

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES

July 11, 2007

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Item 1 – Roll Call and Introductions

The meeting was called to order on July 11, 2007 at 9:00 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Margaret Bruce; Shalom Eliahu; William Peacock; Clifford Waldeck; Terry Young.

Board member absent: Mary Warren.

Anna Torres introduced new staff in the Management Services Division: Theresa Donahoe and Smriti Saha.

Bruce Wolfe asked Dyan Whyte and Tom Mumley, newly appointed Assistant Executive Officers, to say a few words.

Dyan Whyte said she felt honored to have the opportunity to serve as Assistant Executive Officer. She said she enjoys working at the Water Board where her personal goals of protecting the environment match the goals of the office. She said she looks forward to working with Board staff to help them find projects they find rewarding.

Tom Mumley said he felt grateful for the opportunity to serve as Assistant Executive Officer. He said he enjoys working at the Water Board and values the work that is accomplished here. He said he hopes to share his enthusiasm with staff. He said he will work to ensure that staff is both leaders and team players in environmental programs.

Mr. Muller presented a Cal/EPA Customer Service Award to Mary Rose Cassa. He awarded her with a Certificate of Recognition in appreciation of her ongoing commitment to Customer Service.

Mr. Wolfe said Ms. Cassa has been a leader in developing the Water Board's public participation program.

Gary Wolff, State Board member, discussed recent workshops held by the State Board including: workshops to receive comments regarding updating the Strategic Plan; workshops regarding enforcement policies for water rights and water quality; and a workshop concerning suction dredging. He also discussed upcoming State Board activities.

Dr. Wolff and Mr. Waldeck discussed water rights issues.

Item 2 – Public Forum

Athena Honore, Policy Associate, Save the Bay, said her organization entered into a partnership with a local professional sports team to help educate fans about trash. She said, at certain games, announcements and scoreboard messages will be made to “stash your trash.” She said Save the Bay hopes to raise fans’ awareness that dropping food wrappers and beverage containers in places like parking lots creates trash that often ends up in the Bay.

Ms. Honore said trash presents a serious threat to the health of the Bay. She said the quality of life in the Bay Area depends on a vibrant Bay. She said the Board has the authority to reduce the amount of trash that enters the Bay.

Item 3 – Minutes of the June 13, 2007 Board Meeting

Motion: It was moved by Mr. Peacock, seconded by Mrs. Bruce, and it was unanimously voted to adopt the Minutes of the June 13, 2007 Board Meeting.

Item 4 - Chairman’s, Board Members’, and Executive Officer’s Reports

John Muller said current legislation was among the topics discussed during the State and Regional Board Chairs’ recent telephone conference call. He said Board Chairs will meet on August 6, 2007 in Sacramento.

Mr. Muller said on June 20, 2007 he hosted an Associate Administrator of U.S. EPA on a tour of local facilities in Half Moon Bay. He said Bruce Wolfe joined them on the tour.

Mr. Muller said U.S. EPA’s Local Government Advisory Committee’s DVD profiling water infrastructure challenges was selected to receive a national award for documentaries.

Clifford Waldeck said he was looking forward to using environmentally friendly practices in his new business location.

Margaret Bruce said she took a summer trip that gave her opportunities to learn about water issues.

Terry Young said she recently attended a National Research Council Committee meeting held in Washington, DC. She said the Committee's goal is to make recommendations on how to measure efficiency in scientific research conducted by federal agencies.

Mr. Wolfe said the first annual Teng-Chung Wu Pollution Prevention Award will be made at the September Board meeting. He said the award will honor the late Dr. Wu who led staff on handling pollution prevention issues.

Mr. Muller thanked staff for working quickly to develop the award.

Mr. Wolfe said staff recently participated in a stakeholder forum held in Oakland regarding preparation of the 2009 California Water Plan.

Mr. Wolfe said there have been recent news articles about ships in Suisun Bay. He said approximately 50 ships in the Bay have been designated for disposal and the closest disposal facility is located along the Gulf Coast. He said the hulls of ships must be cleaned before the ships are towed to the facility. He said there is concern that paint and portions of the hulls will fall into waters of the Bay when the hulls are cleaned.

Mr. Wolfe said, given the large number of ships awaiting disposal, some of them may remain in Suisun Bay for awhile. He said there is concern that paint and debris above the water line on the ships will fall into waters of the Bay.

Mr. Wolfe said staff is working with the U. S. Maritime Administration regarding procedures for hull cleaning and ship maintenance that are protective of Bay waters.

Mr. Muller suggested he and Mr. Peacock serve on a subcommittee regarding ship disposal. Mr. Peacock agreed to serve on the subcommittee.

In reply to a question from Clifford Waldeck, Mr. Wolfe discussed a hull cleaning pilot project conducted in the Eastern United States.

Mr. Wolfe said he would keep the Board informed of future developments regarding the ships.

Mr. Wolfe said on July 17, 2007 the State Board will consider adoption of a resolution to amend the Basin Plan for the San Francisco Bay Region to establish a TMDL for mercury.

Mr. Wolfe said he issued a Water Code 13267 letter to the Bay Area refineries requiring submittal of information about mercury. He said on July 31, 2007 the State Board will hold a hearing on the refineries' request to stay requirements in the letter pending a hearing on a petition.

Terry Young asked about an item in the written Executive Officer's Report concerning development of a grazing waiver as part of implementation of a watershed pathogen TMDL. In reply to Dr. Young's question, staff said the waiver under development could be used to develop waivers to implement TMDLs in other watersheds.

Item 5 – Consideration of Uncontested Items Calendar

Mr. Wolfe briefly summarized several items on the uncontested calendar. He said there was a supplemental for Item 5B. He recommended adoption of the uncontested calendar as supplemented.

Mr. Waldeck made a motion to adopt the uncontested calendar as supplemented and recommended by the Executive Officer. Mr. Peacock seconded the motion.

Mr. Peacock said the Item 5B Supplemental requires that photographs of the restoration project will be taken every year and that the photographs will be analyzed every five years. He asked if an analysis should occur every year.

Staff said photographs will be analyzed every year for the first 15 years of the project. Staff said because of financial constraints, photographs will be analyzed thereafter every five years. Staff said the project may take 70 years to complete.

The Board unanimously voted to approve the uncontested calendar.

Item 6 – City and County of San Francisco, Combined Sewer System, San Francisco – Hearing to Consider Imposition of Administrative Civil Liability for Discharge of Untreated Wastewater into Waters of the State

Mr. Wolfe said the permittee signed a waiver of the right to a hearing on the proposed ACL and no Board action was necessary. He said the permittee agreed to pay an Administrative Civil Liability in the amount of \$626,000. He said \$482,000 may be used for supplemental environmental projects.

Mr. Wolfe said two supplemental environmental projects have been proposed. He said one project would facilitate fish passage in Apanolio Creek and Frenchman's Creek in the Pilarcitos Creek watershed. He said the other project would include the design and construction of landscaped-based treatment controls for runoff in the Lobos Creek watershed.

Mr. Muller thanked all parties for their work on the supplemental environmental projects.

In reply to a question from Clifford Waldeck, Mr. Wolfe said implementation of supplemental environmental projects will be overseen by the San Francisco Estuary Project. He said the permittee would be required to pay a proportionate amount of the civil liability to the State Board if a supplemental environmental project was not implemented.

Item 7 – City and County of San Francisco, San Francisco International Airport, Industrial Wastewater Treatment Plant, San Mateo County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Dr. Young recused herself from participating in discussion on this Item.

Mr. Wolfe said the permittee signed a waiver of the right to a hearing on the proposed MMP and no Board action was necessary. He said the permittee agreed to pay a Mandatory Minimum Penalty in the amount of \$6,000.

Mark Costanzo, Utilities Manager, San Francisco International Airport, explained the cause of the violations.

Item 8 – Development of Stream and Wetland Systems Protection Policy – Status Report

Ben Livsey said staff is developing a draft stream and wetland systems protection policy that will protect streams, floodplains, and transitional areas like wetlands and riparian areas. He said riparian areas enhance water quality by filtering pollutants, trapping sediment, and stabilizing stream banks. He said flood plains store waters and can attenuate the severity of flooding.

Mr. Livsey said the policy will be developed as a Basin Plan Amendment that will include beneficial uses, water quality objectives, and an implementation plan. He said beneficial uses will include: Flood Peak Attenuation and Water Quality Enhancement.

Mr. Livsey said the Amendment will include five narrative water quality objectives:

1. Watershed Hydrology – enhancing infiltration capacity and controlling runoff to avoid excessive water in streams.
2. Stream Channel Equilibrium – balancing the amount of sediment and water in streams to avoid excessive sediment erosion and deposition.
3. Floodplain Connectivity – protecting the hydrologic connection between stream channels and floodplains.
4. Riparian Vegetation – preserving and restoring vegetation that shades streams.
5. Wetland Structure – protecting the hydrologic conditions and vegetation characteristics of wetlands.

Mr. Livsey said staff will develop numeric performance criteria to be used to evaluate compliance with the policy.

Mr. Livsey said the implementation plan will define streams, wetlands, and riparian areas. He said NPDES permits, water quality certifications, waste discharge requirements, and waiver conditions will include implementation actions.

Mr. Livsey said the draft policy may affect staff's regulation of stormwater runoff, floodplain management, and dredge and fill activities. He said staff also will use the policy when reviewing environmental impact documents and evaluating grant applications.

Mr. Livsey said staff recognizes the significance of the proposed Basin Plan Amendment. He described meetings that have been held with stakeholders. He said stakeholders have expressed the need to have cost-effective and achievable implementation actions. He said they also have spoken in favor of developing a policy that will protect stream and wetland systems.

Mr. Waldeck asked if staff had received opposition to the draft policy.

Shin-Roei Lee reiterated that stakeholders have expressed concerns about implementation costs and imposition of additional burdens. She reiterated stakeholders have spoken in favor of developing a policy that protects streams and wetland systems.

Mr. Wolfe said the policy will promote consistency in staff's review of project applications. He said the policy also may help applicants and municipalities understand staff's review process.

Mrs. Bruce said inclusion of water quality enhancement as a beneficial use would appear to be a major change. She said she felt the change would be positive. She asked staff to give examples of changes stakeholders and municipalities might expect when the stream and wetland systems protection policy is used to review applications.

Ms. Lee gave an example using stream management and riparian vegetation. She said there may be situations where vegetation should be removed from stream banks. She said instead of a clear cutting approach, staff would expect adequate vegetation to remain to provide shade for streams and to moderate stream temperatures.

Mrs. Bruce suggested staff prepare a flow diagram to help stakeholders understand responsibilities under the draft policy.

Dyan Whyte said she has been working on basin planning aspects of the draft policy and Shin-Roei Lee has been working on implementation aspects. Ms. Whyte said the Basin Plan must define beneficial uses and beneficial uses must be designated to specific waters. She said designating beneficial uses to waters will be the next step in preparing the proposed Basin Plan Amendment.

Ms. Lee said participating in a stakeholder collaborative group has helped her understand the important connection between land use and water use. She said a stream and wetland systems protection policy will help staff in reviewing permit applications and also may help municipalities in the land use decision making process.

Mrs. Bruce and Yuri Won discussed the legal definition of streams and wetlands.

Dr. Young said there are ways to measure geomorphic features like stream channel equilibrium and flood plan connectivity.

Arthur Feinstein, Bay Chapter Executive Committee, Sierra Club, thanked staff for developing the draft stream and wetland systems protection policy. He said the policy is needed and encouraged staff to complete preparation of the Basin Plan Amendment quickly.

Item 9 – Erosive Forces and Stream Restoration Efforts in Santa Clara County – Status Report

Bruce Wolfe said a seminar on the topic of Erosive Forces and Stream Restoration Efforts in Santa Clara County was held on January 31, 2007. He said representatives from four stakeholder groups that participated in the seminar will give presentations on the topic today.

Trish Mulvey, Chair, Santa Clara Basin Watershed Management Initiative, said stakeholders that participated in the seminar agreed that:

1. Natural erosion tends to improve stream ecology.
2. Human induced erosion that is accelerated tends to degrade stream ecology and has other negative consequences.
3. Human induced erosion is caused by structures and activities in urban landscapes and in streams.
4. Solutions to reducing accelerated erosion may involve changing stream channels. She said solutions also may include reducing stormwater runoff from new and existing developments.
5. Solutions to reducing accelerated erosion will be achieved on a stream reach by stream reach basis.

[Mr. Muller left the meeting at 11:04 a.m.]

Ms. Mulvey said human induced erosion that is accelerated may cause stream bank failure and there may be resulting property loss. She said human induced erosion increases sediment management costs and degrades fish spawning and feeding habitats.

Ms. Mulvey said as urbanization increases, the amount of impervious surface in a community increases. She said an increase in impervious surface results in an increase in stormwater runoff. She said an increase in impervious surface also results in an earlier and higher peak of stormwater moving through streams.

Melody Tovar, Deputy Director, Environmental Services Department, City of San Jose, said a municipality must consider stormwater issues in the context of many community needs, including recreation, public safety, economic development, and affordable housing. She said decisions often include multiple objectives.

Ms. Tovar said the City of San Jose is implementing a Hydromodification Plan approved by the Water Board. She said the City has learned smaller, more frequent storms can erode creeks significantly. She said the City recognizes the manner in which developments are built can have a tremendous impact on the quantity of stormwater moving through creeks.

Ms. Tovar said available land is scarce and the City is trying to use facilities like parks for dual purposes, such as stormwater detention during the rainy season and recreational use during other seasons. She said groundwater levels and soil contamination can present challenges in implementing on-site measures. She said the City is concerned about costs to operate and maintain treatment controls.

Ms. Tovar said regulations should provide flexibility to allow the development of stormwater controls in regional facilities as compared to the development of controls on a project by project basis. She said in-stream solutions also offer promise.

Keith Garner, Sheppard, Mullin, Richter & Hampton, representing California Home Builders Association, said homebuilders are committed to producing healthy environments and protecting streams. He discussed the following stormwater issues:

1. Problem areas in stormwater management should be identified and prioritized. He said programs have focused mostly on controlling runoff from new development projects. He said policy makers should balance how much runoff is associated with new development as compared to existing development.
2. Effective and efficient stormwater controls should be identified. He said resources should be used to develop controls that work.
3. Regional solutions should be used instead of, or as a context for, project-by-project requirements. He said this is one of the most important considerations from a builder's perspective.
4. Incentives should be part of stormwater programs.
5. Permitting agencies should coordinate activities to avoid conflicting directives and to encourage innovative solutions.

Richard McMurtry, Santa Clara Creeks Coalition, said stakeholders at the January 2007 seminar agreed that producing healthy streams requires:

1. Stream channels that are stable enough to resist erosion.
2. Implementation of stormwater controls in new development projects in order to keep runoff in streams at current levels.
3. Implementation of stormwater controls in existing developments in order to have runoff in balance with stream channels.

Mr. McMurtry said all of the above activities may be required to restore stability in some stream reaches.

Mr. McMurtry gave Board members copies of a DVD of the January seminar and requested the Board's stormwater subcommittee consider recommendations of stakeholders at the seminar. He also requested the Board's stormwater subcommittee hold a meeting to consider issues of watershed permitting and to consider new forms of communication between the Board and stakeholders. He said the subcommittee could decide whether the issues warrant further attention.

Mr. McMurtry said the issue of watershed permitting was discussed at the seminar. He briefly discussed legal authority for the permits.

Dr. Young said Mr. Muller had left the meeting. She said, at his request, she would serve as Chair for the remainder of the meeting.

Mr. Waldeck said it is important homebuilders and municipalities participate in discussion of stream restoration issues.

Mr. Wolfe said stormwater controls could be used to reduce runoff from existing developments. He said incentives could help encourage the use of controls.

Mrs. Bruce said she hoped incentives for homebuilders would incorporate economic realities of the building community, economic realities of the municipalities, and ecological realities of the watershed.

Mrs. Bruce asked if local governments use a mapping system to identify locations for regional stormwater facilities.

Ms. Tovar said only a small number of locations within the City have enough vacant land for development of regional facilities. She said vacant land generally is scattered throughout the watershed. She said mapping is used to help agencies understand how stormwater controls developed on scattered parcels can be aggregated for the benefit of stream channels.

Ms. Mulvey said there should be effective collaboration among agencies in order to provide watershed protection to streamside properties.

Mr. Peacock complimented the speakers on their collaborative effort to address stream protection issues. He asked about incentives that could be given to owners of existing developments to reduce stormwater runoff.

Ms. Tovar said homeowners could be encouraged to use stormwater to irrigate their landscape. She said runoff from many existing homes drains directly to gutters and storm drains.

Ms. Mulvey said she would like to see rainwater treated as a resource. She said reducing runoff rates might allow more stormwater to infiltrate to groundwater. She said it would be helpful if water agencies, wastewater agencies, and stormwater agencies coordinate with each other.

Shin-Roei Lee said green building certification programs provide an incentive for owners of existing developments to reduce stormwater runoff. She said some banks offer lower mortgage rates on properties that have been certified. She said property owners tend to be showing more interest in owning green buildings.

Ms. Lee described a municipal program that provides incentives to property owners to reduce stormwater runoff. She said storm drain fees are based upon the amount of impervious surface on a parcel. She said a property owner's storm drain fee is reduced if the owner decreases the amount of impervious surface on the property. She said the storm drain fee also is reduced if the owner retrofits existing impervious surface with stormwater treatment measures such as grassy swales or pervious pavement.

Mr. McMurtry described a municipal pilot program that involves helping single family homeowners install cisterns to capture stormwater on their properties.

Mrs. Bruce spoke in favor of holding a meeting of the Board's stormwater subcommittee. She recommended the subcommittee discuss overlapping, and perhaps contradictory, regulatory requirements for stormwater.

Mr. McMurtry asked what Board members thought about the concept of watershed permitting.

Mr. Waldeck said it was difficult to express an opinion based on a general discussion.

Gary Wolff, State Board member, said people are willing to invest resources to purchase features that generate economic value. He said people generally like to live near fountains, lakes, and streams. He gave an example of a housing development where stormwater controls provided esthetic benefits and people were willing to invest in the housing.

Dr. Wolff said treating stormwater for reuse offers a way to increase available water supply. He described a Southern California facility that treats stormwater for reuse.

Ms. Mulvey said streamlining the permit process is important. She said applicants should not have to deal with conflicting requirements.

Dr. Wolff concurred and said, to correct the process, specific examples of conflicting requirements would be helpful.

Mr. McMurtry asked whether Board members would like more information regarding consequences of human induced erosion as compared to natural erosion.

Mr. Eliahu and Mr. McMurtry discussed erosion issues.

Mr. McMurtry reiterated his request that the Board's stormwater subcommittee meet to consider watershed permitting. He asked that the subcommittee explore the idea of conducting more Water Board-stakeholder discussions like the discussion today.

Dr. Young said Mrs. Bruce agreed to serve on the subcommittee. Dr. Young said she and Mr. Waldeck also agreed to serve on the subcommittee.

Dr. Young thanked stakeholders who participated at today's hearing. She encouraged continued State Board participation in the discussion.

Dr. Wolff said he would be willing to attend a subcommittee meeting and would try to bring other State Board staff if needed.

Mrs. Bruce requested that the subcommittee define the term "watershed permitting" more clearly.

Dr. Young said it would be helpful to develop a simplified picture rather than another layer in a complex picture.

Mr. Waldeck encouraged staff and stakeholders to discuss the issues under consideration with people who are not engaged in the environmental field.

Mr. Wolfe said the stream and wetland systems protection policy discussed under Item 8 would be developed as a Basin Plan Amendment. He said watershed permits would implement policy concepts. He said staff would like to see the policy help facilitate successful implementation actions.

Item 10 – In-House Training Program – Status Report

Stephen Hill described the Water Board's in-house training program. He said trainings were initiated in 1990 and generally occur monthly. He said they typically last four hours and are organized and presented by Board staff. He described general topics covered in the trainings.

Board members thanked Mr. Hill for his presentation and commended staff for conducting the training program.

Item 15 – Adjournment

The Board meeting was adjourned at 12:17 p.m.