

STATE OF CALIFORNIA

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

MEETING DATE: March 13, 2019

ITEM: **3**

SUBJECT: **MINUTES OF THE FEBRUARY 13, 2019 BOARD MEETING**

San Francisco Bay Regional Water Quality Control Board

February 13, 2019 Board Meeting

ADOPTED March 13, 2019

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 9:10 a.m. in the Elihu M. Harris Building, First Floor Auditorium.

Board Members Present

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

Board Members Absent

Status

QUORUM

Former Executive Officer Bruce Wolfe introduced the new Executive Officer Michael Montgomery. Mr. Montgomery is joining the Board from the US Environmental Protection Agency.

Senior Water Resource Control Engineer Dale Bowyer introduced Imtiaz-Ali Kalyan, who joins the Watershed Management Division as a Water Resource Control Engineer.

Senior Engineering Geologist David Elias introduced Sarabeth George, who joins the Groundwater Protection Division as an Engineering Geologist.

Senior Water Resource Control Engineer Robert Schlipf introduced Anna Gallagher, who joins the Permit and Enforcement Division as a Water Resource Control Engineer, and Matias Tejero-Leon who joins the Division as a Scientific Aid.

Division Chief Bill Johnson introduced Jessica Watkins as the new Senior Water Resource Control Engineer for the General Permits and NPDES Enforcement Section in the Wastewater and Enforcement Division.

State Water Resources Control Board Member Tam Doduc gave an update on state-wide issues. She said Governor Gavin Newsome appointed Laurel Firestone to the State Board and Joaquin Esquivel as the Chair, replacing Felicia Marcus. She said the next Board meeting is on March 5 and 6, 2019 and that two items of interest on that agenda include the Dredge and Fill Procedures and a workshop on prevalence of PFOS [Perfluorooctanesulfonate] in drinking water.

Item 2 – Election of Chair and Vice-Chair –

Board Member Ajami nominated Terry Young to continue as Chair and James McGrath as Vice Chair. Board Member Kissinger asked for a vote. All Board members voted in favor.

Item 3 – Public Forum –

Stephanie Moreno, Executive Director for the Guadalupe-Coyote Resource Conservation District, commented that the South Bay streams need attention due to poor habitat conditions, particularly the impact on fish. She mentioned a report by Jerry Smith, retired San Jose State University Professor, about fish extirpation. She mentioned FAHCE (Fisheries and Aquatic Habitat Collaborative Effort, a settlement agreement between several government and non-government entities in response to water rights complaints against Santa Clara Valley Water District). She said FAHCE requires the District to complete environmental review which was supposed to be completed by 2005 and still is not. She said delay in FAHCE is not a reason for the Regional Water Board not protect the streams. She asked staff to put an update on FAHCE on the April Regional Water Board agenda and the relation to Regional Water Board permits and actions. Interim Executive Officer Thomas Mumley said we will be meeting with parties and will consider bringing the item at a time that provides participation by the parties to FAHCE; the Regional Water Board is not a party to the agreement.

Item 4 – Minutes of the December 12, 2018 Board Meeting

Mr. Mumley recommended adoption of the minutes from the December 12, 2018, Board Meeting.

Board Member Ajami moved approval and Vice-Chair McGrath seconded the motion. Chair Young asked if all were in favor of adoption of the minutes – all Ayes. Chair Young then asked if anyone was opposed - none opposed.

ITEM ADOPTED

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

The Chair and Board Members' did not provide reports. Mr. Mumley did not review or comment on the Executive Officer's Report.

Chair Young administered the oath.

Consideration of Uncontested Items

Item 6A – Bottling Group, LLC, Bottling Group Hayward Plant, Hayward, Alameda County – Reissuance of NPDES Permit

Item 6B – West County Agency, West County Wastewater District, City of Richmond, and Richmond Municipal Sewer District; West County Wastewater District Treatment Plant, Richmond Municipal Sewer District Water Pollution Control Plant, and Wastewater Collection Systems; Richmond, Contra Costa County – Reissuance of NPDES Permit

Item 6C – 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 – Amendment of NPDES Permit to include the East Contra Costa County Permittees

Mr. Mumley recommended approval of Items 6A, 6B and 6C.

Board Member Battey asked about Item 6D, Cleanup Programs. Mr. Mumley indicated that this is an information item and can be discussed separately.

Vice-Chair McGrath moved approval of Items 6A, 6B and 6C and Board Member Kissinger seconded the motion.

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

Nos: None

ITEM ADOPTED

Item 6D – Cleanup Programs – Status Report including Case Closures

Board member Battey asked for more explanation about the drop off in case closures. Stephen Hill, Toxics Cleanup Division Chief, responded. He said that staff is trying to figure out why and improve the case closures and meet targets. He said staff assumed that cases would be more difficult, and closures would take longer. Board Member Battey asked if we can have an **update on whether we are getting closer to closure targets**. Board Member Ajami asked for clarification that this is a mid-year accounting and if staff might catch up to targets by the end of the fiscal year in June. Board Member Ogbu asked whether State Board sets targets or if Regional Water Boards set internal targets. Mr. Hill said the rule of thumb is to close 10-15% of cases per year and that Regional Water Boards set the targets. Vice-Chair McGrath requested more context for these case closure numbers. Mr. Hill mentioned Figure 2 provides this context, such as number of cases closed over time. Board Member Battey said she would like this brought back in six months with more explanation and information on the five-year plan for the last five years of the program.

Consideration of Uncontested Enforcement Items

Item 7A – CalAtlantic Group, Inc., Preserve Project, San Ramon, Contra Costa County – Consideration of Imposition of Administrative Civil Liability

Mr. Hill introduced the item. He explained that he is the head of the Advisory team since the Assistant Executive Officers were involved on the prosecution team. He described the details of the proposed settlement. He recommended acceptance of the settlement with one change, to clarify that the Board and not the Executive Officer is approving the settlement order.

Board Member Lefkovits moved approval with the change proposed and Board Member Ogbu seconded the motion.

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

Nos: None

ITEM ADOPTED

Vice-chair McGrath asked what we learned from this; could we have done more inspections prior to the rainy season or was it just an upset?

Mr. Mumley said we have a program to oversee these sites and to oversee the municipalities who have a permit that requires oversight of these sites in their jurisdiction. We inspected this site, indicated problems and violations at the time, and did not see a satisfactory response. In that case, we strive to send a message that this is unacceptable and make the penalty enough that it does not become the cost of doing business.

Item 7B – City of East Palo Alto, San Mateo County, Order No. R2-2018-0034 for Violation of Trash Requirements of Municipal Regional Stormwater Permit – Rescission of Cease and Desist Order

Mr. Mumley introduced the item and said it is a good news story as the City installed a system to meet their trash requirements. He said he recommended approval of the rescission of the Order. Board Member Battey asked how much did it cost? **She said she is concerned about how these are paid for as she is aware of cost hurdles** and unanticipated consequences in San Mateo County. Mr. Mumley said the cost was close to \$1,000,000. He also said these types of Board actions require the cities to take on more trash controls sooner than planned so we understand that this has cost implications. Mr. Mumley offered that staff can report back to the Board after the next annual report from all the municipalities which will be submitted in December 2019 as that report will have interim information about what the controls cost and how they are funded. Board Member Ajami added that it will be important to have cost data for all cities and not just the cities that have challenges funding the controls. Watershed Division Chief Keith Lichten said that discussions with the municipalities about reissuance of the Municipal Regional Permit for stormwater discharges includes consideration of what is left for compliance with the trash requirements and how the requirements will be accomplished and funded. Chair Young said she and Vice-Chair McGrath will work with staff to set up a workshop on these issues prior to the Municipal Regional Permit reissuance.

Vice-Chair McGrath moved adoption, Board Member Ajami seconded the motion.

Chair Young said that the Board appreciates that the City accomplished this as it was with reluctance that the Board issued this Order to the City.

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

Nos: None

ITEM ADOPTED

Enforcement

Item 8 – California Department of Transportation, Violation of Trash Requirements of Statewide Stormwater Permit, Order No. 2012-0011-DWQ, as amended, NPDES Permit No. CAS000003, Regionwide – Adoption of Cease and Desist Order

Assistant Executive Officer Lisa Horowitz McCann introduced the item and explained she is on the Advisory Team since Mr. Mumley is on the Prosecution Team. Chair Young read the Hearing Procedures and introduced the Advisory and Prosecution Teams. She administered the oath.

Chair Young allowed Dave Pine, San Mateo County Supervisor, to comment out of hearing procedure order as he had to leave. Mr. Pine requested the Board expedite compliance and require Caltrans to accomplish cleaning trash from all acres before 2030. He reminded the Board that the municipalities have obligations to remediate trash, including trash impacts from Caltrans.

Chair Young resumed the order of the hearing and Senior Water Resource Control Engineer Dale Bowyer made the presentation for the Prosecution Team.

Board members asked questions about the timeframes, acres, costs and funding of the trash control targets. They asked about the types of controls that can be implemented to achieve the targets, the value of feasibility studies and the assessments to determine trash generating areas. Prosecution Team staff answered questions.

Chair Young allowed Vicky Danard, Marin Highways, to comment out of hearing procedure order as she had to leave. Ms. Danard commented that the highways are a mess and Caltrans should be required to clean up the trash. She said these highways are not adoptable under the Adopt-A-Highway program and expressed frustration that citizens cannot pick up trash on Caltrans right-of-way.

Chair Young resumed order and said Caltrans will present next.

Caltrans Acting Chief Deputy Director, District 4, Doanh Nguyen and Assistant Division Chief of Environmental Analysis, Shaila Chowdhury, made a presentation. **Board members asked questions about Caltrans' budget and funds to pay for trash controls**, best management practice options, causes of trash, and **coordination with municipalities for cooperative projects**.

Chair Young invited commenters to share their perspectives.

Barbara Lopez, on behalf of Oakland City Council Member Rebecca Kaplan, said the City would like to see stronger enforcement and a tighter timeline.

Fran Berg, US Environmental Protection Agency (USEPA), said they fully support the Order and want more acreage to be addressed earlier in the process. She also said that Caltrans should seek more funding or reprioritize funding to accomplish the requirements in the Order.

David Lewis, Executive Director of Save the Bay, said the permit has been in place for six years, little has been accomplished and the Bay has paid for that delay. He also said the cities are suffering more as a result of Caltrans' inaction. He said lack of funding is not an excuse for not complying with the law. He said this enforcement order should be strengthened to achieve the levels set forth in the permit.

Allison Chan from the Save the Bay provided comments on behalf of San Leandro Council Member Lee. She said the Board should consider the recommendations of USEPA to accelerate implementation. She also said that Caltrans should provide maintenance funding for cooperative projects. Ms. Chan asked to have Council Member Lee's letter added to the record.

Board Attorney Yuri Won counseled that the letter is a late comment and it is up to the Chair to decide whether to include it or not.

Chair Young agreed to admit the letter since it is from an elected official and like the other letters.

Chris Sommers, Vice President of EOA Consulting Firm, commented that he has been helping municipalities for thirty years and developed the visual assessment protocol which is becoming standardized. He urged the Board to address the significance of trash-generating areas and time-lines. He said that municipalities want to collaborate with Caltrans now because their compliance timeline requires 100% trash control much sooner than for Caltrans. He also commented that Caltrans does not have to provide long-term operation and maintenance for cooperative projects and that Caltrans should collaborate with cities on State Highways like Ashby Avenue, San Pablo Avenue and El Camino Real.

Mr. Nguyen and Ms. Chowdhury for Caltrans made a rebuttal and stated that they have committed funds to achieve most of the baseline of 3720 acres but may need additional funds

depending on cooperative projects and maintenance costs. He also said they have physical constraints even if they can secure the money.

Ms. Horowitz McCann reminded the Board that they can consider changes to the Order, including the changes proposed in the Supplemental Report for the Item. She said there were comments recommending changes to the reference to extending timeframes, correcting mistaken dates and changing the benchmarks.

Board members discussed increasing the acres and timeframes of the trash control targets to accelerate implementation. They also discussed addressing appropriate cost-sharing between Caltrans and municipalities for the operation and maintenance associated with cooperative projects, approaches to insure Caltrans seeks more funding, removing references to granting time extensions, costs and benefits of feasibility studies, and consideration for disadvantaged communities.

Chair Young proposed alternative acres and time-lines that were more aggressive than the proposed order.

The Advisory Team proposed edits to the Order to address the changes in which Board members expressed interest.

Vice-Chair McGrath moved approval of the Order with the changes read into the record and those included in the Supplemental Report. Board Member Kissinger seconded the motion.

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

Nos: None

ITEM ADOPTED

Item 9 – Correspondence – There were no correspondence items.

Item 10 – Closed Session – Personnel

The Board did not meet in closed session to discuss personnel matters.

Item 11– Closed Session – Litigation

The Board did not meet in closed session to discuss litigation.

Item 12 – Closed Session – Deliberation

The Board did not meet in closed session to deliberate.

Item 13 – Adjournment

Meeting adjourned at 5:55 p.m. until the next Board Meeting – March 13, 2019