



Knightsen CSD <knightsencsd@gmail.com>

Re: Thank-you and Follow-Up on Bioswale Remediation Questions

1 message

Knightsen CSD <knightsencsd@gmail.com>

Sat, Aug 28, 2021 at 12:50 PM

To: Abigail Fateman <abigail.fateman@dcd.cccounty.us>, Brian Holt <bholt@ebparks.org>, Charles Gardiner <Charles@catalystgroupca.com>, dshaw@balancehydro.com, mwoyshener@balancehydro.com, aaron@catalystgroupca.com

Cc: Mfranco311@gmail.com, Sandra Warren <slwarren58@yahoo.com>, carolynnesteen <carolynnesteen@comcast.net>, Sandra Maxfield <smaxf3hs@gmail.com>

Thank you Sandy for this insight and your attendance at the Eagle Lane meeting.

Knightsen Wetlands Project Team: Since your proposed design includes flaps that would let tidal flow in/out of the East Bay Regional Park parcels, I believe it is critical that you take the concerns raised about maintenance seriously and the detrimental damage they pose to neighboring properties when they fail years later, not to mention if they are not kept free of debris coming in from the river. Below is the link to the Napa Valley Register article that I mentioned in the meeting. I also provided the text for easy reference.

Trish Bello-Kunkel, Chairperson
Knightsen Town Community Services District (KTCSD)

Taken From Napa Valley Register Oct 14, 2018

[Napa County loses lawsuit over Carneros area flood gates | Local News | napavalleyregister.com](#)

Courts**Napa County loses lawsuit over Carneros area flood gates**

It's the flap over the flap gates, two large, cast-iron flaps installed in 1959 on a culvert that goes under remote Milton Road. They are designed to prevent flooding in a part of south Napa County dominated by the Napa River, sloughs, wetlands and levees. The Napa County Superior Court has sided with a Carneros region family that claimed Napa County's failure to maintain the flap gates in a culvert caused salt water damage to their grazing land. A jury decided earlier this month that the county must pay the Ahmann family \$374,000 in damages. The court at a future date will decide if the county also must upgrade or replace the flap gates, with county legal papers estimating this cost at \$495,000 to \$1 million.

"We feel vindicated," Judy Ahmann said earlier this week. County officials had no comment, given that the case still has unresolved aspects. The hinged gates operate under water pressure. They open to let rain water

drain from the culvert into the Napa River and close at high tides to block river water from flowing back through the culvert onto rural properties. John and Judy Ahmann own 340 acres near the Napa River where they've grazed cattle since 1988. Court papers said they started experiencing flooding in the summer of 2013 for the first time in the dry season. The Ahmanns believe salt water has flowed through the flap gates and onto their property, making the soil salty on 90 acres and unable to grow grass for grazing. Several acres are suitable for a vineyard, Judy Ahmann said.

In summer 2013, the Ahmanns told Napa County that they thought the flap gates had a problem. That began a series of point-counterpoint claims between the two parties that culminated in the Ahmann's lawsuit. Napa County claimed the flap gates let in only a trickle of water and are not meant to be waterproof, but rather are a "tide muting device." The amount of water isn't enough to flood the Ahmanns' property, the county said in legal filings. "There is no public purpose served by the replacement of a flap gate and culvert that is allowing only a trickling of water to flow through it," a county's legal filing In summer 2013, the Ahmanns told Napa County that they thought the flap gates had a problem. That began a series of point-counterpoint claims between the two parties that culminated in the Ahmann's lawsuit. Napa County claimed the flap gates let in only a trickle of water and are not meant to be waterproof, but rather are a "tide muting device." The amount of water isn't enough to flood the Ahmanns' property, the county said in legal filings. "There is no public purpose served by the replacement of a flap gate and culvert that is allowing only a trickling of water to flow through it," a county's legal filing said. Nor did the county take responsibility for salinity levels in soil on the Ahmann's land. "The reality is the land is a former salt marsh which would never have been sustainable to grow crops on as it has a high native salt content," said a county legal filing by the law firm Jones & Dyer. Napa County hired divers to inspect the flap gates and the divers concluded the gates were operating properly. The Ahmanns hired a diver who saw sunlight coming through the flap gate sides and concluded rust was keeping them open. Then came the Aug. 24, 2014 South Napa earthquake, with its epicenter near the flap gates. In the wake of the quake, the county had the structural engineering firm Biggs Cardosa Associates inspect the flap gates and culvert for damage.

Biggs Cardosa Associates in a written report concluded the flap gates are moderately corroded, but in good condition. Still, because of age, the consultants recommended the county replace the flap gates, adding this could be "considered in the context of all the other maintenance needs the county has." Attorney Leo Bartolotta, lawyer for the Ahmanns, said in a legal filing that the county for two years failed to disclose it had a report recommending replacement of the flap gates. "The County of Napa has completely failed to maintain the flap gates in a reasonable manner," said the legal filing by Bartolotta, who is with the law firm Geary, Shea, O'Donnell, Grattan & Mitchell.

Bartolotta on Wednesday said that Judge Rodney Stone found the flap gates situation led to an inverse condemnation of the Ahmann's land. A judge usually decides the liability in inverse condemnation cases. In addition, a jury agreed with another claim by the Ahmanns that the situation amounted to a dangerous condition of public property. The jury calculated the damage award.

Judy Ahmann said money awarded by the jury is wonderful, but that she wants the flap gates fixed or replaced. "That's the most important part, really," she said.

On Fri, Aug 27, 2021 at 11:46 PM Sandra Maxfield <smaxf3hs@gmail.com> wrote:
Good Evening Wetlands Project Team,

Thank-you for yesterday's presentation, with the notable attendance of specialists and decision-makers across many disciplines and agencies. Many Knightsen community members were impressed with the commitment shown by the Wetlands Project Team attending a late night Zoom session that ran long. Many team members were obviously making a genuine effort to address community concerns. I am particularly grateful for the level of detail given to beginning to understand the behavior of the shallow groundwater zone. The shallow zone water level hydrographs with cumulative rainfall were impressive, and discussion of Piper Diagrams was informative. These evaluations should prove helpful to the decision making process.

One of my first questions of the evening seemed to be met with a puzzling amount of project team distress. During the Zoom call we were told that improvement of the quality of water discharging to the Delta was a project objective. Design plans show this "water in need of improvement" being detained in the park property bioswales. Knightsen residents have asked many times over the years specifically what needs to be improved in the bioswale water. Does remediation of this water present health concerns for residents, their gardens, and their animals over the lifetime of this wetland? Will this slow moving water be a source of mosquitos or foul odors? If water is detained on the park property during unusually high rainfall events, will that limit the flow rate along Byron Highway and Delta Road ditches?

Under wet weather conditions, this water in need of improvement is being detained on the land surface of the park property and recharged into the Knightsen community's shallow groundwater zone ... rather than largely flowing to and being diluted by the Delta waters. (my interpretation as described in your project objective). Also notable, the quality of this water is so problematic that its cleanup warrants millions of public project dollars. Yet none of these project dollars have been devoted to identifying what chemicals need to be remediated, the byproducts of this remediation, and any associated health and ecological risks. I hope you can better understand our concern when community members ask specifically what chemicals are involved during the bioswale remedial operations, are their any associated risks, and how will they be remediated prior to percolating into the Knightsen's shallow groundwater zone.

Despite the public repudiation of my use of the word "remediation" in association with bioswales, I stand in good company with Cornell College (see first paragraph of attached article) identifying a bioswale as a "remediation technique" (quote from the attached Cornell Univ article). I understand the word "remediation" can evoke an emotional response the wetlands project team might prefer to avoid, but in the best interests of the Knightsen community, I am compelled to use that term to best describe Knightsen's concerns.

Regards,
Sandra Maxfield