

# KAPILOFF

## LAND BANK REPORT

### FISCAL YEAR 2019-2020



CALIFORNIA  
STATE LANDS  
COMMISSION



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## FISCAL YEAR 2019-2020

This report summarizes the status of the Kapiloff Land Bank Fund for fiscal year 2019-20<sup>1</sup>

## BACKGROUND

The Kapiloff Land Bank Fund (Fund) enables the Commission to hold money in trust to acquire certain property or to expend money for project-specific mitigation or restoration projects.<sup>2</sup> The Fund was created to facilitate real property title settlements and land exchanges as an extension of the Commission's authority under Public Resources Code section 6307. The Commission may accept cash deposits when substitute parcels of land of equal value are unavailable for exchange. Money from title settlements may only be expended to purchase outstanding interests in tide and submerged lands, lands that have been or may be converted to wetlands, or adjoining or nearby lands where the public use and ownership of the land is necessary or extremely beneficial for Public Trust purposes.<sup>3</sup> The Commission holds the acquired lands as sovereign Public Trust lands with the same legal character as tide and submerged lands.

Money may also be deposited into the Fund to manage and improve real property held by the Commission for open space, habitat for plants and animals, and public access.<sup>4</sup> If a deposit is made into the Fund for a specified mitigation purpose as a condition of a permit, lease, or other approval, the money is subject to a statutory trust that limits its use to the identified mitigation. Any person or entity may donate money into the Fund for projects, specified or not, that provide for public access to or management and improvement of real property held by the Commission for open space, plant and animal habitat, and public access.

The Fund contains two account categories. The first is Title Settlements, which includes money received from title settlements (deposits) and is the source of money expended on property acquisitions (expenditures). The second is Special Mitigation and Management Projects, which includes money set aside for mitigation, management, or improvement projects. This second category contains an individual subaccount for each fund source.

The Fund overall began the fiscal year with a balance of \$16,502,774 and received deposits of \$3,739,200, with accounts earning \$312,108 in interest. The Commission spent \$1,615,105 across all accounts. Most of this spending was on the Commission's Granted Lands program, the Bolsa Chica Lowlands Restoration Project, and the Coastal Hazard and Legacy Oil and Gas Well Removal and Remediation Program (SB 44, Jackson, Chapter 645, Statutes of 2017)—all of which are within the Special Mitigation and Management Projects category. The Fund ended the fiscal year with a balance of \$18,938,976, a net increase of \$2,436,203. Below is a summary of significant Fund activity.



<sup>1</sup> This report complies with the annual reporting requirement in Public Resources Code section 8618.

<sup>2</sup> Kapiloff Land Bank Act (Chapter 1471, Statutes of 1982, as amended); Pub. Resources Code, § 8600, et seq.

<sup>3</sup> Pub. Resources Code, §§ 8613, subd. (a), 8625, subd. (a).

<sup>4</sup> Pub. Resources Code, §§ 8613, subd. (b), 8625, subds. (b), (c).

# TITLE SETTLEMENTS

The Title Settlements category began with a balance of \$6,953,986 and ended with a balance of \$7,704,896, a net increase of \$750,910. The net increase reflects the deposits described below and interest earnings of \$130,910.

## TITLE SETTLEMENTS (DEPOSITS)

Three title settlements resulted in deposits into the Fund in the 2019–20 Fiscal Year. The Commission also approved one title settlement that closed escrow after the end of the fiscal year.

In August 2015, the Commission entered a litigation settlement with the California Department of Transportation (CalTrans) and Seacliff Beach Colony Homeowners Association (HOA) regarding a rock revetment in Ventura County ([Item 57, August 19, 2015](#)). CalTrans had built the revetment in the 1970s to expand an interchange for State Highway 101. The Commission and the HOA disputed ownership of the land underlying the revetment. Pursuant to the settlement, CalTrans deposited \$300,000 into the Fund in December 2019.

In December 2018, the Commission approved a title settlement involving lands in the historic channel of the Petaluma River within the City of Petaluma ([Item 71, December 3, 2018](#)). The Petaluma River at this location had been dredged and straightened in the early 1900s. Due to the uncertainty of ownership interests in this area, the Commission agreed to settle this title dispute with a private party, the Spanos Corporation, in exchange for a public access trail and a deposit of \$160,000 into the Fund. The title settlement closed escrow in July 2019.

In December 2019, the Commission and the City of Vallejo amended a title settlement that had originally been approved pursuant to special legislation in 1981 ([Item 50, December 6, 2019](#)). The original settlement had left a crescent-shaped parcel of land potentially subject to a Public Trust easement landward of the area removed from the Public Trust by the settlement. A proposed housing development called for including this parcel within the development footprint. Because this small, landlocked parcel was not useful for trust purposes, the Commission agreed to terminate the state's Public Trust interest in the parcel in exchange for a deposit of \$160,000 into the Fund.

In April 2020, the Commission approved an amendment to a title settlement involving land along the Sacramento River within the City of West Sacramento ([Item 5, April 29, 2020](#)). As part of the original settlement, in 1989, the Commission accepted a non-motorized public access easement across private uplands that would have allowed access from a planned public street to the river. The public street was never built, and the easement was never developed. River One, LLC, now owns the property with the easement and intends to build a hotel and condominium tower. Because the proposed hotel and ground-floor restaurant will benefit visitors to the river and because the public-access easement served no present need, the Commission agreed to extinguish the easement in exchange for a deposit of \$116,500 into the Fund. This title settlement closed escrow in December 2020 and is not reflected in this report's accounting.

## PROPERTY ACQUISITIONS (EXPENDITURES)

The Commission did not authorize any property acquisitions.

# SPECIAL MITIGATION AND MANAGEMENT PROJECTS

The Special Mitigation and Management Projects category contains funds received for mitigation actions or by agreements, judgments, penalties, or settlements other than as part of a title settlement. This category is maintained as individual subaccounts, some of which are limited to specific mitigation activities. If not limited, a subaccount may be used for public access, acquisitions, management, and property improvement. This category began with a balance of \$9,548,787. A total of \$3,119,200 in deposits was received, while expenses totaled \$1,615,104. The category ended with a balance of \$11,234,080, a net increase of \$1,685,293. The increase is largely attributed to the \$2 million deposit pursuant to SB 44 (Jackson), Chapter 645, Statutes of 2017.

## BOLSA CHICA LOWLANDS RESTORATION

The Bolsa Chica Lowlands Restoration Project consists of approximately 950 acres of lowlands in Orange County adjacent to the Pacific Ocean. Approximately 600 acres of the site have been restored. Much of the property has been transformed into a full tidal basin, with other portions converted into muted tidal areas or managed as wetland habitat. The site also includes a not-yet-restored future full tidal area. The primary sources of original funding were the Ports of Los Angeles and Long Beach, in exchange for mitigation credits.

The Bolsa Chica subaccount began the fiscal year with a balance of \$3,260,692. Of this, the vast majority—almost \$2,700,000—is reserved for the future full tidal basin restoration, leaving a balance of only a few hundred thousand dollars for operating expenses, including site management, inlet dredging, environmental and other consultant contracts, and engineering or facility repairs. The operating budget for Bolsa Chica is approximately \$2 million per year. Mindful that the operations account was becoming perilously low, the Commission requested and received an appropriation in the 2018–19 Budget Act for \$2 million per year for two years. Because this appropriation is from the Environmental License Plate Fund (ELPF), expenses do not appear in the Fund and are not reflected in this report. Operating expenses for Bolsa Chica in 2019–20 were \$131,127, lower than in years past due to the change in the paying fund. The Bolsa Chica subaccount ended the year with a balance of \$3,187,330, reflecting the above expenditure, plus \$57,765 in interest earned. Staff continues to seek grants and opportunities for ongoing operational funding.

## OWENS LAKE

Since 2010, the Commission has accepted \$1,335,000 from the City of Los Angeles Department of Water and Power to offset losses to Public Trust values caused by the City's dust control activities at the dry bed of Owens Lake ([Item 50, December 10, 2010](#), [Item 61, August 19, 2015](#), and [Item 46, April 5, 2019](#)). The Commission has approved expenditures for a groundwater study ([Item 80, October 18, 2018](#)) and a cattle fence ([Item 46, April 5, 2019](#)). These projects are ongoing, and staff will continue to assess public needs at Owens Lake.

## **GRANTED LANDS PROGRAM**

Local governments that manage legislatively granted state-owned lands are trustees for the State and public. These trustees are required to manage their granted lands and resources consistent with their legislative trust grant, the common law Public Trust Doctrine, and in the best interests of the state. Trustees must also ensure that revenue generated from granted lands is used for purposes consistent with their legislative trust grant and that further the Public Trust. The Commission oversees management of these granted lands and resources. Revenue generated on certain granted Public Trust lands is deposited in the Fund to administer the Commission's Granted Lands Program. Revenues received from trustees are specified by agreement or granting statutes.

The trustees required to deposit revenue into the Fund are the Cities of Newport Beach, Pittsburg, Martinez, Eureka, and Sacramento; and Orange County.<sup>5</sup> The City of Albany and the San Diego Unified Port District will begin depositing revenue into the Fund in Fiscal Year 2020–21.<sup>6</sup> In April 2020, the Commission granted the City of Martinez's request to relieve its obligation to transmit 20 percent of the revenue generated from its granted lands to the State for the 2018–19 Fiscal Year ([Item 71, April 29, 2020](#)). Under current law, the 2020–21 Fiscal Year will be the last year for which Martinez may request relief.

The Granted Lands Program began the fiscal year with a balance of \$464,119 and ended with a balance of \$716,969. A total of \$733,960 was received from trustees during the fiscal year. Orange County did not make a deposit for 2018–19; staff is following up with the County to understand this omission. Expenses for administering the Granted Lands Program (i.e., staff costs) in 2019–20 totaled \$490,195.

## **COASTAL HAZARD AND LEGACY OIL AND GAS WELL REMOVAL AND REMEDIATION PROGRAM**

SB 44 (Jackson, Chapter 645, Statutes of 2017), effective January 1, 2018, authorizes the transfer, upon appropriation in the Budget Act, of \$2 million from tideland oil and gas revenues to the Fund for the Commission's coastal hazard and legacy oil and gas well removal and remediation program. SB 44 also authorizes the transfer, upon appropriation in the Budget Act, of an amount sufficient to bring the unencumbered balance of the Fund to \$2 million for each fiscal year from 2019–20 to 2027–28.

During Fiscal Year 2019–20, the Commission's contractor InterAct PMTI, Inc., assisted in the development of engineering and design plans for the abandonment of four legacy oil wells suspected of leaking off Summerland Beach, Santa Barbara County—the Treadwell #10 well, the CH Olsson #805 well, and the Duquesne #910 well. The Commission prepared and approved an addendum to its [Environmental Impact Report for the Becker and Legacy Wells Abandonment and Remediation Project](#) for these well abandonments, which established safe and tested procedures for abandoning legacy wells in the tidal and subtidal zones ([Item 50, February 28, 2020](#)).

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<sup>5</sup> City of Newport Beach (Chapter 728, Statutes of 1994; Chapter 317, Statutes of 1997); Orange County (Chapter 361, Statutes of 2004); City of Pittsburg (Chapter 422, Statutes of 2011); City of Martinez (Chapter 628, Statutes of 2014); City of Eureka (Chapter 891, Statutes of 2014); City of Sacramento (Chapter 250, Statutes of 2018).

<sup>6</sup> City of Albany (Chapter 590, Statutes of 2016); San Diego Unified Port District (Chapter 372, Statutes of 2019).

In September and October 2020, the Commission engaged in permitting and consultation with agencies including the Coastal Commission, Santa Barbara County, California Department of Conservation's Geologic Energy Management Division, California Department of Fish and Wildlife's Office of Oil Spill Prevention and Response, Central Coast Regional Water Quality Control Board, and U.S. Army Corps of Engineers. And on November 29, 2020, the Commission and InterAct PMTI completed re-abandonments of the Treadwell #10 and NorthStar #815 wells using a barge, divers, and heavy equipment. This re-abandonment work is an essential part of the Commission's efforts to permanently stop hydrocarbon leaking into surrounding waters and onto the beach.

The total cost incurred during the fiscal year was \$940,492, leaving a balance in the SB 44 sub-account of \$2,899,568, largely made up of the annual \$2 million appropriation and \$40,433 in interest. More information on the work conducted by the Commission under SB 44 is contained in a separate report from the Commission to the Legislature. The SB 44 report is available on the Commission's website, [www.slc.ca.gov/publications](http://www.slc.ca.gov/publications).

## **MARTINS BEACH**

In August 2018, the Commission delegated authority to its Executive Office to accept donations and make deposits to the Martins Beach subaccount ([Item 107, August 23, 2018](#)). This action comported with SB 854 (Chapter 51, Statutes of 2018) that established a subaccount in the Fund for money received from public and private sources, including nonprofit sources, to acquire and create a public access route to and along the shoreline, including the sandy beach, at Martins Beach in San Mateo County. A total of \$190 in donations was remitted to the State Controller's Office during the fiscal year. The Martins Beach subaccount ended the fiscal year with a balance of \$1,040,329.

## **OTHER SPECIAL MITIGATION AND MANAGEMENT FUND ACTIVITY**

In October 2018, the Commission authorized the expenditure of \$705,252.55 from three subaccounts to remove and dispose of abandoned vessels, marine debris, navigation hazards or obstructions, and derelict structures in the San Francisco Bay Area ([Item 81, October 18, 2018](#)). The expenditure was intended to partly remediate the abandoned Crockett Marine Services Marina in the community of Crockett, Contra Costa County, and to remove and demolish an abandoned vessel known as the Black Kite, also in Contra Costa County. The Black Kite was removed through a partnership with the East Bay Regional Parks District at a cost of \$50,000 from the Fund. In December 2018, staff expended \$25,440 in an emergency removal effort with the U.S. Coast Guard to abate the Gretchen E, a derelict workboat at Crockett Marina that had sunk and begun leaking oil or fuels. In May 2020, the San Francisco Bay Conservation and Development Commission authorized expenditure of the equivalent of \$100,000 in mitigation credits at the Crockett Marina. This non-Fund activity removed two sunken vessels and 28 derelict wood and steel pilings. In August 2020, a fire destroyed the derelict marine services shop. The Commission spent \$3,290 securing derelict structures (e.g., boarding up windows and doors; installing gates and locks) during FY2019–20 and \$87,370 on post-fire hazardous waste and shoreline cleanup (not reflected in the accounting of this report).



Staff continues to plan the remediation of the marina and shoreline, including removing remaining abandoned vessels and shoreline debris and removing or rehabilitating the former Nantucket restaurant. These projects are expected to consume the remaining approximately \$650,000 in the subaccounts.

In December 2019, the Commission accepted \$250,050 into the Fund for mitigation activities on sovereign land at the Burton Mesa Ecological Reserve in Santa Barbara County ([Item 30, December 6, 2019](#)). The donor, Oak Hills Estate, LLC, plans to develop a residential subdivision on land adjoining the reserve. As part of permitting, the County required the developer to mitigate for habitat loss in the subdivision land by restoring habitat off-site. Because the only suitable restoration land identified is in the reserve, the developer applied to lease 33.34 acres from the Commission for the restoration. This one-time mitigation deposit represents the cost the developer would otherwise have incurred in a private transaction to acquire 33.34 suitable acres. The deposit is limited to the specified habitat-restoration mitigation.

## **FUND ACTIVITY IN FISCAL YEAR 2020-21**

In December 2020, the Commission authorized expending up to \$37,500 from the Las Tunas Groins subaccount for a fence project at the La Jenelle Beach Park in Ventura County ([Item 57, December 17, 2020](#)). The Las Tunas Groins subaccount originated in a 1989 litigation settlement related to hazardous legacy groins the City of Malibu in Los Angeles County. The settlement terms have been fulfilled, and no obligation remains for these funds. The La Jenelle Beach Park is Public Trust land operated and maintained by the County of Ventura and used by the public for beach and fishing access. An existing bollard fence, a series of posts connected by cable or chain, surrounding the La Jenelle access road and parking lot had deteriorated and been removed. The lack of fencing created a potential public danger from illegal beach driving. Commission, County, and California Coastal Commission staff negotiated a solution in which the County would reinstall a bollard fence and the Commission would reimburse the County for half the cost but no more than \$37,500.

Also in December 2020, the Commission granted the City of Martinez's request to relieve its obligation to transmit 20 percent of the revenue generated from its granted lands to the State for the 2019-20 Fiscal Year ([Item 59, December 17, 2020](#)). This relief will allow the City to commit more funds to planning for and rehabilitation of the City marina. The present Fiscal Year, 2020-21, is the last year for which Martinez may seek relief.

# FUND BALANCE

The balance of the Fund as of July 1, 2020, is summarized below.

|  |                   |                     |
|--|-------------------|---------------------|
| Title Settlements (Pub. Resources Code, § 8625, subd. (a))           |                   |                     |
| Principal  | \$ 7,573,986      |                     |
| Interest   | <u>\$ 130,910</u> |                     |
| Subtotal   |                   | \$ 7,704,896        |
| Special Mitigation and Management Projects (§ 8625, subds. (b), (c)) |                   |                     |
| Bolsa Chica Lowlands Restoration                                     | \$ 3,129,565      |                     |
| Granted Lands  | \$ 707,883        |                     |
| Martins Beach  | \$ 1,021,822      |                     |
| Coastal Hazards (SB 44)  | \$ 2,859,135      |                     |
| Other Subaccounts  | \$ 3,334,477      |                     |
| Interest   | <u>\$ 181,198</u> |                     |
| Subtotal   |                   | <u>\$11,234,080</u> |
| Total Fund Balance   |                   | \$18,938,976        |

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