

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

MEETING DATE: November 10, 2021

**ITEM:**               **3**

**SUBJECT:**           **Minutes for the October 12-13, 2021, Board Meeting**

**October 12-13, 2021 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](http://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.

*Day 1, October 12, 2021*

**Item 1 – Roll Call and Introductions**

Chair James McGrath called the meeting to order at 9:04 a.m. via Zoom Virtual Meeting Platform.

<b>Board Members Present</b>	<b>Board Members Absent</b>	<b>Status</b>
Chair James McGrath		QUORUM
Vice-Chair Jayne Battey		
William Kissinger		
Donald Young		
Alexis Strauss Hacker		
Andrew Gunther		

Executive Officer (EO) Michael Montgomery introduced Division Chief (DC) Alec Naugle who introduced new Supervisor Ron Goloubow.

**Item 2 – Public Forum**

Ben Eichenberg, representing San Francisco Baykeeper (SF Baykeeper), shared his comments regarding the Tentative Resolution to adopt the 2021 Basin Plan Review list of proposed projects. Board Member Alexis Hacker asked when the item will come before the Board. EO Montgomery said November 2021. Vice Chair Jayne Battey expressed her appreciation for the comments.

Sophie Kelly, representing Clean Water Action, shared comments on their support of state adoption of beneficial uses for non-tribal subsistence fishing and of tribal subsistence fishing and other tribal cultural uses. Vice Chair Battey expressed her appreciation for the comments.

**Item 3 – Minutes of the September 8, 2021, Board Meeting**

Motion: Vice Chair Battey

Second: Board Member William Kissinger

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

Nos: none

ITEM APPROVED

#### **Item 4 – Chair’s, Board Members’ and Executive Officer’s Reports**

Board Member Andrew Gunther shared that he attended a Bay Area Council meeting that discussed the feasibility of damming the Golden Gate. He provided a summary of his participation.

Board Member Hacker had nothing to report.

Board Member Kissinger had nothing to report.

Board Member Donald Young had nothing to report.

Vice Chair Battey reported on work she is doing with the American Leadership Forum ispecifically engagement opportunities to help combat climate change.

Chair McGrath shared details from the State of the Estuary Conference, which he attended. He also spoke on the passing of the state budget and Measure AA and its potential impact for the region.

State Water Board (SWB) Liaison Sean Maguire gave a brief update on the current status of the drought. He also briefed the Board on the Sanitary Sewer Management Plan General Order draft and an update on the Toxicity Provisions as they relate to the Wetlands Policy and Water Code. SWB Liaison Maguire shared information on State Board’s fee adoption process for the upcoming year. Lastly, he reminded the Board of the online Water Quality Coordinating Committee meeting coming up at the end of the month. Board Member Hacker commented on the importance of the passing of the Toxicity Provisions.

Executive Officer (EO) Michael Montgomery shared highlights from the region’s efforts around drought. He thanked State Board for their leadership on racial equity and gave background on the region’s efforts in both racial equity and climate adaptation. Lastly, he briefed the Board on recent activities related to beneficial reuse.

#### **Item 5 – Uncontested Items**

##### **5A. Amendment of Waste Discharge Requirements for Municipal Wastewater Dischargers** – Amendment of chlorine and oil and grease provisions of NPDES Permits

Chair McGrath administered the oath to persons testifying.

EO Montgomery requested that item 6 be moved to the uncontested calendar. He also informed the Board that there will need to be two separate votes on the uncontested

items. Vice Chair Battey recused herself from the vote on Item 6. Chair McGrath ruled that EO Montgomery's request has been granted.

EO Montgomery provided background on item 5A and recommended adoption.

Vice Chair Battey clarified that this amendment would apply to most but not all treatment systems in the region.

Jackie Zipkin, General Manager of the East Bay Dischargers Authority representing the Bay Area Clean Water Agencies, expressed her support for the amendment.

Chair McGrath asked for a motion.

Motion: Board Member Young

Second: Board Member Hacker

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

Nos: none

ITEM APPROVED

**Item 6 – Resolution to Support a Water Quality Improvement Plan to Address the San Gregorio Creek Sediment Impairment** – Hearing to Consider Adoption of a Tentative Resolution

EO Montgomery provided background on the item.

Motion: Board Member Gunther

Second: Board Member Kissinger

Ayes: McGrath, Kissinger, Hacker, Gunther, Young

Nos: none

ITEM APPROVED

Board Member Hacker suggested staff share the results of their efforts on item 6 through various external communication channels. EO Montgomery concurred.

Break at 10:01 a.m.

Back in session at 10:13 a.m.

**Item 7 – Municipal Regional Stormwater NPDES Permit** - Municipalities and Flood Management Agencies in Alameda County, Contra Costa County, San Mateo County, Santa Clara County, and the Cities of Fairfield, Suisun City, and Vallejo in Solano County – workshop hearing to receive testimony on Tentative Order

Chair McGrath provided background on the item and logistics of the hearing.

DC Keith Lichten made an introductory presentation on the item (MRP).

Mitch Avalon, from the Contra Costa Clean Water Program representing the permittees (Bay Area Municipal Stormwater Collaborative), made an introductory presentation on the MRP. Board Member Gunther asked for clarification on remarks made about new reports required in MRP 3.0 compared with MRP 2.0. Mitch Avalon provided a reply. Chair McGrath asked for follow up from the permittees specifying the highest priority reporting. Board Member Kissinger echoed Chair McGrath's comments asking for specificity.

Sejal Choksi-Chugh, Executive Director; Ian Wren, Staff Scientist, of SF Baykeeper; and Daniel Cooper, Sycamore Law representing SF Baykeeper, shared introductory remarks on the MRP.

Luisa Valiela, representing U.S. EPA Region 9 Water Division, shared overarching comments on the MRP.

Kelly Abreu, Mission Peak Conservancy, shared comments about the MRP related to compliance and reporting.

Board Member Gunther posited a question to Ian Wren of SF Baykeeper about what he meant by saying the MRP allegedly criminalizes homelessness. Ian Wren provided a reply. Board Member Gunther and Ian Wren continued the conversation.

Board Member Gunther asked staff about the assertion that the permit "does not have a shot of meeting legal requirements." Assistant Executive Officer (AEO) Thomas Mumley stated that the staff disagrees. Staff Attorneys Yuri Won and Marnie Allejo provided additional context. EO Montgomery added that staff met with State Water Board to address State Board Orders.

Chair McGrath requested the discussion move to the staff presentation on provisions C.3/C.8.d. DC Lichten made a presentation on the provisions.

Board Member Gunther asked about the rate of retrofitting by the City of San Jose as it relates other cities in the region. DC Lichten provided a reply and EO Montgomery provided additional context. All three continued the discussion about the implementation of green infrastructure across the region.

Lunch break at 11:59 a.m.

Back in session at 12:50 p.m.

Jill Bicknell, Santa Clara Valley Urban Runoff Pollution Prevention Program; Randy Breault, City of Brisbane; Kevin Marstall, City of Concord; Kristin Hathaway, City of

Oakland; Will Provost, City of El Cerrito and Aroon Melwani, Applied Marine Sciences made a presentation on provisions C.3 and C.8.d on behalf of the permittees.

Board Member Gunther asked about the difference in results between permittees' previously designed GSI (green stormwater infrastructure) plans versus what is required under MRP 3.0. Chair McGrath provided clarifying comments on what type of response is expected from permittees. Vice Chair Battey expressed interest in understanding the specific impacts of MRP 3.0 on disadvantaged communities, as stated by the permittees.

Vaikko Allen, Contech Engineered Solutions, made a presentation to the Board on provision C.3, bioretention. Vice Chair Battey shared her appreciation for the presentation. John Stiver, Contech Engineered Solutions, shared his perspective on allowing additional bioretention solutions to be included in MRP 3.0.

Lisa Vorderbrueggen, Building Industry Association, Bay Area, shared her perspective on the provisions, specifically supporting solutions proposed by Contech Engineered Solutions and addressing affordable housing.

David Swartz, Pacific Gas and Electric, spoke on the land use section of provision C.3, specifically the requirement that treats the upgrading from dirt to gravel as creating an impervious surface.

Heather Klein, City of Oakland, addressed concerns regarding a handful of requirements in provision C.3 that deal with the intersection of housing and LID (Low Impact Development).

Joshua Bradt, San Francisco Estuary Partnership, made a presentation on green infrastructure.

Mayor Tim McGallian, City of Concord, expressed his concern with the sections dealing with road maintenance project requirements.

Mayor Amy Worth, City of Orinda, shared her thoughts on some of the challenges faces cities when considering water quality impacts for road maintenance projects.

Board Member Hacker shared thoughts on the potential unintended consequences of additional green infrastructure requirements, particularly related to road maintenance. She also addressed the comments related to monitoring requirements and the intersection of LID and affordable housing.

Vice Chair Battey shared the 5 things on her mind as she is listening to testimony: climate, social justice and environmental equity, benchmarking, innovation, and funding.

Board Member Kissinger said he was interested in hearing more about what types of repairs trigger the road maintenance green infrastructure obligations and how permittee's green infrastructure plans from 2019 are being integrated. He wanted to

hear more from permittees on what are reasonable targets. He echoed Vice Chair Battey's comments on benchmarking.

Board Member Gunther commended the constructive nature of the testimony. He expressed interest in hearing more about successful implementation of green infrastructure in other regions. Board Member Gunther wanted to hear more about the permittees' green infrastructure plans and how they compare to MRP 3.0's expectations. He brought up the issues of reporting and Safe Harbor. Board Member Gunther inquired about the City of San Jose's progress in this area. He noted the funding problems that cities face as it relates to road maintenance.

Board Member Young highlighted two areas of interest. The first related to project language and specificity and the second related to financial difficulties for new project implementation.

Chair McGrath appreciated the collaborative nature of the discussions. He highlighted the importance of permittees being specific when describing the feasibility of projects, noting that roads are a major component of water quality problems in the region. Chair McGrath echoed an earlier comment on Power Analysis.

DJ Edwards expressed support for Contech Engineered Solutions comments on enhanced designs for bioretention facilities.

Break at 2:33 p.m.

Back in session at 2:48 p.m.

Supervisor Derek Beauduy made a presentation on provisions C.10, C.8.e, and C.17.

Board Member Gunther asked about quantitative analysis related to the reduction of trash by permittees. AEO Mumley shared some of the history of rapid trash assessment methods in the region and provided context for the logic behind the proposed monitoring requirements. Board Member Gunther, AEO Mumley and EO Montgomery continued the discussion.

Board Member Hacker asked Supervisor Beauduy about the monitoring plan submittals required by the permittees. Supervisor Beauduy stated that it is done by county, not individual permittees. Board Member Hacker, Supervisor Beauduy and AEO Mumley continued the discussion.

Chair McGrath inquired about earlier testimony on the feasibility of the timeline required to establish a trash monitoring program. Supervisor Beauduy provided a reply. EO Montgomery and AEO Mumley provided additional context.

Chris Sommers, Santa Clara Valley Urban Pollution Prevention Program; Kerrie Romanow, City of San Jose; Kristin Hathaway, City of Oakland; Kathy Cote, City of Fremont; Jackie Morales-Ferrand, City of San Jose (Housing) Carrie Sandahl, City of Mountain View; and Phil Hoffmeister, City of Antioch made a presentation on provisions C.10, C.8.e, and C.17. During the presentation, Chair McGrath asked for clarification on what is considered a large homeless encampment. Jacky Morales-Ferrand stated that an encampment over 50 people is considered large.

Allison Chan, Save the Bay, provided comments on provision C.10, specifically around ground truthing, identification of successful combinations of control methods, and access to funding. She also made comments on provision C.17.

Ian Wren, Baykeeper, provided comments on the ineffectiveness of current evaluation methods for trash capture. Nicole Sasaki, Baykeeper expressed her concerns about the credits and offsets program in MRP 3.0. She also made comments related to provision C.17.

Susan Schwartz, Friends of Five Creeks, expressed her support for offsets as an important incentive for cities.

Hardeep Takhar, Caltrans, commented on provision C.10; highlighting Caltrans municipal partnership program and implementation timelines in MRP 3.0.

Igor Skaredoff, Contra Costa Resource Conservation District, shared his lifelong connection with the creeks in the region and asked the Board not to remove the offsets and credit for creekside clean ups.

Christopher Lim, Contra Costa Resource Conservation District, shared his experience with creek and watershed cleanups and expressed his support for maintaining cleanup offsets and credits.

Chair McGrath moved to closing comments on today's presentations from Board members.

Board Member Kissinger shared his support for credits for trash cleanups and his reservations about the phase out proposed in MRP 3.0.

Board Member Gunther expressed his thoughts about the complexity of the trash issue in the region. He echoed Board Member Kissinger's comments related to the cultural importance of community cleanups.

Board Member Hacker shared that it was beneficial for her to separate the issues of trash and homelessness. She also expressed concerned about the phase out for offsets and credits due to the importance of maintaining community cleanups in the region.

Vice Chair Battey commented several issues, including: extended producer responsibility, human connection with the environment, measurement related to trash capture, being careful around unintended consequences to unsheltered populations

from additional regulation, and understanding the impact that trash has on water quality compared to other water quality issues.

Board Member Young looks forward to continuing to learn from the process and seeing stakeholders engage collaboratively with one another.

Chair McGrath reiterated the comments of Christopher Lim related to community cleanups. He urged more of a focus on monitoring and requested consideration be given to the idea of credits for various actions related to homeless encampment cleanups. He commented on innovative methods for stormwater runoffs that do not require maintenance. Chair McGrath is supportive of measures related to full trash capture devices. He recognized that the region cannot regulate its way to compliance as it relates to redevelopment.

*End of Day 1 – 5:05 p.m.*

*Start of Day 2 – 9:06 a.m.*

Chair McGrath called the meeting to order at 9:06 a.m. via Zoom Virtual Meeting Platform.

**Board Members Present**

Chair James McGrath

Vice-Chair Jayne Battey

Donald Young

Alexis Strauss Hacker

Andrew Gunther

**Board Members Absent**

William Kissinger

**Status**

QUORUM

Chair McGrath allowed for a public speaker. Kelly Abreu, Mission Peak Conservancy, commented on the previous day's complaints of stricter stormwater regulation related to urban construction projects.

Chair McGrath administered the oath to persons testifying.

Chair McGrath stated the agenda for the day.

Diane Burgis, Supervisor on the Contra Costa County Board of Supervisors, commented on requirements related to PCBs cleanup.

Lamar Thorpe, Mayor of the City of Antioch, commented on the costs associated with provision C.17. Chair McGrath provided feedback on expectations for public comments; Mayor Thorpe provided a reply.

Cindy Silva, Councilmember for the City of Walnut Creek, commented on requirements related to green infrastructure plans and road maintenance. Chair McGrath provided feedback on expectations for public comments. Councilmember Silva provided a reply.

Dave Hudson, Mayor of the City of San Ramon, commented on requirements related to trash capture on private property.

Renee Morgan, Mayor of the Town of Danville, commented on green infrastructure requirements related to road maintenance.

Rita Xavier, Vice Mayor of the City of San Pablo, commented on provision C.17.a.i.i.3, implementation of best management practices related to discharges of homeless populations.

Jovan Grogan, City Manager for the City of San Bruno made a presentation on the increase of funding to the City's stormwater enterprise. Chair McGrath commented on the importance of having a plan B regarding stormwater funding. City Manager Grogan provided a reply.

Marie Chuang, Board Chair of the San Mateo City/County Association of Governments (C/CAG), shared many accomplishments related to MRP 2.0 activities and funding challenges that lay ahead with MRP 3.0.

Reid Bogert, San Mateo County Pollution Prevention Program, echoed Marie Chuang's comments and shared a list of suggestions that would allow for greater flexibility of implementation.

Board Member Gunther, responding to comments wanting to prioritize certain projects over others, asked for permittees to include an assessment of whether all project related to green infrastructure plans will eventually be completed.

Vice Chair Battey expressed her appreciation for comments related to unsheltered homeless populations.

Senior Staff Richard Looker made a presentation on provisions C.8.f, C.11, and C.12.

Board Member Gunther asked for clarification on PCBs clean up requirements. Senior Staff Looker provided details from provisions of C.11.c and C.12.c. Board Member Gunther, Senior Staff Looker, and AEO Mumley continued the conversation on PCBs clean up.

Chair McGrath asked for clarification on the scale of clean up for moderate PCB contamination. Senior Staff Looker provided a reply. Chair McGrath asked about the control of PCB contamination from demolition activities. Senior Staff Looker replied that it is still a work in progress. Chair McGrath and AEO Mumley continued the discussion.

Break at 10:55 a.m.

Back in session at 11:11 a.m.

Chris Sommers, Santa Clara Valley Urban Pollution Prevention Program; Lisa Austin, Geosyntec Consultants and Michele Mancuso, Contra Costa County Watershed Program made a presentation on provisions C.11/C.12 on behalf of permittees.

Board Member Hacker asked for clarification on the designation of direct discharge properties. Lisa Austin stated that they are privately owned properties that discharge directly to the Bay, rather than the MS4 drain. Board Member Hacker asked staff if they have a handle on these types of properties. AEO Mumley replied in the affirmative and EO Montgomery provided additional context.

Jim Scanlin, Alameda Countywide Clean Water Program; and Paul Salop, Applied Marine Sciences, made a presentation on provision C.8 on behalf of permittees.

Daniel Cooper, Sycamore Law representing SF Baykeeper, commented on the monitoring provisions.

Vaikko Allen, Contech Engineered Solutions, made a presentation on bioretention performance related to Mercury and PCBs removal in green infrastructure plans.

Lunch break at 11:57 a.m.

Back in session at 1:02 p.m.

Supervisor Janet O'Hara and Supervisor Beauduy made a presentation on provisions C.14, C.5, C.15, C.20 and C.21.

Board Member Gunther asked for clarification on the timeline for requiring permittees to be prepared for major storm events. Supervisor Beauduy provided a reply. Board Member Gunther, AEO Mumley and DC Lichten continued the conversation.

Board Member Hacker asked about standardizing the reporting for cost information and asset management. Supervisor Beauduy, AEO Mumley and DC Lichten provided replies.

Chair McGrath commented about previous testimony related to bacteria monitoring and the rate of illicit discharges from unsheltered populations compared to other sources. AEO Mumley provided a reply. Chair McGrath, AEO Mumley and Supervisor O'Hara continued the conversation.

Melody Tovar, City of Sunnyvale and Carrie Sandahl, City of Mt. View made a presentation on provision C.14. Sheila Tucker, West Valley Clean Water Authority made a presentation on provisions C.20 and C.21. Eric Anderson, City of Mt. View and

Reginald Freeman, City of Oakland Fire Chief, made a presentation on provision C.15. All these presentations were on behalf of permittees.

Nicole Sasaki, SF Baykeeper, commented on provision C.14.a and referenced a recent study on bacterial contamination related to illicit discharges.

Board Member Gunther asked a series of questions on the referenced study. Nicole Sasaki provided replies. Chair McGrath contributed to the conversation and asked for further specificity regarding SF Baykeeper's concerns about the Safe Harbor provisions and what due diligence and best management practices can be done outside the scope of the Safe Harbor provisions. Nicole Sasaki provided replies. EO Montgomery contributed additional context about controls already in place. Daniel Cooper added commentary about the success of green infrastructure in addressing bacteria.

Mitch Avalon, representing the Bay Area Municipal Stormwater Collaborative, made a brief presentation summarizing their requests

Chair McGrath asked staff to consider various extensions to the deadlines in the MRP 3.0 public process.

Break at 2:31 p.m.

Back in session at 2:48 p.m.

EO Montgomery provided staff's viewpoint. Chair McGrath ruled that the comment deadline will be extended one week.

Chair McGrath solicited from the Board members their overall feedback of the two-day Hearing.

Board Member Gunther thanked the permittees and staff for their effort in making presentations. He emphasized the importance of focusing on the substantive disagreements, rather than misunderstandings. He expressed his understanding about the resource limitations facing permittees. Board Member Gunther asked staff to consider provisions that could be eliminated and reporting that can be consolidated. He concluded with remarks about being sensitive to the work currently being done by cities related to unsheltered homeless populations.

Vice Chair Battey thanked staff and all the public speakers for their comments. She commented on the importance of keeping the current climate crisis on top of mind. She appreciated the discussion about reporting, monitoring, and measurements, and the costs related to those activities. Chair Vice Battey highlighted the importance of leaving room for innovation when considering prescriptive versus adaptive approaches. She echoed Board Member Gunther's notes on the discussion around unsheltered homeless populations.

Board Member Young echoed Board Member Gunther's and Vice Chair Battey's remarks and highlighted his three most pertinent topics he would like staff to focus on: green infrastructure and impact on local resources, and performance metrics.

Board Member Hacker thanked Board staff for their efforts. She endorsed Board Member Gunther's remarks about there being dialogue between staff and stakeholders prior to submittal of written comments. Board Member Hacker shared thoughts on six areas: alternative compliance; budget, staffing and municipal stormwater fees; unfunded road maintenance; trash offsets and credits; the importance of green infrastructure implementation; PCBs and mercury control.

Chair McGrath made general remarks about the effort and organization of the staff and stakeholders to get to this point. He emphasized the importance of flexibility in the areas of reporting and monitoring both for road maintenance projects and PCBs. Chair McGrath also highlighted the discussion on investments in green infrastructure. He commented on efforts that could support incentivizing development of affordable housing and expressed his concern about the permittees' hesitancy to look into discharge of PCBs from private properties. Chair McGrath endorsed the prioritization of LID (low impact development) monitoring over trash monitoring.

EO Montgomery responded to a few of the higher-level issues that were raised, including: MRP 3.0 process, monitoring program and costs, roads maintenance and pollution control, trash, and green infrastructure. AEO Mumley expressed his comfort with the dialogue that has taken place over the two-day hearing.

#### **Item 8 – Correspondence**

No correspondence

#### **Item 9 – Closed Session – Personnel**

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

#### **Item 10 – Closed Session – Litigation**

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

#### **Item 11 – Closed Session – Deliberation**

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

#### **Item 12 – Adjournment**

Board Member Gunther motioned, and Board Member Kissinger seconded.

**The meeting was adjourned at 3:27 PM**