

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD SAN
FRANCISCO BAY REGION

MEETING DATE: December 16, 2020

ITEM: 3

Minutes for the November 18, 2020 Board Meeting

November 18, 2020 Board Meeting
Adopted December 16, 2020

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 (510) 313-0610.

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

Chair James McGrath called the meeting to order at 9:01 a.m. via Zoom Virtual Meeting Platform.

Board Members Present	Board Members Absent	Status
Chair James McGrath		QUORUM
Vice-Chair Jayne Battey		
William Kissinger		
Newsha Ajami		
Alexis Strauss Hacker		
Andrew Gunther		

Supervisor Nathan King introduced Scientific Aid Anna Weber. Supervisor David Elias introduced Scientific Aid Gabriel Daess. Division Chief (DC) Keith Lichten introduced Scientific Aid Katrina Morgan and Water Resource Control Engineer Yuanzhe Liu. Supervisor Derek Beauduy introduced Scientific Aid Renee Hu.

Board Member Alexis Hacker thanked EO Montgomery and the executive team for their efforts in the hiring process. EO Montgomery expressed his appreciation for the feedback and thanked the Management Services Division staff and supervisors for their work in getting new hires on board.

Item 2 – Public Forum

Bill McNicholas, Cleanup Marinwood Plaza Oversight Committee, followed up on a deadline that had past for the discharger without work being completed. He provided details on recent developments and expressed his desire to remove the toxic waste site from the neighborhood.

Stephen Nestel, Cleanup Marinwood Plaza Oversight Committee, echoed Bill McNicholas' comments and told the Board they will continue to show up at meetings to remind the Board to take punitive action with the discharger.

Chair McGrath thanked both speakers for their comments.

Item 3 – Minutes of the September 9, 2020, Board Meeting

Board Member Andrew Gunther asked to add details to item 5 regarding his comments on the conversation between Secretary Wade Crowfoot and President Donald Trump. Board Member Gunther iterated Secretary Wade Crowfoot's remarks that the growing aridity of the West is a key factor in creating the new intensity of California's wildfires and that addressing climate change is just as important as addressing forest management. Then, quoting the President's reply, Board Member Gunther said that the President's comments were dangerous nonsense. He explained why the comments were both nonsense and dangerous and that we must let science be our guide as we prepare for the future. He publicly thanked Secretary Crowfoot for his leadership.

Board Member Alexis Hacker asked to change a word at the end of item 7 from "of" to "and".

Motion: Board Member Gunther

Second: Board Member William Kissinger

Ayes: McGrath, Battey, Kissinger, Ajami, Hacker, Gunther

Nos: none

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Item 4 – Chair's, Board Members' and Executive Officer's Reports

Board Member Newsha Ajami referred to the WQCC [Water Quality Coordinating Committee] meeting. She appreciated the focus on diversity and inclusion and the incorporation of issues related to environmental justice at the State Board [State Water Resources Control Board] and Regional levels. Board Member Ajami also reported on the Pacific Council's Goalmakers' series on SDGs [Sustainable Development Goals]. She urged the group to pay more attention to them, especially how they relate to environmental justice concerns.

Board Member Gunther called to the Board members' attention an issue that has come before BCDC [SF Bay Conservation and Development Commission] - Union Point Park homeless encampment. The city [Oakland] is not abiding by the permit and the citizens of the area, who are very sympathetic to the plight of the homeless, are concerned due to the rise of problems at the encampments including murders, gunshots, attempted vehicular manslaughter and unsanitary conditions caused by dumping of septic waste among other issues. Board Member Gunther hopes that the Board can continue to work with permittees to help ameliorate the impacts of homelessness in the region. He expressed his gratitude that these issues will be incorporated in the updates to the MS4 [Municipal Stormwater] permits.

EO Montgomery mentioned that Watershed staff did meet with the City of Oakland yesterday and that updates will be included in the next Executive Officer's Report. He thanked Board Member Gunther for following up on this matter. Board Member Gunther

added that the testimony of the residents of the Marina was heart wrenching and the responses from the City of Oakland were reasoned and thoughtful. He brought up testimonies from the BCDC meeting of members from the community who are dealing with the current problem.

Board Member Kissinger had nothing to report.

Board Member Hacker had nothing to report.

Vice Chair Jayne Battey shared with the Board that she was reappointed last week and is pleased to have another four years of service ahead of her. She reported on the ABAG [Association of Bay Area Governments] Board Meeting which discussed the distribution of housing in the Bay Area Plan. She was inspired by the thoughtful leadership from the many county and city elected officials. Board Member Battey said she has noticed that there are many community-based organizations and private foundations that are doubling down on their work surrounding climate, especially as it relates to the recent fires. She brought up Thrive's work in San Mateo County on single-use plastic bans, inspired by Berkeley. She wanted to draw people's attention to a Biden Administration website, www.climate21.org, which provides robust recommendations on climate change across many federal agencies.

Chair McGrath said he was glad to have Vice Chair Battey reappointed. He commented on Board Member Gunther's report on Union Point Park by providing some background on the park and his work more generally with parks. Chair McGrath appreciated Board Member Gunther's comments on the efforts the city is putting into the issue of homelessness. He also reported on the work done to improve circulation at Aquatic Park. There was an event to celebrate the cleaning out of culverts and repairing of gate structures.

State Board Member Tam Doduc thanked the Board on their individual reports and updates on hiring. She had 3 updates to report. On December 1, State Board will be considering the Toxicity Provisions and State Board Member Doduc is cautiously optimistic that the Board will take action on this item. On December 15, State Board will be considering the statewide Winery Order. She believes there are a few complicated, outstanding issues that may need to be worked out before moving forward. Lastly, State Board is considering their strategic priorities, with a few new items added including racial equity, capacity building, both internally and externally with communities, and, under the broad heading of improving water resiliency, stormwater as a reusable resource. State Board Member Doduc mentioned a few issues she would like to follow up on with EO Montgomery, including trash, access to sanitation, restoration permitting, and ocean acidification in hopes of finding areas common ground between the Regional and State Board priorities that can be worked on in tandem.

Chair McGrath thanked State Board Member Doduc for her energy and the progress made over the years as it relates to management by metrics.

State Board Member Doduc added that at their Board Meeting yesterday, they received a briefing from staff on their performance report. She took the opportunity to communicate with staff about their concerns on the usefulness of the report and how they can be developed further.

EO Montgomery asked Assistant Executive Officer (AEO) Lisa Horowitz McCann to provide an update on a call between the Regional Water Board staff and Supervisor Connolly of Marin regarding Prosperity Cleaners. AEO Horowitz McCann shared with the Supervisor a status update. She explained to Supervisor Connolly how the Regional Water Board approaches enforcement matters and the tools available to them should they choose to pursue that option.

EO Montgomery provided an update on fire recovery and support efforts undertaken by staff. He highlighted the General Permit for Vineyards Properties item in the Executive Officer's report as it relates to counties impacted by fires. EO Montgomery briefed Chair McGrath and Vice Chair Battey on the statewide Winery Order and the effort put in by staff in helping to direct the Order to protect and accommodate the region's interests. He and AEO Horowitz McCann had a conversation with Noelle Cremers, the new Environmental & Regulatory Affairs Director at the Wine Institute. EO Montgomery participated in a meeting run by California Department of Public Health and State Water Board around a pilot effort supported by the Centers of Disease Control on epidemiological studies on COVID data from wastewater systems. He thanked SFPUC [San Francisco Public Utilities Commission] for their cooperation. He also participated in a national workgroup discussion on combined sewer policies through ACWA [Association of California Water Agencies]. Lastly, he expressed excitement that Board Member Hacker and Board Member Gunther will be joining the upcoming All Staff meeting.

Board Member Ajami appreciated EO Montgomery briefing the Board on fire recovery efforts. She mentioned that COVID-19 surveillance efforts were initiated by her colleagues at Stanford, and she would be happy to have them make a presentation to the Board. She hoped there will be a stronger infrastructure to support these efforts in the future. Board Member Ajami also commented on the importance of topic of the dry cleaners, emphasizing source protection and groundwater. She said there is no longer water that can be spared; the more that can be protected the more there will be.

Chair McGrath had a question about changes in policies to CSOs [Combined Sewer Overflows]. EO Montgomery said he does not anticipate any major shifts in policies and that the region does not have many of these systems. They discussed CSOs in the United States.

Board Member Gunther shared his thoughts about the Water Quality Certification given to the Walnut Creek project, which he finds extraordinary. He asked for more background on the project's visionary process. EO Montgomery confirmed the project is a model for others in the region. They discussed the history and future of similar

projects. Chair McGrath added that Mitch Avalon, Deputy Public Works Director for Contra Costa County, played a major role in the development of stream management.

Vice Chair Battey recognized the compassion of the Board in dealing with vineyard properties, and the agricultural community in general, in response to the fires.

AEO Horowitz McCann added to the discussion on Lower Walnut Creek, remarking how innovatively staff have worked on this and similar projects. AEO Thomas Mumley added that the Regional Water Board can permit major projects with limited controversy due to strong communication with the proponents. He also added his praise of Mitch Avalon.

Item 5 – Param and Amandeep Dhillon, Property at Assessor's Parcel Number 0052-160-090, Vallejo, Solano County – Hearing to Consider Imposition of Administrative Civil Liability

Chair McGrath recited the language for swearing in speakers.

Advisory Attorney Yuri Won provided an overview of the procedures of administrative hearing: She, EO Montgomery and DC Xavier Fernandez are part of the Advisory Team. AEO Horowitz McCann, AEO Mumley, DC Keith Lichten, DC Bill Johnson, Supervisor Brian Thompson, Staff Cleet Carlton and Staff Agnes Farres are part of the Prosecution Team. They are represented by Attorney Dan Kippen and Attorney Vaneeta Chintamaneni from the State Water Board Office of Enforcement. Param and Amandeep Dhillon are the parties named in the Administrative Civil Liability Complaint. Advisory Attorney Won recited the order of proceedings and other procedural matters.

Chair McGrath recessed for a break.

Break at 10:18 a.m.

Back in session at 10:32 a.m.

AEO Horowitz McCann introduced herself as the lead prosecutor in this hearing. She provided a short background on the Order. AEO Horowitz McCann introduced Staff Carlton, who made a presentation that laid out the case of the prosecution, including their recommendation to the Board to impose a penalty of \$80,100. DC Fernandez stated that the prosecution had 16 minutes and 2 seconds remaining.

Param Dhillon introduced himself and stated that he will be representing himself. Chair McGrath recommended instructions to Mr. Dhillon on how best to proceed. Mr. Dhillon made a presentation which laid out his defense. He began with the purchase of the property and then the steps he undertook thereafter, including a conversation he had with a representative from BCDC. Attorney Kippen objected on the grounds of hearsay, to which Chair McGrath acknowledged but agreed to continue to listen to the testimony. Advisory Attorney Won added that hearsay evidence is allowed but cannot be used as a sole basis for a finding. Chair McGrath confirmed with Mr. Dhillon that he understands the procedures regarding hearsay evidence. Mr. Dhillon took the oath. He continued

with his defense. Chair McGrath recommended Mr. Dhillon save the last few minutes of his time for his closing statement.

Board Member Kissinger asked Mr. Dhillon a series of questions regarding Mr. Dhillon's experience with real estate and wetland. Mr. Dhillon provided answers.

Board Member Battey asked Mr. Dhillon a series of questions regarding Mr. Dhillon's profession and experience with real estate. Mr. Dhillon provided answers.

Board Member Ajami asked Mr. Dhillon questions about the post-purchase process for the property in question. Mr. Dhillon provided answers.

Chair McGrath asked Mr. Dhillon about documentation related to the purchase of the property. Mr. Dhillon provided answers.

Board Member Hacker clarified what may qualify something as a wetland. She asked Mr. Dhillon to comment on what he envisions the future to be of the property in question, as it relates to the cost of compliance. Mr. Dhillon provided answers, including that he has no intention of developing the property.

Chair McGrath asked the Prosecution Team for a detailed timeline of the purchase of the property and related documentation.

Attorney Kippen asked to cross-examine Mr. Dhillon. He asked for clarification regarding the notice from the city or county requested by Chair McGrath. Chair McGrath provided clarification.

Attorney Kippen asked for Exhibit 24 to be shared. He asked Mr. Dhillon about communication with BCDC. Mr. Dhillon answered. He asked Mr. Dhillon about the accuracy of the document (Ex. 24). Attorney Kippen asked for Exhibit 8 to be shared, referencing a question Chair McGrath had asked earlier regarding notifications of easements on the property. He asked Mr. Dhillon questions relating to the document's accuracy. Mr. Dhillon gave his answers. Board Member Ajami asked if there was anything that specified the land use as a wetland. Attorney Kippen referred to the section of the document that provided the answer.

Lunch break at 12:10 p.m.

Back in session at 12:56 a.m.

DC Fernandez stated the prosecution had 16 minutes and 2 seconds left. AEO Horowitz McCann wanted to provide more detailed answers to Chair McGrath's questions on timeline. Supervisor Thompson provided the details, including references to exhibits that corresponded to specific events. Chair McGrath reiterated his question about whether notices were readily available with due diligence, citing a specific document. Supervisor Thompson replied that Exhibit 4 was said document.

Vice Chair Battey asked how long grading and fill went on for. Supervisor Thompson replied with the answer. Board Member Gunther asked for further clarification on the

grading and fill work. Supervisor Thompson replied. Board Member Gunther asked if Board Staff were notified about the loss of Mr. Dhillon's daughter. Supervisor Thompson replied.

Board Member Ajami asked if any work had been done since Mr. Dhillon notified that he stopped work in December 2019. Supervisor Thompson replied. Board Member Ajami asked about the fill material used on the property. Supervisor Thompson replied. They discussed the delineation of the land as a wetland and work done with the fill material.

Board Member Kissinger asked questions about grading on the site and issues relating to Regional Water Board staff accessing the site. Supervisor Thompson replied.

AEO Horowitz McCann provided the prosecution's closing remarks.

Chair McGrath reiterated the matter at hand and gave Mr. Dhillon 5 minutes for closing remarks.

Mr. Dhillon gave his closing remarks. Chair McGrath thanked Mr. Dhillon and offered his condolences on behalf of the Board.

Advisory Attorney Won informed the Board they can meet in closed session to discuss details prior to deciding on the case. Chair McGrath agreed to convene in closed session.

The Board went into Closed Session at 1:27 p.m.

The Board came back into the main session at 2:45 p.m.

Chair McGrath asked Advisory Attorney Won to read the changes to the order. Advisory Attorney provided the new language. Chair McGrath clarified that the Regional Water Board has the authority to require compliance. Vice Chair Battey added that the Board's heart is with the Dhillon's and that the Board is mindful of their responsibility in protecting the environment. She urged Mr. Dhillon to hire an environmental consultant. Board Member Kissinger echoed the comments of his colleagues regarding the fine. He encouraged Mr. Dhillon to work with the Board to resolve issues going forward.

Mr. Dhillon expressed his displeasure with the Board's decision and said that he would continue to explore his options.

Chair McGrath asked for a motion.

Motion: Board Member Kissinger

Second: Board Member Hacker

Ayes: McGrath, Battey, Kissinger, Hacker, Gunther

Nos: none

ITEM APPROVED

Item 6 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) to Establish Chlorine Water Quality Objectives and Replace Total Residual Chlorine Technology-Based Effluent Limitation with Water Quality-Based Effluent Limitations – Hearing to Consider Adoption of Proposed Basin Plan Amendment

EO Montgomery introduced Staff Tong Yin. Staff Yin, a Water Resource Control Engineer, made a presentation to the Board.

Board Member Kissinger asked for clarification on the change in mercury. Supervisor Jan O’Hara provided a reply. DC Fernandez supplemented her answer.

Board Member Hacker thanked staff. She made a connection to pollution prevention and described other benefits.

Jackie Zipkin, General Manager of East Bay Discharger Authority, provided comments on the positive feedback the Basin Plan Amendment will have on their operations. She commended staff on their work and encouraged the amendments adoption.

Eileen White, Director of Wastewater of East Bay Municipal Utility District (EBMUD), thanked Regional Water Board staff for their work on the matter. She provided background on BACWA’s [Bay Area Clean Water Agencies] efforts and benefits to EBMUD.

Lorien Fono, Executive Director of BACWA, expressed her support of the amendment and thanked the Regional Water Board staff who worked on it.

Board Member Hacker asked how the amendment would be implemented as it relates to permittees that had permits recently renewed. EO Montgomery and DC Johnson provided responses.

Board Member Gunther expressed his gratitude for the effective work of all those involved, and that the amendment was uncontested.

EO Montgomery recommended the Board adopt the amendment.

Chair McGrath asked for a motion.

Motion: Board Member Hacker

Second: Board Member Gunther

Ayes: McGrath, Battey, Kissinger, Hacker, Gunther

Nos: none

ITEM APPROVED

Item 7 – Overview of Regional Water Board Proposed Strategic Priorities

Discussion of the Board's Programs and its Work Plan and Priorities for the 2020-2021 Fiscal Year

Break at 3:25 p.m.

Back in session at 3:31 p.m.

EO Montgomery, AEO Horowitz McCann and DC Lichten made a presentation on the Regional Water Board's strategic priorities for 2021. EO Montgomery concluded the presentation by stating the Program Priorities will be presented at the December Board Meeting.

Vice Chair Battey asked how the Regional Water Board's priorities will be impacted by the new Biden Administration. EO Montgomery provided a response, including examples of where federal funding may come from. Vice Chair Battey encouraged taking a proactive approach. She thanked those involved for their work.

Board Member Gunther expressed his excitement that Climate Change is a strategic priority. He is happy the groundwater project is underway. He encouraged the Regional Water Board to ensure that science continues to be the basis for its narrative. He pointed out a report by the Union of Concerned Scientists called, "Troubled Waters". Board Member Gunther stressed the effort required to work through the JEDI [Justice, Equity, Diversity and Inclusion] issues. EO Montgomery provided his response to Board Member Gunther's input.

Board Member Ajami commented on the progress the Regional Water Board has gone through in including Climate Change as a priority. She stressed the importance of understanding the consequences of our decisions today on the future. She added her thoughts on the Diversity and Inclusion efforts, stressing cultural diversity.

Board Member Hacker asked about how resources will be split between the priorities. She included thoughts on how best to communicate this publicly.

Chair McGrath spoke about his excitement about the organizational development portion of the priorities.

EO Montgomery gave his thanks to the management team and staff for their efforts in pushing forward each of these priorities.

Board Member Ajami added that it is important to hone in on communicating through an environmental justice lens.

[Pushed to December] Item 8 – Enforcement Actions and Priorities for Fiscal Year 2020/21 Summary Report [Brian Thompson, 510 622-2422, Brian.Thompson@waterboards.ca.gov]

Item 9 - Correspondence

No correspondence

Item 10 – Closed Session – Personnel

The Board did not meet in closed session for Personnel in this meeting

Item 11 – Closed Session – Litigation

The Board did not meet in closed session for Litigation in this meeting

Item 12 – Closed Session – Deliberation

The Board did not meet in closed session to deliberate in this meeting.

Item 13 – Adjournment

Board Member Gunther motioned, and Board Member Kissinger seconded.

The meeting was adjourned at 4:19 PM