U. S. C. Section 1344) permit, and the permitted volume is greater than 300,000 cubic yards, the fee shall be based on the total permitted volume. ■

NEW WATER BOARD APPOINTMENTS

Governor Wilson recently announced his appointments to the State Water Resources Control Board, Central Valley and the S.F. Bay Regional Water Quality Control Boards.

Central Valley Region

A. Vernon Conrad, a Fresno County Supervisor, has had extensive experience in water management, served as Chairman of the Alta Irrigation District, and has been active in the California Farm Bureau, including serving as two-term Chairman of the Fresno County Farm Bureau.

S.F. Bay Region

Peter Snyder, Mayor of Dublin, has served on the Board since 1984, and was chairman of the Board in 1988;

Danny McLeod, CEO of Rigging International, an engineering construction company and member of the Piedmont Planning Commission;

Craig Johns, an attorney specializing in environmental, wetland, land use and real estate law with the firm of Crosby, Heafey, Roach & May was appointed as a new member.

State Water Resources Control Board

Mark Del Piero, a former Monterey County supervisor, with land use and legal expertise, has been appointed to the board. Mr. Del Piero's experience includes participation in the development of 5 public sewer districts, 4 water control districts, and \$500,000,000 in capital facilities planning. ■

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