

*STATE OF CALIFORNIA*

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

MEETING DATE: January 10, 2018

ITEM:       **4**

SUBJECT:    **MINUTES OF THE DECEMBER 13, 2017 BOARD MEETING**



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## San Francisco Bay Regional Water Quality Control Board

# December 13, 2017 Board Meeting

## ADOPTED January 10, 2018

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 (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.

#### Board Members Present

Chair Terry Young  
Vice-Chair James McGrath  
Cecilia Ogbu  
Newsha Ajami (arrived at 9:15)  
William Kissinger  
Steve Lefkovits  
Jayne Battey

#### Board Members Absent

#### Status

QUORUM

Toxics Cleanup Section Leader Laurent Meillier introduced new Scientific Aides Torren Campbell and Ryan Seligman.

### Item 2 – Public Forum

Mike Conner, General Manager of the East Bay Dischargers Authority, stated that his organization's highest priority is on nutrients in the Bay, and they are working with Board staff to address the Bay nutrient issue. He asked the Board to work with them as partners versus as the regulated community. He said he likes the Board focus on strategic planning and the effort to address sea level rise. He commented about challenges with the State Board's proposed requirement that all labs demonstrate achievement of the TNI 2016 Standard. He recommended addressing complicated monitoring logistics, using technology for remote monitoring, and requested changing NPDES permits to allow electronic information management, such as with chlorine residual.

Craig Johns, Program Manager for the Partnership for Sound Science in Environmental Policy, commented that his organization is tracking WaterFix and its potential future selenium loading and impacts to Bay and Delta. He says conditions need to be imposed on proponents (water contractors) to insure all environmental impacts are addressed. His organization asked TetraTech to look at selenium loadings, and it found increases in selenium to the Bay. WaterFix reevaluated and increased its loading assumptions in its environmental documents but still concluded no impact on the Bay and did not identify mitigation measures. He said they recently asked Tetrattech to propose a monitoring program to indicate selenium impacts. It is not costly but will produce useful information. He will present it to

the State Water Board as conditions to add to the Change of Point of Use permit that the State Water Board is considering for the project/contractors.

**Item 3 – Minutes of the November 8, 2017 Board Meeting**

Executive Officer Bruce Wolfe recommended adoption of the Minutes from the November 8, 2017, Board Meeting.

Vice-Chair McGrath moved for adoption of the Minutes; Board Member Ogbu seconded the motion.

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

Nos: None

ITEM ADOPTED

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

Mr. Wolfe gave an overview of this month’s Executive Officer’s Report. He provided an update on staff activities in response to the North Bay fires including helping Cal Office of Emergency Services assess impacts that need water quality protection, facilitating funding for debris cleanup and containment and erosion control, and adapting affected regulatory programs (e.g., extending timeframes to develop the monitoring program for the Vineyard Program). Board Member Ajami asked about encouraging “greener” development, and Chair Young expressed appreciation that staff made regulatory program adjustments.

Chair Young recommended taking up Item 5 next and returning to Board reports later. She also honored Mr. Wolfe’s 40 years of Water Board service and leadership.

**Uncontested Items**

**Item 5A – Oyster Point Class III Solid Waste Disposal Site, City of South San Francisco and Oyster Point Development, LLC, South San Francisco, San Mateo County – Amendment of Waste Discharge Requirements Order No. 00-046**

**Item 5B – Conditional Waiver of Waste Discharge Requirements for Disaster-Related Wastes in the San Francisco Bay Region – Adoption of Conditional Waiver**

Mr. Wolfe stated that he provided Board members with paper copies of three figures today that were not included in the original agenda package for Item 5A. He recommended adoption of the items 5A and 5B with these figures included.

Vice-Chair McGrath moved for adoption of the items; Board member Battey seconded the motion.

Board Member Lefkovits asked if the order for Item 5A will need adjustments if property uses change. Mr. Wolfe said yes, that is the next step, as today’s item just adds the developer to the order. Chair Young assumed that there were no comments on Item 5B because staff worked with stakeholders satisfactorily to manage temporary waste disposal until this conditional waiver could be adopted. Vice-Chair McGrath thanked staff for coordinating with stakeholders and other Regional Water Boards who experienced fire to provide high quality and professional responsiveness. Board Member Ogbu asked if we know of facilities that might take advantage of the provision for temporary storage. Mr. Wolfe responded that we have not heard of any but wanted to provide the opportunity for short-term staging for debris removal.

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

Nos: None

ITEMS ADOPTED

**Item 6 – 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) – Reissuance of General NPDES Permit**

Staff Engineer Marcos de la Cruz presented the item to the Board, supported by Division Chief Bill Johnson.

Board members asked about treatment technology, costs of treatment, rationale for the new proposed limits, general permits versus individual permits, why dischargers objected to the limits in the permit, examples of sites with constraints to achieving permit limits, and extent of outreach and opportunity for input by stakeholders.

Mr. Johnson and Mr. Wolfe responded to the questions, highlighting the achievability of the limits given the existing treatment technology performance and treatment options, how the permit provides incentives to minimize discharging contaminated groundwater to sanitary sewers, opportunities for individual permits where warranted, and the extent of outreach to stakeholders.

Christopher Ellsbury, Environmental Health and Safety, Santa Clara County, commented that they are pumping from a traffic underpass daily to prevent flooding, are treating volatile organic chemicals in that pumped water, and will incur violations under the new permit for occasional exceedances. They cannot install GAC due to space limitations. He requested an extension of compliance dates to allow more time to see if alternative treatment can be added.

Chair Young asked how often and what are the ramifications of exceeding the new limits. Mr. Ellsbury answered they will only exceed limits occasionally but are worried about incurring violations for exceedances. Mr. Johnson explained that a discharger can decide if it wants an individual permit to have flexibility on how to comply. Board Member Ajami asked if the County had looked into other treatment methods to achieve the limits, and Mr. Ellsbury stated they did not have time as they received the tentative order five months ago, provided comments, then got a response a couple months ago indicating staff was still proposing the tentative order without incorporating these comments into the tentative order. Board Member Ajami responded that she thinks four to five months is long enough to evaluate options in parallel with commenting on the tentative order. Vice-Chair McGrath clarified that a discharger can apply for an individual permit and not be mandated to implement GAC. Mr. Johnson added that an individual permit may provide site-specific requirements and limits and would not mandate GAC. Mr. Wolfe noted that the County needs to dewater at this location and is pulling volatile organic chemicals from other sources; the county is not a source, so this is a unique situation that may need a different permitting approach.

Aaron O'Brien, Tamalpais Environmental, commented that costs and carbon use will increase under the new permit, the permit constrains staff's ability to address unique situations, and that they worry about treating and controlling flooding from future larger storms. Jeff Miller, Global Remediation and Environmental Programs Manager, HP, Inc., stated that staff did not conduct adequate cost analyses for adding metals treatment or incurring metals violations since GAC does not treat metals. He also

said he did not have adequate time to evaluate how to meet the new limits. Board Member Ajami asked how old the current systems are, and Mr. Miller replied they are from the 70's, 80's, and 90's; they are pump and treat systems with high flows and in a small space. Erik Lawson, Stantec Consultants, stated that Board staff is not considering feasibility to add GAC, time needed to design and construct new systems, and sites with metals and other constituents not effectively treated with GAC. Liz Kimbrel, Langan Engineering, commented that current limits meet Water Quality Objectives, so it is not necessary to impose more stringent technology-based limits, many of which are almost equivalent to laboratory reporting limits. She also expressed concern with the costs and requested more time (at least 18 months) before the permit becomes effective.

Board Member Battey asked if there is a way to tier, give more time for those who cannot comply right away, or offer a time schedule for compliance. Mr. Johnson responded that there are ways to offer time schedules but mandatory minimum penalties apply in both the general or individual NPDES permits.

Mr. Wolfe proposed delaying the effective date of the permit six months to January 1, 2019, to give the few cases that need time to figure out how to come into compliance with the general permit or apply for an individual permit. Mr. Johnson suggested that even with a time delay, new construction dewatering sites should meet general permit terms immediately. Vice Chair McGrath suggested July 2018 is adequate to allow time for those who need to apply for individual permits versus those who can comply now. Chair Young asked for comments and questions to clarify how to address Board member desires to give those who need new systems time to comply. Mr. Wolfe indicated that the permit already provides this time, because it directs the Executive Officer to authorize discharge once adequate information is submitted about compliance systems; so dischargers would remain covered under the existing general permit (no MMPs would incur) until the Executive Officer authorizes them to discharge with a new system; then the authorization to discharge would trigger new permit coverage (and MMPs could incur).

Mr. Wolfe recommend adoption of the tentative order with changes as per the supplemental sheet for this item (re: nickel objectives per the Basin Plan) and with the effective date extended from July 1, 2018, to January 1, 2019, and all other associated and related dates changed appropriately (e.g., expiration date, application date).

Marnie Ajello, Attorney for the Board, pointed out that Mr. Miller of HP commented that they did not have a reasonable opportunity to comment on responses and explanations. She clarified that the comment period is to allow opportunity to comment on the permit. The permit itself, particularly the relevant parts of the fact sheet, did not change in response to the comments, and there is not an endless opportunity to comment on staff's responses to comments received. She noted that Mr. Miller did in fact comment on the responses to comments today during his oral comments.

Board Member Ajami moved for adoption of the item as amended; Vice Chair McGrath seconded the motion.

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

Nos: None

ITEM ADOPTED

**Item 7 – U.S. Army Corps of Engineers, Santa Clara Valley Water District, and California Coastal Conservancy, South San Francisco Bay Shoreline Project, Santa Clara County – Adoption of Waste Discharge Requirements and Water Quality Certification**

Mr. Wolfe introduced this item. He said this is a multi-benefit project that proposes to construct a 3.8 mile ecotone levee that will provide flood protection to the community of Alviso and nearby water/wastewater infrastructure, as well as provide sea level rise resiliency and environmental restoration.

Staff Engineer Tahsa Sturgis presented the item to the Board, supported by Division Chief Keith Lichten. Several stakeholders commented on the project and the tentative order for its Waste Discharge Requirements and Water Quality Certification.

LTC David Kaulfers, Project Manager, US Army Corps of Engineers (USACE), commented that the project team has been meeting every four to six weeks since January 2017. He noted that the project will provide flood risk management for Alviso, a regional wastewater facility, and a water purification center; 2,900 acres of ecosystem restoration by conversion of salt ponds to tidal wetlands; and key connections to the SF Bay Trail and viewpoints for restored habitat.

Sam Schuchat, Executive Director, CA State Coastal Conservancy (SCC), added that the project is part of the larger 15,000 acre south bay salt pond restoration effort, meets the goals of the Baylands Goals Report and Measure AA, and is needed now because sea level rise resiliency projects have approximately 17 years (until 2030) to be implemented before sea level rise starts to increase exponentially and preclude restoration efforts that can keep up. He also stated that the project has highlighted the following policy issues:

- Wetland type conversions – SCC does not agree that breaching levees to allow salt ponds to convert to tidal wetlands should require mitigation. This type of conversion is given limited credit in the WDRs and downplays the ecological restoration benefits.
- Construction of an ecotone levee should not count as fill impacts because it provides a net environmental benefit when accounting for sea level rise. For this project, construction of the 30:1 ecotone is not necessary and they could have proposed a standard 3:1 slope that accomplishes the project purpose with less fill but no environmental benefit.

Richard P. Santos, Director, District 3, Vice Chair of the Santa Clara Valley Water District Board of Directors, commented that he is a resident of Alviso; he encouraged adoption of the tentative order for its flood protection and environmental benefits. Melanie Richardson, Interim Chief Operating Officer for Watersheds, Santa Clara Valley Water District, echoed the flood protection and wastewater treatment benefits, urged adoption of the tentative order so that funds available for the project in February 2018 will not be jeopardized, and expressed the following concerns:

- Requiring mitigation for this project will set a precedent for future restoration projects.
- The no net loss policy dis-incentivizes future restoration projects if they result in fill due to ecotone construction.

Anne Morkill, Refuge Complex Manager, U.S. Fish & Wildlife Service, stated that the project meets purposes of the Refuge, facilitates tidal wetland restoration, and enhances opportunities for wildlife-dependent recreation. She also wants to advance the discussions on the policy issues (ecotone fill, no net loss policy) raised by the project and tentative order. Ken Davies, Sustainability & Compliance Manager, City of San Jose, described the significance of the project in protecting wastewater and

recycled water infrastructure. He said Pond A18 was going to be contributed by the City of San Jose to the project, and the City would be open to additional contributions should the levee alignment change and require more City property.

Jeneya Fertel, Biologist, USACE, expressed concerns with mitigation requirements described in the tentative order as USACE believes the restoration component compensates for fill-based impacts; she explained Corps permitting ratios as a comparison that results in much lower than project mitigation ratios, and, in response to questions from Vice Chair McGrath, said that the mitigation rules and requirements were developed jointly with U.S. EPA. Arijs Rakstins, Deputy District Engineer for Project Management, USACE, reiterated that USACE needs permits by January 2018 to be able to apply for further project funding and, to reduce regulatory complexity, encourages partnerships on future projects, credit for conversion of salt ponds to tidal marsh, and to not consider ecotone fill in net fill calculations. Rochelle Trigueros, representing the Bay Area Council and the Silicon Valley Leadership Group, encouraged approval of the tentative order to protect infrastructure and encouraged the Board to approve future projects like this more rapidly.

Board members asked several questions. Chair Young asked Mr. Santos if he has a preference on levee alignments, and Mr. Santos said any alignment that protects Alviso from flooding is fine. Board Member Kissinger asked Mr. Schuchat to explain why this type of restoration and sea level rise resiliency project is not possible after 2030. Mr. Schuchat responded that experts in a stakeholder workgroup including SFEI, SCC, and others determined that with existing sea level rise projections, projects need to be finished in 2030 because after 2030 seas are expected to rise too quickly for wetlands to become established. Board Member Ajami inquired about staff's response to the policy issues raised regarding fill. Mr. Wolfe responded that the tentative order brings to light the question of how we support implementation of restoration projects that require filling waters/wetlands. We need to clarify our policies so that, when appropriate, we can approve sea level rise and climate change adaptation projects without mitigation requirements for fill due to ecotone (or similar type) construction. This is the first ecotone/shoreline resiliency type project brought before the Board. This tentative order resolves these issues for this project while allowing time to make policy decisions for future projects of this type moving forward. Chair Young asked if addressing these policy issues are a priority for staff and Mr. Wolfe said yes. They are difficult questions/issues because a salt pond is considered Waters of the U.S., but breaching a salt pond to convert it to something else needs to fall into one of our mitigation categories – enhancement, creation, or restoration. Also, vegetation will be moving up the ecotone slope and changing with sea level rise. In order to realize the greatest benefit, climate scientists are pushing for three feet of adaptation room and for projects to be implemented now or in the very near future.

Chair Young noted the commenters who disagree with the mitigation originally required in the tentative order and the current language in the tentative order regarding the Contingency Mitigation and Monitoring Plan (CMMP) address the issues raised. Mr. Lichten added that the tentative order as currently written does not require mitigation, but mitigation requirements that come about as the project design is finalized and project phases are implemented (and Water Board policies are addressed) are covered in Provision 17. Provision 17 (which requires submittal of the CMMP) gives time for the project alignment and impacts to be better defined and policy discussions to move forward. The Water Board will use Provision 17 and the CMMP if it is determined that additional mitigation may be needed because of project design/alignment changes or because the project is not completed as expected.

Peter Prows, Outside Counsel, Santa Clara Valley Water District (SCVWD), read Finding 22 of the tentative order as requiring SCVWD to provide mitigation for anything less than 2,900 acres of salt pond to tidal marsh conversion resulting from the project. Board Member Kissinger said it seems they are ignoring the words “up to” in that part of the tentative order. Mr. Wolfe explained that the “rubber meets the road” with Provision 17; SCC will use the CMMP to report on consistency with Water Board policies as designs of levee reaches are finalized. The submittals required by Provision 17 gives us the opportunity to describe how this project meets the no net loss policy and address changing policies for this type of project. This gives time over the next few years for the parties to demonstrate how the project will meet current and future policies. Board counsel Tamarin Austin stated that findings in the tentative order are not requirements. The requirements of the tentative order are defined in its provisions, so SCVWD’s concern about mitigation language in the findings is not relevant because they are not requirements.

Vice Chair McGrath stated that consistency with existing policy will be considered in context of the project. The no net loss policy came about in the past because projects that were “bad” came before the Board; knowing this is a good project, though, does not absolve us of requiring net fill to be minimized. We need to be cautious about ignoring the no net loss policy until we have something to replace it that uses advanced thinking. He said he is supportive of the ecotone levee and not as concerned with associated temporal losses. Chair Young asked staff to address the comments about potential alternative alignment as non-mitigating. Mr. Lichten stated there would be a significant reduction in fill with the alternative, landward alignment. The CMMP will address this, and the USACE will be looking at the alignment and evaluating alternatives as the project moves forward. LTC Kaulfers, confirmed that USACE is looking into the alternative alignment.

Board Member Battey asked if the tentative order is in the best shape to move the project forward (from a federal perspective), and Mr. Lichten said yes.

Mr. Wolfe said we want to move the project forward. The project needs to comply with Water Quality Objectives, the Basin Plan, and the no net loss policy; there are some project uncertainties; and finalization of design is needed. The tentative order provides a mechanism to continue with approval of this project as it moves through the proposed project phases. This is the first time the Board is considering approving a project of this type. We need policy review moving forward as we look at needed sea level rise adaptation. For the record, we are not requiring 300:1 ratio as comments noted and the current tentative order language addresses this.

Mr. Wolfe recommended adoption of this tentative order. Board Member Kissinger moved adoption of the tentative order. Vice Chair McGrath seconded the motion.

Chair Young concluded that she was pleased to hear that staff, applicants, and stakeholders want to move this project forward. She added that the Board takes seriously the issue of inadvertently setting a precedent regarding approval of the tentative order and, with the current language in the tentative order, can approve it under existing requirements and policies. It is a high priority for the Board to look at policies that may discourage this type of project in the future.

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

Nos: None

ITEM ADOPTED

### **Other Business**

Mr. Wolfe suggested and Board members directed him to postpone Agenda Item 9 until the January 2018 Board meeting.

### **Item 8 – Regional Monitoring Program (RMP) for Water Quality in San Francisco Bay – Presentation on the State of the RMP by Philip Trowbridge, Program Manager, SFEI**

Phil Trowbridge, Program Manager of the Regional Monitoring Program for Water Quality in San Francisco Bay, made a presentation. He started by acknowledging that this is the 25-year anniversary of the program and recognized its uniqueness and that it is still such a strong program. He described the keys to success: collaboration between regulators, dischargers, and scientists; adaptive management; and the role of the Board, as the Board created and continues to steer the program. He reviewed recent status and trends monitoring and results. He mentioned that: copper remained below trigger levels; sediment monitoring focused on Bay margins versus the open Bay; PCBs are still elevated in fish; mercury is still elevated in fish; and flame retardants have declined in the Bay since its use was phased out. He also mentioned some of the special studies, such as “non-targeted” emerging contaminants and sediment supply. Mr. Trowbridge described bringing science to management through publishing *The Pulse of the Bay*, holding an annual meeting, producing newsworthy publications, and serving as recipient for supplemental environmental projects per the Memorandum of Understanding with the Board.

Board members complimented the program and noted that it is one of few in the State and in the nation; other organizations (including Regional Water Boards in other areas) have and are trying to create similar programs. They also discussed the value and types of actions and decisions compelled by data and science, such as showing environmental impacts of flame retardants and getting the State legislature to ban their use. Chair Young asked if the program is mining the information developed by the European Union about toxicity. Mr. Trowbridge said it is, and SFEI has an emerging contaminants expert in scientist, Becky Sutton. Assistant Executive Officer Tom Mumley added that one of the key advisors to the program is from Environment Canada. Chair Young asked if our funding matches our needs as needed for long-term viability of the program. Mr. Trowbridge responded that the mix of fund sources provides some stable and some declining funds, but sources are managed to accomplish the monitoring needs. Dr. Mumley pointed out how robust the monitoring and results are considering the budget. Chair Young acknowledged that SFEI does much more than just the monitoring discussed today; they do an excellent job communicating about science. Board Member Ajami indicated that the water sector needs the type of data collection, management, communication and decision-making that is modeled here with water quality. The format and success of the RMP could be used in many more ways. Mr. Trowbridge added that the trust and respect for the data and the program are invaluable, and Dr. Mumley commented that the program relies on consensus-based decision making for which they almost always and easily achieve consensus.

### **Board Member Reports**

Mr. Wolfe suggested a return to Item 4 for Executive Officer and Board member reports, which were postponed earlier during discussion of Item 4.

Board members discussed preparing for Board Chair and Vice-chair elections in January. Chair Young asked that Board members Kissinger and Ajami work together to seek nominations and tee up the elections for the next meeting; this is based on common practice to ask the two people who are the

longest serving, who are not either Chair or Vice Chair, currently, to put their heads together and kind of manage the process of doing the elections.

Mr. Wolfe notified the Board that the Attorney General has filed an appeal of the United Artists court decision on the Board's behalf. He explained the new Cannabis Program and its resources. The Board got State Board approval for a new unit that combines cannabis regulation with other agricultural regulatory programs. Jim Ponton will be the supervisor of the new unit, which will include two new staff plus two others to be moved into the unit.

Vice Chair McGrath noted he went to Lodi to see cranes. It was an emotional experience, stunning, recommended, and a reminder of the importance of what we do.

Board Member Battey was just up in Napa and noted that the businesses really appreciated patronization and everyone should go; she enjoyed seeing the flood control work there.

Board Member Ajami noted that she and Mr. Wolfe were involved with Silicon Valley Clean Water and ReNUWIT, who are holding a workshop on February 1, 2018, on potable water reuse; they plan to attend a planning meeting on content for the workshop; and Board members should know about it and maybe attend.

**Item 9 – Sustainable Groundwater Management in the San Francisco Bay Region – Status Report**

As per the discussion above, this Item was postponed until the January 2018 meeting.

**Item 10 – Correspondence**

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

There was no closed session at this meeting.

**Item 11 - Adjournment**

Meeting adjourned at 3:35 pm until the next Board Meeting – January 10, 2018