Adopted as Submitted – 5/18/05

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES
April 20, 2005

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Item 1 - Roll Call and Introductions

The meeting was called to order on April 20, 2005 at 9:04 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Mary Warren, Vice-Chair; Kristina Brouhard; Shalom Eliahu; Clifford Waldeck; and Gary Wolff.

Board members absent: Kristen Addicks; Margaret Bruce; and Josephine De Luca.

Bruce Wolfe said the Governor recently made three new appointments to the Water Board: Kristina Brouhard, Gary Wolff, and Margaret Bruce. He said Margaret Bruce would be present at the next Board meeting.

Kristina Brouhard and Gary Wolff made introductory remarks. Each of them read aloud the Oath of Office to serve as a regional board member.

Board members welcomed Mrs. Brouhard and Dr. Wolff to the Board.

Mr. Wolfe said Tam Dudoc was recently appointed as a member of the State Water Resources Control Board. He said Ms. Dudoc would serve as the State Board liaison to the regional board.

Item 2 - Public Forum

Sejal Choksi, San Francisco BayKeeper, said she reviewed the item in the written Executive Officer's Report regarding the San Francisco Bay Mercury TMDL. She said she differed with staff's description of the State Board's action on the TMDL. She said she believed the State Board sent a directive that the TMDL be changed in order to address mercury contamination in the Bay in a timely and thorough manner. She said BayKeeper would like to work with staff to find solutions to the mercury problem

Item 3 – Minutes of the March 16, 2005 Board Meeting

Motion: It was moved by Mrs. Warren, seconded by Mr. Eliahu, and it was voted to adopt the minutes of the March 16, 2005 Board meeting.

Dr. Wolff and Mrs. Brouhard abstained because they did not attend the March 16, 2005 Board meeting.

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

John Muller reported attending the Water Education Foundation's Annual Executive Briefing held in Sacramento on March 24 and 25. He also reported attending a recent ceremony in the South Bay that marked the opening of tide gates for a group of salt ponds that will be restored to wetlands. He invited the public to attend a Water Summit meeting in Half Moon Bay on April 28, 2005.

Dr. Wolff asked if the State Board had remanded the San Francisco Bay Mercury TMDL to the regional board for revision.

Mr. Wolfe said the State Board did not remand the TMDL. He said the State Board tabled adoption of the TMDL. He said the State Board recognized the San Francisco Bay TMDL should integrate work being done by the Central Valley Water Board. He said the Central Valley Board is developing a Mercury TMDL for the Delta and other waters upstream to the Bay.

Mr. Wolfe said staff plans to update the numeric water quality objective for mercury in the Bay. He said the update would meet a concern raised by U.S. EPA about the TMDL. He also said staff would like to work with BayKeeper to address its concerns.

In reply to a question, Sarah Raker said water from drinking water treatment plants could be used to artificially recharge aquifers. She said treated water could be injected into aquifers and extracted for later use. She said there are proposals in Roseville and Tracy to inject water treated with trihalomethanes into aquifers. She said there is concern that disinfection products like THMs might remain in the groundwater. She said the Central Valley Water Board has required the Roseville and Tracy projects conduct studies to see if disinfection products degrade over time.

Mr. Wolfe said the City of Richmond recently adopted a resolution requesting that Cal/EPA assign lead regulatory oversight for the Zeneca and UC Field Station sites to the Department of Toxic Substances Control. He said Water Board and DTSC staff have met and used the recent Brownfield Memorandum of Agreement as a template to resolve the oversight question. He said staff discussions are continuing.

Mr. Wolfe said there has been discussion about restoring Site 25 at Moffett Field into a marsh or wetland. He said it was important that the site be cleaned up adequately before being restored.

Item 5 – Consideration of Uncontested Items Calendar

Mr. Wolfe recommended adoption of the uncontested calendar, excepting Item 5F. He recommended Item 5F be continued.

Motion: It was moved by Mr. Eliahu, seconded by Mrs. Warren, to adopt the uncontested calendar as recommended by the Executive Officer.

Tim Healy, Assistant General Manager, Napa Sanitation District, thanked Gina Kathuria, Lila Tang, and Tong Yin for their work on reissuing the District's NPDES Permit. He also thanked Bruce Wolfe and said it was helpful to have Mr. Wolfe involved in the process.

Dr. Wolff said he would abstain on the vote of the uncontested calendar. He said he is a Board member of BayKeeper and would like a chance to resolve a potential conflict of interest question.

A voice vote was held on the motion. The motion passed. Dr. Wolff abstained.

Item 6 – City of Sunnyvale, Sunnyvale Water Pollution Control Plant, Santa Clara County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said the City of Sunnyvale signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the City agreed to pay a Mandatory Minimum Penalty in the amount of $12,000. He said $12,000 would be used for a supplemental environmental project.

Item 7 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for San Francisco Bay Region to Establish a Tomales Bay Watershed Pathogens Total Maximum Daily Load (TMDL) and Implementation Plan – Hearing to Receive Testimony on Proposed Amendment

Farhad Ghodrati said 171 people became ill after eating raw oysters from Tomales Bay in 1998. He said a virus of human fecal origin caused the illness. Also, he said shellfish harvesting in Tomales Bay is prohibited about 70 days a year due to high pathogen levels.

Mr. Ghodrati said the pathogens TMDL covers Tomales Bay and its main tributaries, Lagunitas Creek, Walker Creek, and Olema Creek. He said water contact recreation and non-contact water recreation are the beneficial uses in the tributaries. He said water contact recreation, non-contact recreation, and shellfish harvesting are the beneficial uses in Tomales Bay.

Mr. Ghodrati said pathogens have the potential to cause a variety of diseases in humans. He said pathogens in Tomales Bay and its tributaries come from human and animal sources. He said human sources are a greater threat to public health than animal sources. He said human sources include: faulty septic systems; boat discharges; and sewage treatment facilities. He said animal sources include: agricultural runoff from grazing lands, dairies, equestrian facilities; municipal runoff (pet waste); and wildlife.

Mr. Ghodrati said the proposed TMDL uses fecal coliform concentrations to indicate pathogen presence. He said the proposed TMDL establishes the following numeric targets:

1. 14 fecal coliform MPN/100 mL of Bay water;
2. 43 fecal coliform MPN/100 mL of tributary water; and
3. Zero discharge of human waste.

Mr. Ghodrati said the TMDL allocates loads to pathogen source categories. He said septic systems, small wastewater treatment facilities, and boat discharges are allocated a zero load. He said the load allocation for animal agriculture, municipal runoff, and wildlife in Tomales Bay is 14 MPN fecal coliform/100 mL. He said the load allocation for animal agriculture, municipal runoff, and wildlife in the tributaries is 43 MPN fecal coliform/100 mL.

In reply to a question, Mr. Ghodrati said shellfish harvesting occurs only in the Bay. He said that is the reason the coliform target for the Bay is more stringent.

In reply to a question, Dyan Whyte said load allocations are concentration based and are not mass based. She said 14 MPN fecal coliform/100 mL is based on a median value of five samples taken in the Bay over a 30-day period. She said the 43 MPN fecal coliform/100 mL tributary target is based on a single sample maximum value. She said tributary water that enters Tomales Bay becomes diluted. She said staff believes when tributary water, not exceeding 43 MPN fecal coliform/100 mL, enters the Bay, there would be enough dilution that five samples taken in the Bay within 30 days would comply with the Bay target of 14 MPN fecal coliform/100 mL.

Becky Tuden said to implement the TMDL, regulated parties are required: (1) to assess sites to ascertain potential sources of pathogen runoff; (2) to develop a plan to reduce pathogen loads; and (3) to implement the plan.

Ms. Tuden said the State Board's Nonpoint Source Implementation Policy requires that waste discharge requirements, a waiver of waste discharge requirements, or a Basin Plan prohibition regulate all nonpoint source discharges. She said the TMDL implementation plan is consistent with the State Nonpoint Source Implementation Policy. She said:

1. Dairies must comply with the Board's waiver of waste discharge requirements;
2. Wastewater treatment facilities must comply with Board's waste discharge requirements;
3. Municipal runoff must comply with Marin County's stormwater permit;
4. Boaters will have to comply with a boating management plan under development;
5. Septic systems must comply with requirements of Marin County Environmental Health Services Department; and
6. Horse and cattle ranches must develop and implement facility plans.

Ms. Tuden said enforcement action would be taken if regulated parties fail to take reasonable steps to reduce pathogen loads.

Ms. Tuden said the stakeholders have an opportunity to comment today at the first public hearing on the TMDL. She said a second public hearing is scheduled for June 2005. She said the Board could consider adopting the TMDL upon the close of the second hearing.

In reply to a question, Ms. Tuden said the County of Marin does not inspect existing septic systems on a routine basis.

David Smith, U.S. EPA, spoke in favor of the TMDL. He said the concentration based targets and allocations in the TMDL protect human health.

David Lewis, University of California Cooperative Extension, said the community would like to improve water quality. However, he said stakeholders might feel they cannot meet the allocations in the TMDL. He said a study conducted in 1995 and 1996 demonstrated that fecal coliform loads in areas dominated by wildlife would exceed the allocations.

Nancy Scolari, Executive Director, Marin Resource Conservation District, suggested the TMDL should acknowledge the importance of sustainable agriculture in the watershed. She said landowners are concerned that allocations might be impossible to achieve and enforcement actions might be taken. She said livestock, wildlife, and humans are identified in the TMDL as categories that are sources of fecal coliform. She suggested DNA technology might be used to track the source of a contaminant to a particular category.

Sharon Doughty, Point Reyes Station, asked the Board to implement reasonable regulations to allow her family to stay in business as a Tomales Bay dairy producer. She reiterated the fact that the proposed allocations in the TMDL have been exceeded in a watershed dominated by wildlife. She said the proposed allocations are unrealistic.

Thomas Baty, Inverness, spoke in favor of the TMDL. He raised three issues for consideration. First, he recommended the beneficial uses of Tomales Bay be expanded to include non-human uses such as fish spawning and estuarine habitat for endangered species. Second, he recommended wildlife not be listed in the TMDL as a pathogens source. He said a background level of pathogens from wildlife is not a form of pollution. Third, he recommended that a facility to receive and treat septic waste be developed in West Marin.

Mike Gale, Petaluma, said he raises cattle in the Walker Creek watershed. He said his operation includes 88 cow-calf pairs that are grass-fed on 600 acres. He said the targets and allocations are too low. He said he worries that his business will be threatened if he does not meet the ranchland allocation. He said West Marin ranchers have been trying for many years to improve water quality. He said ranchers have taken action to fence cows out of creeks and to plant native trees.

Bob Giacomini, West Marin, said the dairy producers and ranchers need more time to meet the agricultural allocations. He said they are willing to continue to work towards reducing loads. He invited Board members to Tomales Bay to see activities being conducted to improve water quality. He raised questions about the California Department of Health Service's prohibition on commercial shellfish harvesting during rainfall periods.

Leslie Dapo, Western United Dairymen, read a letter from Paul Martin, Western United Dairymen's Director of Environmental Services. Mr. Martin said the 43 MPN fecal coliform/100 mL allocations for dairies and grazing lands are unrealistic. He said when allocations are too stringent, producers may feel they have no hope of complying.

John Hulls, Point Reyes Light, said the TMDL should identify the portion of fecal coliform loads attributable to nonpoint sources and the portion attributable to wildlife. He said the community would like reasonable assurance that fecal coliform loads will be reduced by their efforts to meet allocations. He said the TMDL should include a margin of safety to account for lack of knowledge and data uncertainty. He said the margin of safety is required by U.S. EPA guidelines.

In reply to a question, Mr. Wolfe said nutrients and sediments impair the three Tomales Bay tributaries. He said mercury also impairs Walker Creek. He said TMDLs are being prepared to address the pollutants. He said staff would try to see that measures implemented to address pathogens also address nutrients and sediments.

Dr. Wolff asked if the cost effectiveness of measures that address multiple pollutants has been investigated.

Dyan Whyte said ranchers are preparing Rangeland Management Plans as a first step to reduce pathogen loads. She said the plans also would address activities to reduce sediment and nutrient loads. She said the pathogen target for onsite septic systems is zero discharge. She said a reduction in human waste also would reduce nutrient loads.

Mr. Wolfe said staff would use an adaptive management approach in implementing the TMDL. He said practices that have been shown to be effective are being implemented first. He said staff would consider other approaches if reductions in loads are not achieved.

Dr. Wolff said when he read the TMDL he was not clear how economic analyses would be incorporated in the adaptive management process.

Mr. Eliahu said stakeholders currently appear to be carrying out many implementation activities.

Mr. Wolfe reiterated the first step in the implementation process involves using practices that are known to be effective. He said stakeholders might feel a level of uncertainty when numeric targets are set.

Mrs. Warren said she did not want ranchers to be held responsible for pollution created by wildlife.

Ms. Whyte said data indicate that pathogen loads from cattle dominated watersheds are much higher than pathogen loads from wildlife dominated watersheds. She said the implementation plan attempts to reduce pathogen loads in watersheds with cattle. She said the pathogen contribution from wildlife then would be evaluated.

Ms. Whyte said staff has worked a long time with dairies in their operation of confined animal facilities. She said staff is starting to work with livestock producers on issues of cattle grazing lands and access to creeks.

Dr. Wolff asked staff to estimate the target that would apply to a watershed that was primarily wildlife dominated.

Ms. Whyte estimated the target would be 200 MPN/100 mL. She said many variables, like the weather when samples are taken (storm or nonstorm events) and the length of averaging period of samples, would affect the calculation.

Mr. Muller said a reasonable approach must be used to reduce pathogen loads. He said agricultural use preserves land as open space for millions of people in the Bay Area.

Mr. Wolfe said staff would like to take a reasonable and balanced approach in developing the TMDL. He said staff has developed a long-term partnership with the community and would like to continue the partnership.

Mr. Waldeck said new guidelines and practices that are reasonable might need to be introduced in the watershed.

Mrs. Warren reiterated that the assessment of livestock pathogen loads must be fair.

Mr. Wolfe said staff recognizes that the dairies and ranchers have done a lot to reduce pollution loads. He said staff would try to be reasonable and balanced in addressing load reductions and implementation actions.

[The Board took a break at 11:43 a.m. and resumed at approximately 11:50 a.m.]

Item 9 – 2003-2004 Annual Review of Municipal Stormwater Programs with Focus on Monitoring – Alameda, Santa Clara, San Mateo and Contra Costa Counties

This item was heard next.

Wil Bruhns said San Mateo, Alameda, Contra Costa, and Santa Clara Counties have conducted countywide stormwater programs for about 15 years. He said the Water Board requires that the stormwater programs implement Best Management Practices in six program areas. He said the stormwater programs submit annual reports to the Board that describe implementation activities.

Mr. Bruhns said staff currently is working on developing a regional stormwater permit that would regulate the four counties under a single permit.

Shin-Roei Lee discussed the monitoring component of the counties' stormwater programs. She said stormwater washes into creeks, and insight into how well programs are working could be gained by monitoring the health of creeks.

Ms. Lee said basic water quality parameters are used to assess the health of creeks. She said the assessment often includes the use of aquatic insects. She said a pollution problem is likely if insects that tolerate pollution inhabit a creek and pollution sensitive insects do not.

Ms. Lee recommended the stormwater programs develop plans that establish timetables for water quality monitoring of each watershed. She recommended annual reports include reliable monitoring data in a standardized format.

In reply to a question, Habte Kifle said staff sent stormwater enforcement letters to four cities. He described corrective actions that have been taken.

Mr. Wolfe said staff is looking into ways to streamline annual reporting requirements.

Mr. Eliahu asked if the programs' monitoring data indicate that water quality has improved during the last 15 years.

Larry Kolb said stormwater is difficult to monitor. He said in the regional stormwater permit that is being developed, staff is considering using the approach described by Ms. Lee and requiring that the health of creeks be monitored.

[Mr. Waldeck left at approximately 12:15 p.m.]

Mr. Wolfe said monitoring data collected by stormwater programs should be used to guide future management decisions.

Sejal Choksi, BayKeeper, commended staff for work done in reviewing the annual reports. She recommended stormwater permits require numeric effluent limits.

Item 8 – 2003-2004 Industrial Stormwater Program Review

Rico Duazo said stormwater from industrial facilities is regulated in several ways. He said NPDES municipal stormwater permits issued by the Regional Water Board require municipalities develop an industrial and commercial stormwater inspection program. He said as part of the program, municipalities develop local ordinances to control stormwater pollution from industrial facilities. He said there are over 200 municipal stormwater inspectors in the Bay Area.

Mr. Duazo said the State Board has issued a General Permit that regulates stormwater discharged from industrial facilities. He said the General Permit requires individual facilities to: (1) implement a stormwater pollution prevention plan; (2) implement a stormwater monitoring plan; and (3) submit an annual report to the Regional Water Board.

Mr. Duazo showed slides illustrating stormwater controls used at auto dismantler facilities and concrete batch plants to control pollutants.

Vic Pal reiterated the fact that the State's General Permit requires industrial facilities to submit annual reports to the Regional Water Board. He said 1400 industrial facilities in the Bay Area are covered under the General Permit, and every facility submitted an annual report to the Water Board for 2003-2004. He said reports include analyses of samples taken during 2 rain events in the wet season and visual observations of stormwater runoff from facilities.

Mr. Pal said stormwater samples taken by industrial facilities are analyzed for several parameters. For each parameter, he said the analytical result is compared to a benchmark level established by U.S. EPA. For example, he said 14% of the industrial facilities submitting 2003/2004 annual reports had sample results that exceeded U.S. EPA's benchmark level for Total Suspended Solids. He said comparing a facility's sample

results to benchmark levels offers a way to see whether a facility is making effective use of stormwater controls.

Mr. Pal said staff does follow up work with industrial facilities that: (1) do not take samples; (2) have analytical results from sample data that are above benchmarks; and (3) have not filed for coverage under the General Permit even though they are required to file.

Item 10 – South Bay Salt Pond Initial Stewardship Plan, Review of Annual Self-Monitoring Report

Steve Moore gave the staff report. He said on March 17, 2004 the Board adopted Waste Discharge Requirements to regulate water discharged from ponds that formerly were used to produce salt. He said the project is the first large scale attempt to reconnect salt ponds back to the Bay. He said U. S. Fish and Wildlife Service and California Department of Fish and Game own the ponds.

Mr. Moore said during the last year FWS and DFG violated the Board order by discharging oxygen-depleted water to the Bay and not communicating violations to staff. Also, he said some monitoring that should have occurred before water was discharged did not occur.

Mr. Moore said on February 1, 2005, FWS and DFG submitted annual reports to the Board. He said on March 25, 2005, staff sent letters to the agencies notifying them of noncompliance with the Board order and requiring revisions to the annual reports. He said the March 25th letters represent a first step in enforcement action. He said further enforcement would be considered if the agencies do not comply.

Mr. Moore said the agencies have reacted positively to staff's letters and are working to increase dissolved oxygen levels.

Mr. Eliahu said FWS' and DFG's project has not been done before and project work involves some trial and error.

Felicia Madsen, Save the Bay, said in the past her organization has given enthusiastic support to the South Bay Salt Pond Restoration Project. She expressed concern with FWS'and DFG's noncompliance with the Board order and said Save the Bay would recommend stronger enforcement action if violations occur again.

Sejal Choksi, BayKeeper, expressed concern that the Board did not assess a monetary penalty against FWS and DFG for noncompliance. She suggested full enforcement action be taken if future violations occur.

Adjournment

The Board meeting was adjourned at approximately 1:10 p.m.