

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO BAYKEEPER; SAVE
THE BAY; COMMITTEE FOR GREEN
FOOTHILLS; CITIZENS' COMMITTEE
TO COMPLETE THE REFUGE; and
STATE OF CALIFORNIA, by and through
XAVIER BECERRA, ATTORNEY
GENERAL,

No. C 19-05941 WHA (lead case)
consolidated with
No. C 19-05943 WHA

Plaintiffs,

v.

**QUESTIONS RE CROSS-MOTIONS
FOR SUMMARY JUDGMENT**

U.S. ENVIRONMENTAL PROTECTION
AGENCY AND ITS ADMINISTRATOR,

Defendants.

REDWOOD CITY PLANT SITE, LLC,

Intervenor-Defendant.

By next Thursday, September 10, at noon, each party shall please file a memorandum limited to eight pages (double spaced, no footnotes, no attachments, no declarations), answering the following questions:

1. To what extent did the decision maker or anyone advising the decision maker on the matter consider the Region 9 proposed decision? The government so far has evaded answering this. Please give a forthright answer.

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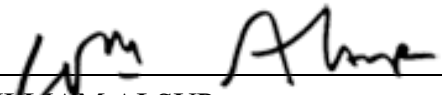
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2. If built immediately before the 1972 Act, would a subdivision built on former wetlands but completely sealed off from the Bay by strong, tall levees with no pipes or gates connecting to the Bay have been subject to the Act (a) if the ground level in the subdivision was one foot lower than the high water mark or (b) if it was filled in and always one foot higher than the high water mark. Assume the ground has been dry at all relevant times except for rain. All parties must answer as to both contingencies and quote from closest decisions on point. Provide contra authority as well.

3. What is the significance of the pipe at the Cargill facility that allows Bay water to flow into a cell (when the valve is open)? Quote from closest decisions on point.

IT IS SO ORDERED.

Dated: September 5, 2020.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE