

STATE OF CALIFORNIA

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

MEETING DATE: December 12, 2018

ITEM: **4**

SUBJECT: **MINUTES OF THE November 14, 2018 BOARD MEETING**

San Francisco Bay Regional Water Quality Control Board

November 14, 2018 Board Meeting Draft Minutes for Board Consideration

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.

Note: **Bold text** in paragraphs for each item represent topics Board members focused on and were discussed more extensively than others.

Item 1 – Roll Call and Introductions

Meeting called to order at 9:04 a.m. in the Elihu M. Harris Building, First Floor Auditorium.

Board Members Present

Vice-Chair James McGrath
William Kissinger
Cecilia Ogbu
Newsha Ajami
Jayne Battey

Board Members Absent

Chair Terry Young
Steve Lefkovits

Status

QUORUM

Planning Unit Supervisor James Ponton introduced Geologist Joshua Hoeflich, who joined the Planning Division's Irrigated Lands and Cannabis Unit.

Planning Unit Supervisor Jan O'Hara introduced Engineer Selina Louie, who joined the Planning Division, moving from the Watershed Division.

Enforcement Unit Supervisor Brian Thompson introduced Engineer Jerry Xu, who joined the NPDES Division's Enforcement Unit after serving as a Scientific Aid for the Unit.

Watershed Unit Supervisor Xavier Fernandez introduced Scientific Aid Fadwa Bouhedda, who joined the Watershed Division.

Watershed Division Chief Keith Lichten introduced Scientific Aid Joseph Martinez, who joined the Watershed Division.

Item 2 – Public Forum

Richard McMurtry of the Santa Clara County Creeks Coalition commented that Jerry Smith released a report this year that says steelhead trout have been extirpated in Santa Clara Valley

creeks. He encouraged the Board to ask staff what went wrong on Coyote Creek and what could stakeholders and other agencies do differently. He recommended restarting the Watershed Management Initiative in parts of the valley where local agencies and stakeholders are committed to improving conditions for fish, such as Stevens Creek in the City of Cupertino. He also said he contacted Water Board Chair Terry Young and State Water Board Chair Felicia Marcus requesting meetings to discuss restarting the Watershed Management Initiative. He said Ms. Marcus responded that he could set up a meeting with the State Water Board's Chief Deputy Director, Jonathan Bishop, and asked for Assistant Executive Officer Lisa McCann to attend.

David Lewis, Executive Director of Save the Bay, wanted to call attention to a letter San Mateo County Supervisor Dave Pine shared that he and 74 local elected officials sent to the Board recently asking the Board to accelerate consideration of an enforcement order against Caltrans for trash reduction violations. He said he shared with the Board his guest opinion piece in many Bay Area Newsgroup papers on the same topic. He also reminded the Board that, at its March 2018 meeting, the Board asked staff to bring an enforcement order against Caltrans to the Board in June 2018. He also said that several cities and Save the Bay are appealing to the Board to take immediate action.

Craig Johns of California Resource Strategies introduced Matthias Ismael from Carl Zeiss Corporation. Mr. Ismael commented that he had to get permits from many agencies due to impacts on wetlands from Zeiss' project to consolidate several facilities in one location. He said that with Board staff assistance they redesigned the project to minimize impacts and established an off-site mitigation site for the remaining impacts such that they were able to secure all the environmental permits. Mr. Ismael thanked Watershed Division staff for their professionalism and exemplary work, specifically Brian Wines, Dale Bowyer, and Keith Lichten.

Item 3 – Recognition of John Bourgeois, Outgoing Executive Project Manager of the South Bay Salt Pond Restoration Project, for Outstanding Public Service

Executive Officer Bruce Wolfe introduced the item and asked Watershed Division Chief Keith Lichten to make the presentation. Mr. Lichten described the difficult and successful restoration work that John Bourgeois implemented as Executive Project Manager for the South Bay Salt Pond Restoration Project. He offered a tentative resolution honoring Mr. Bourgeois for the Board to consider.

Brenda Buxton from the State Coastal Conservancy said that the Conservancy hired Mr. Bourgeois several years ago, and he managed to keep everyone marching in the right direction with both his personal and scientific ability.

Chris Barr from the U.S. Fish and Wildlife Service, which manages the San Francisco Bay National Wildlife Refuge Complex, thanked the Board for recognizing Mr. Bourgeois. He said that the federal and State collaboration for the South Bay Salt Pond Restoration Project to restore salt ponds back to tidal marsh is unprecedented. He further said this project has involved multiple communities and capacity to listen to all the voices of the community,

navigate State regulations, show how we can come together around a common goal, and implement restoration on such a large landscape. He also said we thank Mr. Bourgeois, and we thank the Water Board for its support for this project.

Vice-Chair McGrath said that he participated on the stakeholder planning committee for this project. He was impressed to watch development of the scientific issues and adaptive management that made the project successful.

Mr. Bourgeois said he has been humbled to work on such an amazing project. He said he is very satisfied with the project's progress and accomplishments. He said he feels he is leaving the project in good hands. He said he appreciated the support of the Water Board and its staff every step of the way.

Mr. Wolfe recommended approval of a resolution honoring Mr. Bourgeois. All Board members voted in favor.

Item 4 – Minutes of the October 10, 2018 Board Meeting

Mr. Wolfe recommended adoption of the minutes from the October 10, 2018, Board Meeting.

Board Member Battey asked for the minutes to reflect that staff agreed to come back to the Board with information as requested. Mr. Wolfe suggested adding a sentence that indicates that Mr. Wolfe agreed to provide progress reports as requested. **Board Member Battey further requested that the minutes generally include the dates certain indicated for followup actions discussed during meetings.**

Board Member Kissinger moved approval, and Board Member Battey seconded the motion. Vice Chair McGrath asked if all were in favor of adoption of the minutes with the corrections – all Ayes. Chair McGrath then asked if anyone was opposed - none opposed.
ITEM ADOPTED

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

Board Member Battey thanked emergency response personnel in response to the fires and the affects of climate change that we are all experiencing. She said she appreciates the work so many are doing in response, including wetland restoration projects such as the one Mr. Bourgeois has been directing.

Board Member Ajami mentioned that she was asked to write for the American Water Works Association about how utilities are evolving and how they need to change their business model. **She said it helped her think about the Water Board's role in addressing infrastructure in the future and considers projects creating wetlands as infrastructure projects. She said she wrote in the article about how we need to expand our definition of infrastructure to include nature.**

Vice-Chair McGrath said that most Board members attended the Water Quality Coordinating Committee Meeting in late October, which included discussions of climate change response and dealing with wildfires. He mentioned a meeting coordinated by Stanford, coming up on December 10, for San Mateo County on how to deal with resiliency.

Mr. Wolfe highlighted items in the Executive Officer's Report. **He mentioned the items on Sanitary Sewer Overflows and that staff will continue to report on progress in reducing such overflows. He said that it is important to track improvement since overflows affect everyone in the region, and everyone has a role to be part of protecting their sewer systems.** He said he was pleased with the item on outreach staff is doing to get the message out for dairies on what can be done on the ground and to work with other agencies. He reported on the status of the enforcement items and specifically said he has now signed the Montara Water and Sanitary District settlement indicated in the report, which is the final action regarding performance of the coastside agencies. He said staff will summarize all the actions together in the next Executive Officer's Report. He said that the Measure AA grant fund project application period is open; these are projects that can be for shoreline resiliency and multi-benefit restoration projects.

The Board went into closed session at 9:55 a.m.

Board Member Ajami left the meeting at 11:00 a.m.

Vice-Chair McGrath administered the oath.

Uncontested Items

Item 6A – Browning-Ferris industries, Corinda Los Trancos (Ox Mountain) Landfill, Half Moon Bay, San Mateo County – Reissuance of NPDES Permit

Item 6B – Browning-Ferris Industries, Ox Mountain Sanitary Landfill, half Moon Bay, San Mateo Count – Updated Waste Discharge Requirements and Rescission of Order No. R2-2006-0040

Item 6C – General Waste Discharge Requirements for Discharge or Reclamation of Extracted and Treated Groundwater Resulting from the Cleanup of Groundwater Polluted by Volatile Organic compounds (VOCs), Fuel Leaks, Fuel Additives, and Other Related Wastes (VOC and Fuel General Permit) – Amendment of General NPDES Permit

Mr. Wolfe recommended adoption of items 6A, 6B, and 6C.

Board Member Kissinger moved adoption and Board Member Battey seconded the motion.

Vice-Chair McGrath called for a vote on items 6A, 6B, and 6C.

Ayes: McGrath, Ogbu, Kissinger, Battey

Nos: None

ITEMS ADOPTED

Site Cleanup Requirements

Item 7 – Union Oil Company of California, Inc., and Novato Properties LLC, for the property located at 7455 Redwood Boulevard, Novato, Marin County – Adoption of Site Cleanup Requirements

Mr. Wolfe introduced the item and indicated that the Water Board had separated staff functions for this item. Vice-Chair McGrath reviewed the hearing procedures and opened the hearing.

State Water Board Attorney Marnie Ajello noted that the Water Board received late comments from Chevron Environmental Management Company (CEMC). She said it is standard practice not to accept late comments into the record but that is at the Board's discretion. Vice-Chair McGrath declined to admit the comments into the record.

Engineer John Jang made the presentation for the Water Board's Cleanup Team.

Board Member Kissinger asked questions about the proposed zoning change and commented that the change continues to be delayed. Mr. Jang said the City was not present to answer, but he speculated that the City has no opposition to the zoning change and that the reason for delay seems to be completion of the Environmental Impact Report.

Board Member Battey asked about the cleanup effort relative to when the site changed hands and whether the Water Board issued a closure plan saying the site was clean. Mr. Jang and Toxics Division Chief Stephen Hill explained some of the historic cleanup effort at the site but answered no, there is not a closure report.

Vice-Chair McGrath asked for any cross examination. Robert Goodman, attorney representing Union Oil Company and CEMC, introduced himself and said he had with him Katherine Szymanowski, geologist with Arcadis for CEMC. He asked questions about a corrective action plan submitted by CEMC to be completed once the site was rezoned. Mr. Goodman noted that the Water Board never rejected the plan. Mr. Jang responded that staff did not accept the plan as it was to address soil concentrations but not to address soil vapor. Mr. Goodman also asked questions of Mr. Jang regarding the Shell site next door.

Board members asked additional questions about the status of this cleanup plan and asked for clarification about both the adequacy of the cleanup plan and the timing of cleanup.

Mr. Goodman made a presentation. He said the question is not if the site will be cleaned up but when. He said they do not think the Board can require cleanup to residential standards when the site is zoned for commercial use. He said the City still has to do an Environmental Impact Report, so rezoning is not imminent. He explained that, at this time, there are no receptors, and contamination is staying onsite. As such, they propose to do cleanup (dig and haul soil) at the time the site is redeveloped. He said he thinks site cleanup to residential standards is reasonable once the site is rezoned. He also expressed objection to the tentative

cleanup and abatement order setting drinking water standards for groundwater cleanup, because it is inconsistent with findings at the adjacent site that determined shallow groundwater is not a source of drinking water. He said he did not think a cleanup and abatement order was the right regulatory tool.

Ms. Szymanowski said that contamination is contained onsite, and the groundwater is not a source of drinking water nor are neighboring properties drawing from groundwater as they are served by Marin Municipal Water District. She said soil vapor risks will be resolved when soil is removed, and there is no risk to human health at this time because the site is a vacant lot. She said they have 26 years of data to show the plume is stable and decreasing. Vice-Chair McGrath asked about geologic characteristics of the site and how it contains the contamination onsite. She answered that the site has a clay layer with groundwater underneath so constrains vertical movement of contamination and that it is also contained horizontally. Board Member Kissinger asked if there is agreement that free product is still present after 26 years. She said it is minimal and only a sheen in one well. Board Member Kissinger asked what else needs to be done to address Board staff concerns. Mr. Jang said staff estimates excavation of about 2600 cubic yards is needed from locations where buildings will be and that the discharger proposed less than that. Mr. Goodman said they planned to excavate about 2000 tons which is less than 2600 cubic yards. Mr. Goodman said that they face the challenge that they cannot target the correct areas to excavate without a development plan. Board Member Kissinger asked why staff doesn't think this makes sense. Mr. Jang and Mr. Hill said the Water Board is pursuing cleanup sooner rather than later consistent with cleanup policies that cleanup should occur in a reasonable timeframe. Vice-Chair McGrath asked about containment of contamination and if staff agrees that it is contained. Mr. Jang said yes because the clay is sufficient for preventing vertical migration and bioattenuation at edges of the site are reducing contamination before migration offsite. He also said that monitoring wells are confirming that contamination is not migrating towards the creek.

Vice-Chair McGrath and Board Member Kissinger asked questions about the adjacent Shell site and the issue that it was closed without setting drinking water standards for groundwater due to finding the groundwater unusable due to high iron. Mr. Hill said that the shallow groundwater below the site qualifies as a potential source of drinking water per the State's Sources of Drinking Water Policy, and setting cleanup levels at drinking water standards is consistent with that policy. He also said the State's Low threat Closure Policy allows a site to be closed before drinking water standards are met if other criteria are met. He said that's how the other two nearby cases were handled, what we plan to do for this site, and what we do all the time. Vice-chair McGrath asked what cleanup timeframe the discharger thinks is reasonable. Mr. Goodman said the correct timeframe is tying cleanup to rezoning and development plan approval. Vice-Chair McGrath asked Mr. Goodman if he believes the Water Board has discretion to require the level of cleanup and excavation to insure vapor intrusion risk is eliminated. Mr. Goodman said he thinks the Water Board has some discretion but that the policy allows engineering controls if vapor risk remains. Mr. Goodman concluded that the

Water Board should not issue a cleanup and abatement order, and they should have staff work with the parties to get agreement on an acceptable cleanup plan.

Robert Hines, attorney representing Novato Properties, made introductory comments and introduced Carla Ravipati of Novato Properties. Mr. Hines said they support the Revised Tentative Order. He said the Water Board needs to place Chevron on a cleanup schedule. Ms. Ravipati said that, in 2002, she reached out to the Water Board and Unocal and a cleanup effort started, but since Chevron bought Unocal, action had stalled. She said, in 2004, she had removed all the buildings to provide access for Unocal to address cleanup. Since then, very little progress has occurred on the site. She said her legal fees are probably more than it costs to fully cleanup the site. She said the City continues to progress towards rezoning the site, and she has design plans for mixed use onsite, which will benefit the community and bring housing to downtown. Mr. Hines emphasized that Ms. Ravipati has made a good faith effort to clean up the site, but it has been 26 years. He said that Water Board staff provided everything the Water Board needs to approve a cleanup plan, and it should have a deadline, should include active cleanup, and should assume a reasonable likelihood of residential use. He said he appreciates the flexibility in the Revised Tentative Order to set alternative cleanup levels for soil vapor that addresses attenuation from ground to second floor residential units. He said Chevron has put forward corrective action plans. He said setting deadlines will insure the plans are implemented and that the timelines set in the Revised Tentative Order are reasonable. Finally, he said since the site cannot be developed without cleanup, it should be done now.

Representatives for the Cleanup Team, Unocal/CEMC, and Novato Properties made closing arguments summarizing points already made.

Board members commented that they generally support the Revised Tentative Order based on the length of time that has passed without cleanup, that the site is fully characterized and ready for cleanup to start, there is agreement on remedies, the site is small, the costs are not an impediment, and they expect residential development in the future.

Board Member Kissinger moved adoption of the Revised Tentative Order, and Board Member Ogbu seconded it.

Ayes: McGrath, Ogbu, Kissinger, Battey

Nos: None

ITEMS ADOPTED

Other Business

Item 8 – Nutrient Watershed Permit Implementation and Our Strategy for Understanding and Addressing Nutrients in San Francisco Bay – Status Report

Mr. Wolfe introduced the item and NPDES Unit Supervisor Robert Schlipf made the first part of the presentation, including providing background information about the permit and nutrient conditions in San Francisco Bay. Mr. Schlipf introduced Holly Kennedy from HDR

Engineering who made a presentation on the results of HDR's study that evaluated treatment options to address nutrient loads from wastewater treatment plants that discharge to San Francisco Bay. Ian Wren, representing the San Francisco Estuary Institute, presented on use of wetlands and green infrastructure for reducing nutrient loading to the Bay. Mr. Schlipf presented the approach for the 2019 Nutrient Watershed Permit. He said the next permit will likely include continued monitoring and analysis of loading, nutrient load targets (with credits for early action and loading caps to account for population increase), studies (e.g., reductions from regional use of wetlands or water recycling), and increased support for the Nutrient Management Strategy. Board Member Kissinger commented on the value of wetlands for nutrient reduction and asked if there is funding for specific treatment plants to select best options or if that cost is on the individual plants. Mr. Wolfe answered that we intend for the study results to be the foundation of a strategic planning or master planning effort by the individual plants. He also said we want to pair that with the science indicating what the Bay needs in terms of nutrient reduction. He further said that sub-embayments have different conditions, so we might be able to set up some nutrient trading opportunities by matching locations in need of the most nutrient reduction with locations with the most opportunity to use regional wetlands or other treatment methods. He also said we want to coordinate nutrient reduction actions with other future needs of plants such as flood protection or sea level rise resiliency.

Dave Williams, representing the Bay Area Clean Water Agencies (BACWA), commented that they feel fortunate to work with a very enlightened Board and with enlightened staff. He said BACWA supports the approach presented for the 2019 Nutrient Watershed Permit, including increased funding for studies and science, and specifically doing a deeper dive into use of wetlands for nutrient reduction. He said they also support credits for early actions, and many members are already engaged in several nutrient reduction activities or planning such activities. Vice-Chair McGrath said he wanted to recognize BACWA members as well-functioning and highly professional wastewater treatment plants.

Eileen White, Director of Wastewater for the East Bay Municipal Utility District (EBMUD) and member of the BACWA Board, commented that she acknowledges that the Nutrient Management Strategy is a well-coordinated strategy. She mentioned the many diverse players, the iterative and collaborative effort at addressing nutrients, the science program, and the innovative and multi-benefit wastewater treatment solutions. She said the Nutrient Watershed Permit and science program provide mutual benefits for permittees and regulators. She also pointed out the high costs of nutrient removal, particularly for EBMUD due to its resource recovery program (taking in extra waste and treating it for energy efficiency). EBMUD is initiating a comprehensive master planning effort to consider competing priorities and needs for upgrades such as seismic stability, solids waste management, greenhouse gas emission reduction, and protection of San Francisco Bay. She thanked the Board and its staff, particularly Bruce Wolfe, Tom Mumley, and Robert Schlipf.

Item 9 – Correspondence – There were no correspondence items.

Item 10 – Closed Session – Personnel

The Board met in closed session to discuss personnel matters.

[Authority: Government Code section 11126(a)]

Item 11 – Closed Session – Litigation

The Board met in closed session to discuss litigation.

[Authority: Government Code Section 11126(e)(1) and 1126(e)(2)(A)-(C)]

Item 12 – Closed Session – Deliberation

The Board did not meet in closed session to deliberate.

Item 13 – Adjournment

Meeting adjourned at 3:06 p.m. until the next Board Meeting – December 12, 2018.