

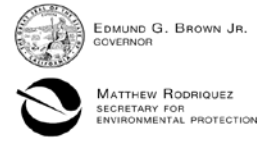
STATE OF CALIFORNIA

**REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

MEETING DATE: February 14, 2018

ITEM: **3**

SUBJECT: **MINUTES OF THE JANUARY 10, 2018 BOARD MEETING**



San Francisco Bay Regional Water Quality Control Board

January 10, 2018 Board Meeting
ADOPTED February 14, 2018

Note: Copies of orders, resolutions, and minutes are posted on the Regional Water Board’s website (www.waterboards.ca.gov/sanfranciscobay). Information about obtaining copies of audio recordings of Board meetings may be obtained by calling the Board’s file review coordinator at (510) 622-2430. Written transcripts of Board meetings may be obtained by calling California Reporting, LLC, at (415) 457-4417.

Item 1 – Roll Call and Introductions

Meeting called to order at 9:07 a.m. in the Elihu M. Harris Building, First Floor Auditorium.

<u>Board Members Present</u>	<u>Board Members Absent</u>	<u>Status</u>
Vice-Chair James McGrath	Chair Terry Young	QUORUM
Cecilia Ogbu		
Newsha Ajami		
William Kissinger		
Steve Lefkovits		
Jayne Battey		

Staff Engineering Geologist Selina Hernandez introduced Madeline Little who is joining the Toxics Cleanup Division as a Scientific Aid.

Item 2 – Election of Chair and Vice-Chair

Board members Ajami and Kissinger had been appointed to prepare nominations and manage the annual election. Board Member Ajami nominated Chair Young and Vice-Chair McGrath to lead the Board again in the same roles.

Ayes: Ogbu, Ajami, Lefkovits, Battey, Kissinger, McGrath

Nos: None

ITEM ADOPTED

Item 3 – Public Forum

No parties asked to speak during the Public Forum.

Item 4 – Minutes of the December 13, 2017 Board Meeting

Executive Officer Bruce Wolfe recommended adoption of the Minutes from the December 13, 2017, Board Meeting.

Board Member Battey moved for adoption of the Minutes; Board Member Ajami seconded the motion.

Ayes: Ogbu, Ajami, Lefkovits, Battey, Kissinger, McGrath

Nos: None

ITEM ADOPTED

Item 5 – Chair’s, Board Members’, and Executive Officer’s Reports

Board Member Battey reported a meeting with Supervisor Dave Pine from San Mateo County and a meeting with the Santa Clara Valley Water District, assisted by Assistant Executive Officer Lisa McCann. The meeting with Supervisor Pine focused on sea level rise, Measure AA funding, and permitting for sea level rise projects. The meeting with the Santa Clara Valley Water District focused on all the District’s functions and projects, specifically the planned Anderson Dam retrofit. The District also discussed its work dealing with homeless encampments and the challenges that work presents.

Vice-Chair McGrath reported that he attended the Celebration of Life of Ellen Wyrick-Parkinson, active citizen in West Oakland who was instrumental in the rerouting of the Cypress Freeway and other community projects. He will be meeting next week with the City of Berkeley about its plans to establish fees for stormwater management and green infrastructure. He commented on the recent information released about the operation and maintenance of Orville Dam and recommended keeping infrastructure maintenance a high priority.

Mr. Wolfe commented that multiple agencies are working to coordinate project review and permitting wetland restoration and shoreline resiliency projects, and he has discussed this with the Santa Clara Valley Water District and the U.S. Army Corps of Engineers.

Mr. Wolfe gave an overview of this month’s Executive Officer’s Report. He commented that the dry cleaner cleanup site on Treasure Island described in the report does not have to enroll in the recent Board-adopted permit for discharge of groundwater extracted at cleanup sites because the site is doing in-situ cleanup. Mr. Wolfe also reported on staff’s post-North Bay fire activities. He shared that four programs proposed to be third parties for verification of farm plans as per the Vineyard Permit and that he is reviewing them for approval now; he said they include the California Sustainable Winegrowing Alliance, Fish Friendly Farming (California Land Stewardship Institute), the Napa Resource Conservation District (LandSmart Program), and the Sonoma Resource Conservation District (LandSmart Program). Mr. Wolfe updated the Board on regulation of cannabis cultivation, saying we now can implement the State’s General Waste Discharge Requirements, but, at this point, no businesses in our region have applied for coverage. Sonoma County and western San Mateo County have indicated that they will be allowing outdoor grows. Indoor grows throughout the region are not covered by the permit. He also announced that the Federal Highway Administration awarded the Board an environmental award for the Pilot Implosion Project for the East Span of the San Francisco Bay Bridge.

Item 6 – Central Marin Sanitation Agency, Wastewater Treatment Plant, San Rafael; San Rafael Sanitation District, Collection System, San Rafael; Sanitary District No. 1 of Marin County, Collection System, Corte Madera; and Sanitary District No. 2 of Marin County (a.k.a. Ross Valley Sanitary District), Collection System, San Rafael; Marin County – Reissuance of NPDES Permit

Staff Engineer Vince Christian, supported by Supervisor Robert Schlipf and Division Chief Bill Johnson, presented the item.

Board Member Kissinger asked for clarification about the potential for NPDES permits to increase liability for dischargers, making collection agencies vulnerable to citizen lawsuits. He also asked about options and rationale for not using other mechanisms rather than NPDES permits to compel collection agencies to improve their systems and implement required construction projects. Mr. Johnson said we can address in other ways but other options, including individual waste discharge requirements, are more administratively burdensome; by including collection agencies in an NPDES permit, we can approve bypasses when appropriate. Counsel Tamarin Austin said that the Water Board can intervene if a citizen suit is brought under the Clean Water Act, thereby providing some protection from liability for collection agencies.

Board Member Battey asked for more context about the frequency and reasons for “blending.” Mr. Johnson explained the history of blending and bypass for the Central Marin Sanitation Agency and other facilities in the region.

Board Member Ogbu asked about San Jose’s NPDES permit and if, in that case, collection agencies were named in the permit originally or brought in later. Staff responded that they were brought in later when staff worked with San Jose to identify all agencies contributing.

Board Member Kissinger asked if there is good legal authority for using NPDES permits even though collection agencies do not discharge to waters of the U.S. Staff answered yes.

Vice-Chair McGrath asked for clarification that if collection agencies meet their required deadlines, even if blending continues, that they will be in compliance with the permit. Counsel Marnie Ajello said yes. Vice-Chair McGrath then asked if the deadlines can be extended if good-faith efforts and circumstances seem reasonable. Ms. Ajello said the permit should not be modified by the Executive Officer once the Board had adopted it.

Mr. Wolfe recommended that the Board not accept the late written comments submitted. Vice-Chair McGrath ruled not to accept the comments.

Jason Dow, General Manager, Central Marin Sanitation Agency, described positive attributes of the agency. Greg Horton, General Manager, Ross Valley Sanitary District, commented that the District is in compliance with its 2013 Cease and Desist Order and was surprised that similar requirements are now being issued in a federal permit. He asked the Board to reject the permit with the collection agencies included, issue it just to the Central Marin Sanitation Agency, and let the Ross Valley Sanitary District implement its requirements in a cease and desist order, as the District is effectively implementing its requirements. Board Member Ajami stated that she recalled Water Board staff requiring the Ross Valley Sanitary District to do

asset management. Mr. Horton said the Ross Valley Sanitary District brought a revised proposal to Water Board staff based on asset management, not the other way around.

Doris Toy, San Rafael Sanitation District, commented that the District is concerned that third parties will come after them and requested that the Board release the collection agencies from the permit and let the San Rafael Sanitary District work with staff to establish another approach to securing the requirements.

Melissa Thorme, counsel for the San Rafael Sanitation District, said it asked staff if they could help draft orders and that offer still stands. Ms. Thorme also said the issue of bypass has only come up in this permit and not in the past two permits for the Central Marin Sanitation Agency, even though nothing has changed in the law, only in interpretation of the law. She said staff is using inflow and infiltration as the reason for including the collection agencies in the NPDES permit; that is misguided and staff is misusing the bypass regulations. Board Member Kissinger said the bypass prohibition and exceptions are clear and asked why she thinks it does not apply to this facility. She responded that the plant was designed for bypass so no prohibited bypass is occurring and added that blending is not defined in the federal regulations; this permit is a duplication of the State Board's Waste Discharge Requirements and Ross Valley's Cease and Desist Order; the San Rafael Sanitation District would accept a cease and desist order; the NPDES permit increases liabilities in terms of compliance and citizen law suits and cannot easily be modified; and changes, such as to deadlines, cannot be delegated to the Executive Officer. Counsel Ajello commented that Ms. Thorme is correct that blending is not defined in the federal regulations, and we are interpreting the operations in this case to be both blending and bypass.

Becky Mitschele, U.S. EPA Region 9, commented that in general U.S. EPA agrees with the approach to include collection agencies in NPDES permits, and it makes sense in this case. She noted that U.S. EPA is pleased that the permit incorporates asset management and integrated planning. Other Board permits have included collection agencies, and this Board's decision to include them in this case would not be precedential.

Vice-Chair McGrath asked Mr. Wolfe if he recommends any changes in response to comments and Board discussion. Mr. Wolfe said he understands the concerns about liabilities for the collection agencies and recommended to either remove specific dates and replace them with language saying work will be done "annually" or add a clause that authorizes the Executive Officer to adjust dates. Mr. Johnson suggested that we could change the permit to allow collection agencies to implement alternative and equivalent rehabilitation to what is currently identified. Board Member Kissinger asked for clarification as to whether an Executive Officer can be authorized to adjust dates in an NPDES permit. Counsel Ajello said she recommends against this as it is inconsistent with the California Water Code, which does not allow substantive requirements to be delegated to the Executive Officer.

Board Member Kissinger and Board Member Ajami questioned staff further as to whether the Board can use cease and desist orders for all the collection agencies and still be able to make

the case that all feasible alternatives to bypass have been considered, such that the Water Board can make findings to allow the current discharge with bypass by the Central Marin Sanitation Agency. Board Member Battey said she prefers if the permit can say more generally that collection agencies will implement a performance-based plan in lieu of detailed list of actions and submittal dates. Vice-Chair McGrath stated that he checked rainfall records and confirmed the high levels of inflow and infiltration that occurred during the drought are unacceptable and need improvement. Board Member Kissinger asked if the permit expires in March. Mr. Johnson clarified that the permit has been administratively extended until a new permit is reissued. Board Member Kissinger asked legal counsel for clarification that the approval of bypass cannot be made by putting requirements for all of the agencies into cease and desist order(s). Counsel Austin recommended against this because the findings in the NPDES permit would have to rely on a future Board action to adopt a cease and desist order, which is uncertain.

Mr. Johnson, Mr. Schlipf, and Assistant Executive Officer Thomas Mumley itemized recommended changes to Table 5, including changes to compliance dates and language to allow the named collection agencies to implement an equivalent, alternative amount of sewer pipe replacement than specified in Table 5.

Mr. Wolfe reminded the Board that even with permit compliance of effluent limits, the bypass discharge still has a water quality impact by reducing full treatment for all constituents and increasing loading. This permit insures minimum water quality impact and most efficient operation of collection systems to minimize inflow and infiltration. He also said he thinks it is better for the Board to take consolidated actions for staff efficiency and the opportunity to focus on high priority tasks. He recommended adoption of the permit with staff's proposed changes.

Board Member Ajami moved approval of the item and Board Member Lefkovits seconded the motion.

Ayes: Ogbu, Ajami, Lefkovits, Battey, Kissinger, McGrath

Nos: None

ITEM ADOPTED

Other Business

CLOSED SESSION at 12 p.m.; RECONVENED at 12:40 p.m.

The Board held a closed session, pursuant to Government Code section 11126(e), to discuss the case of John D. Sweeney and Point Buckler Club, LLC v. San Francisco Bay Conservation and Development Commission, et al. The Board did not have any information to report from the session.

**Item 7 – Sustainable Groundwater Management in the San Francisco Bay Region –
Status Report**

Supervising Engineering Geologist Alec Naugle, Staff Geologist Yemia Hashimoto, and Staff Scientist Maya McInerney presented the item.

Board members asked about data collection and accessibility, staff resources associated with the Sustainable Groundwater Management Act, and efforts to assist areas that rely on groundwater but do not have groundwater management plans. Board Member Ogbu said she really likes the fact sheets and wanted to know when they will be available. Mr. Naugle said we took on 14 groundwater basins out of 35 and plan to have fact sheets posted for those 14 basins at the end of 2018. Vice-Chair McGrath gave kudos for the excellent presentation organization and content and for planning to put it all on the Board's website.

This item was for informational/discussion purposes and no action was taken.

Item 8 – Correspondence

We received a nice letter from Dick Santos, Chair of the Santa Clara Valley Water District, noting his appreciation for the action the Board took in December in adopting the permit for the South Bay Shoreline Protection Project.

Item 12 - Adjournment

Meeting adjourned at 1:47 p.m. until the next Board Meeting – February 14, 2018