

Volume 1, Issue 1

December 31, 2009



FRIENDS OF LOS ALAMITOS

**Report to the community—Guadalupe rive
watershed basin Plan
Volume 1,
Issue 1**



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Info. you must know

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Message from the President—Mike Boulland



This newsletter explains the newly adopted 2009 water laws that affect all Guadalupe River Watershed residents and property owners.

Since the Los Alamitos Creek flows to San Francisco Bay via the Guadalupe River, a 10 year plan to improve the quality of the water entering the bay and its creeks is required by the California Environmental Protection Agency (EPA). This plan addresses the EPA's concern to reduce the amount of mercury that enters the bay from New Almaden.

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 document are ranked according to the agency's authority and it's defined roll for the management of the Los Alamitos creek.

Articles are written from the highest state level authority to the local level that summarize their newly created policies:

The first agency is the State Water Resource Board (SWRB)

2nd - SF Regional Water Resource Board (SFRWRB)

3rd - Santa Clara Valley Water District (SCVW)

4th - Responsible Parties

5th - Residents/Property Owners

Several other articles are written in this newsletter to help clarify other local creek restoration plans.

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

Residents need to read the SWRB - Attorney's statements explaining his Resolution that was added to help the creekside residents understand the intent of the SWRCB to give them relief from the restoration cost of a creek cleanup.

State Water Resource Control Board—Sacramento—Highest Level



The 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. It also includes programs of implementation to achieve water quality objectives. The BP is adopted and ap-



proved by the State Water Resources Control Board, U.S. EPA, and the Office of Administrative Law as required by law .

Periodically, the Water Board considers amendments to the Basin Plan (BPA). Each amendment is subject to an extensive public review process. At a public hearing, the Water Board may act to adopt the amendment. Adopted amendments are subject to approval by State Board. In most cases, the Office of Administrative Law and the U.S. Environmental Protection Agency (U.S. EPA) must approve the amendment as well.

On November 11, 2009 the SWRCB

adopted the Guadalupe BP Amendment. At the request of members of the New Almaden community and FOLAW the board adopted an additional Resolution No. 68-16. Quoted below is this resolution that addresses 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 volunteers 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." -

S F Regional Water Resources Board—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 SFRWRBB staff members revised the BP Amendment document to include several important changes.

Our board members followed up by attend-

ing the SFRWRB meeting on October 8, 2009 **where they approved the** draft of the Basin Plan.

At this meeting the Board member Sing requested the SFRWRB staff to add to the BPA a statement that would clarify the role of the Creekside property owners' responsibility.

The final BPA draft adopted was written to include a statement of responsibility for Creekside 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



Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary

Santa Clara Valley Water District—Technical Lead— Local

The Basin Plan Amendment states the roll of the Santa Clara Valley Water District is to be the “**Technical Lead**” of the Los Alamitos mercury cleanup project.

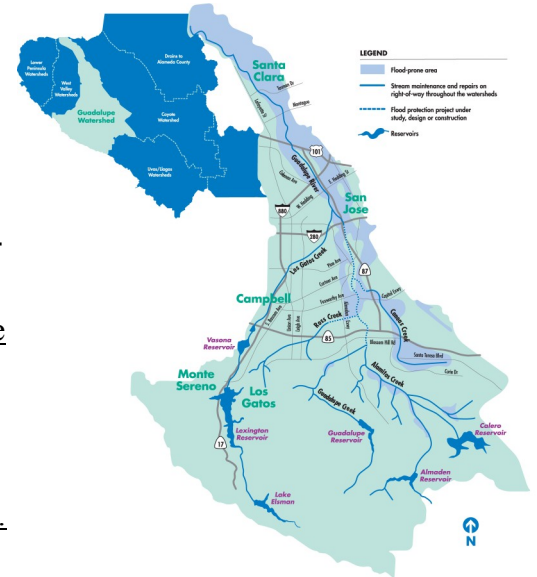


The language on *BPA-14* states: “**The Water Board’s strategy for Alamitos Creek, which is highly polluted with mercury mining waste, is to encourage a cooperative effort among the**

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 SWRB 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

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:

“SFBWB 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 appropriate



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 the 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.

This process is not unique to New Almaden **hillside and creekside** property owners, it applies to all residents in the state.

SCVWD— Creek Bank Stability and Habitat Restoration Handbook

“The State Board encourages the (SCVWD) District 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 commit to watershed stewardship, we too encourage a cooperative effort among the Dis-

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

Residents need to read a copy of the Creek Bank Stability and Habitat Restoration Handbook to understand the procedures to take to do work in the Los Alamitos creekbed.



FOLAW'S MONITORING ACTIVITIES

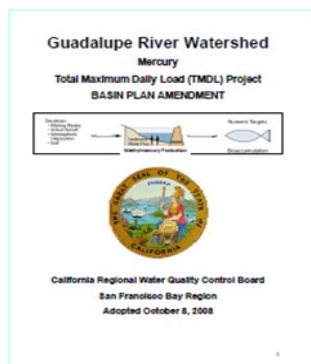
FOLAW'S members working with watershed community residents have monitored the activities of several agencies that are responsible for the Los Alamitos Creek restoration and the mercury clean up. We have taken an active role to attend conferences, board meetings and to make community presentations helping report the latest news of the various boards decisions to the general public and watershed residents.

We monitored for the last three years the Guadalupe River Total Maximum Daily Load Basin Plan Amendment (TMDL) document adoption process. This important document affects everyone in our Los Alamitos Watershed, including creekside owners, non-creekside residents and public agencies. Most residents in the watershed do not realize that Basin Plan document enforces water laws that protect water life and steam flow that moves down the creek. This document also determines law that affect other residents who's water flows through storm drains or runs off from the various hillsides.

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

human health problems. All of the TMDL's address mercury or other chemical pollutants in its local watershed. Presently, the State Water Board is concerned about the large amount of methyl mercury level in the San Francisco Bay; therefore, the TMDL was written to reduce the amount of mercury sediment that flows downstream to the bay.

FOLAW provides this educational outreach document to help individual watershed residents understand the new water codes and goals that have been adopted by various water board agencies. We feel this information is vital to each resident so that they understand what is expected to protect their reach of the creek.



The Basin Plan document directs various local water boards to meet clean water standards deadlines by requiring them to send water sample reports to the State Water board on a regular schedule of benchmarks dates. If our local water board does not report meeting the clean water standard set by the State then that local board may be penalized by a huge monetary fine.

After a careful review of the Basin Plan

Amendment revision, FOLAW members were confused with the written TMDL's statement of responsibility for creekside property owners. What we discovered was that each level of agency that was responsible for writing and approval of the Basin Plan document stated orally their intentions was to relieve the creekside property owner's legal responsibility but passed a resolution that was poorly written and confusing.

We produced this educational document to summarize the roles of each agency, responsible parties and Los Alamitos Watershed property owner. Each agency created it's interpretation of the Basin Plan and policy on how to enforce the water laws. Therefore, the Basin Plan document contain statements that has various agency interpretations.

Residents will need to have the written transcripts of both the SWRB, SFRWB and a DVD copy of the SWRB meeting for their records. The official transcript DVD shows the SWRB members discussing their intent is not to make the creekside property owners responsible for the cost of cleaning up the mercury restoration project.

The Basin Plan– It's Function and Enforcement

The California State Legislators requires the State Environmental Protection Agency to create clean water goals for a water resources Basin Plan that protects the public's source of clean water, stream bank protection, restoration and flood control in all of the state's major watersheds and rivers. These plans are called Basin Plans (BP) and are written or revised every ten years.

On November 11, 2009, the Guadalupe River Basin Plan was adopted into law.

This Basin Plan establishes a defined schedule of goals, objectives, and standards that must be followed to improve the quality of water in the watershed. The BP standards and goals are designed to be stringent enough to maximize the highest standard of purity of water for the public's health and safety.

The plan is designed to be a working document and may be updated or changed when new research discovers better techniques to manage the quality of water in the watershed.

The legislators give the responsibility of enforcement of the BP to the SFRWRB. Also, he Legislators makes the BP part of California State Water Code at the time the BP is adopted at SWRB meeting. All parties that do not follow the plan are subject to fines and penalties.

Membership / Donations

Help us support our Los Alamitos Watershed organization by joining FOLAW.

There is no membership fee to join FOLAW today. Your membership will keep you informed with current laws and regulations that affect the Los Alamitos Watershed. Your membership includes email notices of meetings and events from our Yahoo FOLAW Group Website, access to our watershed library, and resources to public agency support.

Help us with tax deduction donation with your membership. This year all donors who contribute more than \$35

dollars will receive a free DVD of the State Water Resources Board meeting that pass the resolution to limit the responsibility of creekside property owners.

A generous donation given at the time of joining FOLAW will help defray the cost of duplication of the State Water Resources Board DVD, newsletter printing, volunteer expenses incurred researching the Water Code, and educational outreach projects.

SWRB MEETING DVD

Board's Intent

Residents may ask for a copy of the State Water Resource Board Guadalupe Basin Plan adoption meeting DVD for their records. The DVD shows the SWRB attorney and board members making statements that they will not approve the adoption of the Basin Plan if the creekside property owners are held responsible for the Los Alamitos Cleanup.

Contact Mike Boulland at the FOLAW address, phone number or email below to request your DVD.

State Water Resources Board Resolution- Attorney's Statements

Watershed residents will need to have a copy of the SWRB's official meeting transcripts and DVD that shows the intent of the SWRB Member's is not to make the Los Alamitos creekside property owners responsible for the cost of the BP's cleaning up mercury restoration project. This statement will not be found in the BP document but in an attached "Resolution" document.

The SWRB's attorney recommended the Board follow correct procedures by writ-

ing an attached resolution document to BP that addressed the creekside property owners responsibility was to allow access to the creek for restoration and mercury calcine removal.

The reason that the resolution could not more specifically written was that the SWRB could not change the Water Code Law; therefore, the BP plan document contains the SFRWRB statements that may have various interpretations.

This document quotes the State Water Resources Board the Basin Plan's directions for Los Alamitos Watershed residents, creekside property owners, responsible parties and public agencies. He stated that other public agencies should have no difficulty understanding the SWRB intention using the DVD of the meeting.

Finally, he warned that like all other water bodies in the state, the SWRB has the right to correct any water sources that affects the health and safety of the public.



Disclaimer

FOLAW does not give legal advice. The information provided in this document is of a general nature and cannot substitute for the advice of a **licensed professional**, i.e., by a competent authority with specialized knowledge who can apply it to the particular circumstances of your case. Please contact a local bar association, law society or similar association of jurists in your legal jurisdiction to obtain a referral to a competent legal professional if you do not have other means of contacting an attorney-at-law, lawyer, civil law notary, barrister or solicitor.

Friends of Los Alamitos Watershed Educational Outreach Mission

FOLAW would like to expand its current educational outreach programs about the science and regulation of mercury in the environment. FOLAW is helping several public agencies communicate the results of their environmental mercury studies and cleanup plans. FOLAW seeks to increase public awareness concerning methyl mercury in the Los Alamitos creek located in the upper Guadalupe River watershed south of San Jose, California.



FOLAW's outreach provides education for residents and visitors documents to understand the issues. FOLAW is helping the residents, visitors, flora and fauna continue to live in a safe environment.

We are proud to provide this educational outreach service to our community. Also, this document is designed to help us meet our mission to educate the community about important issues that affect the Los Alamitos Watershed.



Donations are

Tax Deductable

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

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

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

Find us on the web at
FOLAW.com

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 monthly meetings. Our meeting is a potluck and generally ends at 9 p.m.

Join FOLAW Today

FOLAW

Membership Application

First and Last Name

Street, City, Zip

Home Phone

Cell Phone

Email

Spouse Name