

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

MEETING DATE: February 8, 2023

ITEM: 4

SUBJECT: Minutes for the December 14, 2022, Board Meeting

December 14, 2022, Board Meeting
Adopted Minutes

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.

Item 1 – Roll Call and Introductions

Meeting called to order at 9:06 a.m. at Elihu H. Harris Building, First Floor Auditorium.

Board Members Present

Chair Jayne Battey

Vice-Chair Alexis Strauss-Hacker

William Kissinger

Dr. Andrew Gunther

Donald Young

Letty Belin

Board Members Absent

Status

QUORUM

New Staff Introductions

Division Manager Alec Naugle announced the promotion of Water Resource Control Engineer Katie Kulha to supervisor in the Toxics Cleanup Division.

Supervisor Kevin Lunde introduced new Water Resource Control Engineer Gerardo Martinez who joined the Planning Division.

Supervisor Laurent Meillier announced the retirement of Water Resource Control Engineer Martin Musonge. He memorialized and acknowledged Engineer Musonge's 36 years of service. Engineer Musonge shared appreciation for his opportunity to work on water quality protection and cleanup throughout his career, the important work of the Regional Water Board and acknowledged the expansion of and commitment to racial equity.

Item 2 – Public Forum

Bill McNicholas, Cleanup Marinwood Plaza Now, commented that he has not seen any progress on the Marinwood Plaza cleanup and wants to figure out what is going on. He reiterated the need to get the place cleaned up.

Steven Nestel, Cleanup Marinwood Plaza Now, commented that he wants this facility cleaned up and said every time we get a promise, we get disappointed.

Executive Officer White stated that staff is in communication with responsible parties and is expecting reports soon. Staff issued a Notice of Violation in October and are committed to getting the site cleaned up.

Board Members asked if the financial instrument that was delayed continues to be an issue, what are the consequences for the responsible parties. Executive Officer White said the responsible party indicated that financing would be in place at the end of the week so work and reporting will proceed. Assistant Executive Officer Lisa Horowitz McCann added that we may directly inquire and request information about the status and reasons for delay in the financing from the responsible party. She also clarified that the specific consequence and likely enforcement option is to issue a fine for failure to report.

Item 3 – Minutes of the of November 9, 2022, Board Meeting

Chair Battey asked if there were any edits to the November 9, 2022, minutes. She said she would like staff's response to Steven Nestel's comments added. Executive Officer White said she can add that. Chair Battey asked for a motion to approve the minutes with that change.

Motion: Vice Chair Hacker

Second: Board Member Gunther

Ayes: all

Nos: none

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

Chair Battey asked for reports from each of the Board Members. Since State Water Board Liaison Maguire was not able to attend the meeting, t State Water Board Member Laurel Firestone made a report. She thanked Board Members for attending the Water Quality Coordinating Committee Annual Meeting. She spoke about State Water Board conservation actions such as adopting emergency regulation prohibiting wasteful water use. She also spoke about the continuing focus on climate change actions, including setting goals for water use reductions by 2030 through water loss performance standards for distribution systems, adding water supply through desalination, and capturing more stormwater. State Water Board Member Firestone also said they just adopted the Sanitary Sewer Overflow General Order and expressed appreciation for Regional Water Board staff assistance. She said the State Water Board will discuss the Racial Equity Action Plan in January.

Vice Chair Hacker said she met with Save the Bay about strategies to control trash around the Bay and their hope to make progress in 2023.

Board Member Kissinger said he also met with Save the Bay about the same topic.

Board Member Young reported from the Association of Bay Area Governments committee. He said the most important item to share is that the Estuary Blueprint and State of the Estuary were both funded.

Board Member Bellin said she also met with Save the Bay about the same topic.

Board Member Gunther said he heard a report at Bay Conservation and Development Commission about State Highway 37 challenges with planning traffic and climate improvements. He said he was heartened to see Caltrans working with agencies on a multi-benefit project for the road, habitat restoration and flood protection addressing equity relief based on who sits in the traffic lanes. He appreciated Water Board staff leadership on this item. He shared that chinook salmon entered the fish ladder in Alameda Creek which is the first time in 65 years. In terms of climate change news, he suggested checking on conditions with water supply in the Colorado River Basin and the aridification, specifically people trucking water because they are running out along with the problems of low flow and the infrastructure of turbines and pumps.

Chair Battey also met with Save The Bay. She mentioned that she attends the Chairs' meeting monthly and the last one featured a water rights report by Erik Oppenheimer. She said she appreciated learning about the effort to identify the specific rights everywhere and get good data and that State Water Board acknowledges that they have work to do on our state's outdated systems. She said State Water Board expects to collaborate with Regional Water Boards about water quality impacts of water rights changes. She said that she and Vice Chair Hacker instituted a process for evaluating Executive Officers, working with Attorney Emel Wadhwani, and will be initiating that soon.

Executive Officer White said she has also been in discussions with Save the Bay and Caltrans about trash control. She highlighted the Executive Officer's Report Items, including the annual accomplishments, beneficial reuse of sediment, and acknowledged that Zack Rokeach received a Sustained Superior Accomplishment Award for his contributions to the reissued Municipal Regional Stormwater Permit.

Board Member Gunther asked about the planning environmental linkages (PEL) study in the State Highway 37 report and was surprised to read that it has never been done in California. Watershed Division Manager Keith Lichten explained that the PEL is to get ahead of design and agency concerns and document them to facilitate the interagency planning and permitting of the project.

Board Member Kissinger asked for an explanation of the pretreatment program within NPDES. Executive Officer White explained the program. AEO Mumley added that BACWA entities proactively developed pretreatment of Mercury per TMDL to reduce mercury loads.

Chair Battey administered the oath.

Item 5 – Consideration of Uncontested Items

- A. North San Mateo County Sanitation District, Wastewater Treatment Plant and Wastewater Collection System, Daly City, San Mateo County** – Reissuance of NPDES Permit [Will Burrell 622-2317, will.burrell@waterboards.ca.gov]
- B. Rodeo Sanitary District, Rodeo Sanitary District Water Pollution Control Facility and Wastewater Collection System, Rodeo, Contra Costa County** – Reissuance of NPDES Permit [Sam Plummer, 510-622-2485, sam.plummer@waterboards.ca.gov]
- C. Waste Discharge Requirements for Mercury and PCBs from Municipal and Industrial Wastewater Discharges to San Francisco Bay** – Reissuance of NPDES Permit [James Parrish, 622-2381, james.parrish@waterboards.ca.gov]

Executive Officer White recused herself from the presentation of uncontested items. Assistant Executive Officer Tom Mumley introduced the items.

Board Member Gunther complimented staff and Bay Area Clean Water Agencies (BACWA) on scientifically determining that it is valid to relax the monitoring and only do intensive monitoring when necessary.

Vice Chair Hacker said she appreciates the upgrade of the aeration basin to resolve past problems.

Chair Battey said she appreciates the attention to compliance, addressing climate change and the recycling opportunities coming forward. Assistant Executive Officer Mumley said we are actively looking at water recycling opportunities as part of the normal business of reissuing permits and additionally at facilities around the region. He said that recycling water remains costly, especially for small facilities but we are still looking for opportunities to optimize where possible.

Mary Cousins, Regulatory Program manager for the Bay Area Clean Water Agencies (BACWA), thanked staff for the smooth reissuance of the mercury and PCB permit and specifically the collaboration with Environmental Scientist James Parrish to compile monitoring data. She said during permit development, BACWA supported the work of two community organizations to promote awareness of fish consumption advisories for subsistence fishers. She said BACWA supports adoption of the permit.

Chair Battey asked for a motion to adopt the uncontested items.

Motion: Board Member Kissinger

Second: Vice Chair Hacker

Ayes: all

Nos: none

Item 6 – Informational Item

California Department of Transportation, Update on Compliance with Cease and Desist Order No. R2-2019-0007, Implementing Trash Discharge Reduction Requirements – [Derek Beauduy, 510-622-2348, derek.beauduy@waterboards.ca.gov]

Executive Officer White introduced the item and Supervisor Derek Beauduy made the staff presentation.

Board Member Kissinger complimented the material. He asked about Caltrans' use of hydrodynamic separators, the issues of trash in roadway versus in landscape, and what Google's involvement is about. Supervisor Beauduy, Division Manager Keith Lichten and Assistant Executive Officer Mumley responded. They explained staff's understanding of Caltrans concerns with devices, such as flooding and worker safety, managing trash in roadways differently than that caught in vegetation, and improvements desired with visual assessments, including the possibility of Caltrans working with Google to improve tracking.

Board Member Gunther asked if staff saw an effect of Caltrans controls when inspecting and if Caltrans can meet trash reduction goals with growing trash intentionally disposed illegally on roads. Division Manager Lichten said trash controls are reducing trash overall but not enough to prevent discharge to the Bay. Executive Officer White said pollution prevention programs are critical to solving this problem.

Chair Battey commented that no homeless encampments are observed in the photos provided. Supervisor Beauduy said staff did see some, though they are mostly under bridges.

Shaila Chowdhury, Caltrans, presented Caltrans Trash control update. She explained their increased efforts and investments in trash capture devices, enhanced maintenance/litter pick up, public education, and maintenance credits. She reviewed the compliance path and cited the compliance efforts by year to meet the prohibitions established.

Chair Battey and Board Member Gunther asked for clarification of Caltrans expenditures, and the time period represented. Shaila Chowdhury of Caltrans confirmed that they have spent about half a billion dollars in total since 2018. Of that total number roughly \$40 million has been spent on education and outreach over the last three years.

Josh Quigley, Save the Bay, made a presentation. He thanked the staff team and showed that Caltrans falls short of compliance. He presented a history of non-compliance by citing specific requirements of the Cease-and-Desist Order and why Save the Bay finds an on-going lack of compliance. He further stated that trash pollution impacts communities and still discharges into creeks and the Bay. He asked how we will address trash control moving forward, for elevation of issues within Caltrans, and a

request for the Board to have an item in the early part of next year to recommend enforcement actions.

Attorney Yuri Won asked if the Chair is willing to accept the additional written comment letters that Josh Quigley asked to submit to the Board. Chair Battey approved submittal.

Board Member Gunther asked Save the Bay if they see any improvements in trash control and what outcomes they want from enforcement. Josh Quigley said they want more innovation, attention, and resources for trash control. Board Member Gunther asked about other places where Caltrans is better improving trash control under regulatory actions. Josh Quigley said the San Francisco Bay Regional Water Board regulated trash first and Assistant Executive Officer Mumley said Los Angeles Regional Water Board also issued trash TMDLs and pursued trash controls. Vice Chair Hacker mentioned past enforcement actions by USEPA and Water Boards against some Caltrans districts under Stormwater Permits, mostly for erosion and sediment, but relatedly trash.

Reid Bogert, Bay Area Municipal Stormwater Collaborative, commented on the status and challenges of trash control by municipal stormwater entities. He asked the Board to provide flexibility for municipalities to not have to enter into agreements with Caltrans and to get Caltrans to commit more resources. He said they are asking for highways throughout the State to be added for trash control by Caltrans.

Chris Sommer, Santa Clara Valley Pollution Prevention and Runoff, echoed Reid Bogert's comments and ongoing commitment to full trash capture.

Cade Cannedy, with Climate Resilient Communities, commented that communities he works with, such as East Palo Alto and the Belhaven Community, continue to suffer the most racism and environmental injustices. He said additional trash exposure due to illegal dumping and failure of Caltrans and others to control trash further burdens these underserved and overburdened communities.

Nina Atkind, Surf Rider Foundation San Francisco, commented that trash and pollution control requires going after industries who cause pollution, and they concur with Save the Bays' assessment and comments. She further explained problems associated with trash and microplastics transport to water ways via roadways. She urged Caltrans compliance with requirements and an increased budget for trash control.

Elisabeth Wilfong, City of Hayward, commented that Hayward has had success and challenges collaborating with Caltrans. Hayward was the first to accept funding from Caltrans in 2021 for full trash capture devices. The project is planned and designed now but has had challenges including, multiple redesigns, need for new locations, and multiple months to redo feasibility studies. It commonly takes longer to plan, approve, and implement projects than the funding windows allow, so projects are often not able to be implemented.

Rani Fischer, Santa Clara Valley Audubon Society, commented that surrounding communities and birds are impacted by trash that remains uncontrolled and said the Board needs to take a stronger stance in seeking compliance by Caltrans.

Margo Meiman, Pacific Beach Coalition, commented that they cleanup trash at beaches and associated parking lots and found more than 29,000 pounds of trash in 2022. She said they cannot cleanup highways and that Caltrans can do better. She urged the Board to take stronger steps, including those outlined by Save the Bay, and to urge Caltrans to improve funding approaches and amounts.

Board Member Kissinger made the observation that various parties did an excellent job explaining the situation. He said Caltrans has a tough job and confirmed that the \$500 million is for the Bay Area only, not statewide. He commented that Caltrans should be held to the same standard as municipalities and hopes the best technologies are being employed and that structural and bureaucratic hurdles can be tackled such as funding cycles and timing.

Executive Officer White said staff recognizes Caltrans has made progress but is not complying and hasn't done enough. She said she is recommending monthly meetings and requesting that Caltrans prepare a comprehensive plan/report to outline how they will come into compliance by June 2024. Staff will bring the plan to the board March 2023.

Board Member Young asked if there are issues with supply chain delays purchasing and implementing the devices or if there are other hurdles. Mumley said he knows vendors with hydrodynamic separators are advertising readiness to deliver these devices.

Ken Johansen, Caltrans Stormwater Program Manager, said they do not anticipate supply chain delays, have designed their own structure for trash capture and are pursuing hydrodynamic separators, and doing a pilot study that will provide Caltrans, local partners, and vendors with information to address safety and flooding issues for better siting of devices.

Board Member Young asked how we are addressing the increase in illegal dumping relative to expectations on Caltrans to make additional load reductions, meet targets and come into compliance. Executive Officer White said it makes the source and control of trash more complex.

Vice Chair Hacker asked about responsibility for trash between municipalities and Caltrans based on Reid Bogert's comments. Division Manager Lichten said we endeavor to make all parties responsible and that is tricky due to highways in municipalities where Caltrans owns the right-of-way, but municipalities own the storm drain systems where trash enters and discharges to waters; hence, we are challenged by the bureaucracy and a shared government agency responsibility.

Board Member Gunther asked for clarification about interpretation of visual assessments and how or if they are interpreted to represent progress or compliance objectively, as he understands the challenges of determining compliance. He asked if we have 303(d) listings for trash in the Bay Area, including Lake Merritt, and wants a way to account for intentional and unintentional sources of trash, e.g., pandemic increase in trash. Assistant Executive Officer Mumley said Lake Merritt has shown improvements and that most trash is intentional, such as thrown out windows from cars on ramps and roads, and from trucks without proper (legally required) covers.

Chair Battey thanked staff and stakeholders for all the information and presentations. She also wants to evaluate the proposal from Executive Officer White. She said we have a state-wide, world-wide problem with trash so she would like more staff attention on the supply chain and sources of trash to disrupt it (maybe with CalEPA and whomever should be involved). She also suggested the use of an interagency strike team like the State Water Board is using to address water rights changes.

Board Member Kissinger said he supports the ongoing close oversight of Caltrans and the other suggestions. Board Member Hacker also supports the recommendations and wants staff to make additional efforts for compliance including improving visual assessments, maintaining close oversight, holding meetings with Caltrans and considering municipalities' perspective.

Chair Battey concluded by asking for thumbs up from Caltrans and other stakeholders in the room that they are willing to stay in close coordination with staff. A thumbs up was received from Caltrans representatives.

She announced staff will go into closed session.

Item 7 – Closed Session – Litigation

The Board met in closed session.

Item 8 – Adjournment 2:08 pm

There were no announcements from Closed Session, and the Board Meeting adjourned at 2:08 pm.