

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

MEETING DATE: December 11, 2019

ITEM:

4

SUBJECT:

MINUTES OF THE NOVEMBER 13, 2019 BOARD MEETING

San Francisco Bay Regional Water Quality Control Board

November 13, 2019 Board Meeting
ADOPTED DECEMBER 11, 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 (510) 313-0610.

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 9:05 a.m. at Elihu M. Harris Building, First Floor Auditorium.

Board Members Present	Board Members Absent	Status
Chair James McGrath Cecilia Ogbu William Kissinger (arrived at 9:15, left at 1:55 p.m.) Jayne Battey Newsha Ajami		QUORUM

Executive Officer Michael Montgomery introduced Engineering Geologist Alec Naugle as the new Division Chief for the Toxics Cleanup Division.

Supervisor Jan O'hara introduced Krista Klinefelter who joined the Planning Division as a scientific aid working in the nonpoint source programs.

Mr. Montgomery announced Sustained Superior Accomplishment awards for Senior Engineering Geologist Jim Ponton and Engineering Geologist Ron Goloubow.

Item 2 – Public Forum

No persons asked to speak during Public Forum.

Item 3 – Minutes of the October 9, 2019 Board Meeting

Mr. Montgomery indicated that the minutes needed to be corrected to show that Board Member Ogbu was not present at the meeting.

Chair McGrath and Board Member Ajami expressed appreciation to staff and everyone who put the last meeting together.

Chair James McGrath asked if all were in favor of adoption of the minutes with the correction—all Ayes. Chair McGrath then asked if anyone was opposed - none opposed.

ITEM ADOPTED

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

State Water Board Member Tam Doduc thanked people for attending the Water Quality Coordinating Committee and said they are developing a plan in response to the Governor’s Executive Order on water resilience. She said there are voluntary agreements in the works for water rights on the San Joaquin and Sacramento Rivers and they will guide next steps for the San Francisco Bay Delta. She also said the State Water Board will hear a state-wide report on the status of the Per- and Polyfluoroalkyl Substances (PFAS) investigations at their next Board meeting and she is interested in next steps for treatment and clean up. She said she expects that will require an integrated and collaborative approach with other agencies and stakeholders.

Board Member Ajami asked questions about the investigation and availability of PFAS data. Ms. Doduc said the data is available on the State Water Board’s website. She also asked about follow up on fire-fighting use of PFAS and impacts on creeks, such as occurred in Berkeley. Assistant Executive Officer Thomas Mumley and Mr. Montgomery responded that we are following up on water quality after fires and working with local agencies to use proper practices to prevent water quality impacts.

Board Member Ogbu announced is that this is her last meeting and how much she appreciated her time on the Board.

Board Member Ajami said she attended a meeting on World Water Tech and there were lots of conversations on water resiliency, PFAS and other emerging issues.

Board Member Battey mentioned concern in the agricultural community about the problems with bees. She also mentioned her participation on the American Leadership Foundation Board regarding sustainability.

Chair McGrath mentioned his participation in the Regional Monitoring Program Annual Meeting, the State of the Estuary Conference and the Water Quality Coordinating Committee. He commented that there is a lot of work to do regarding contaminants of emerging concern.

Mr. Montgomery highlighted a few items in the Executive Officer’s Report including the reports on Lehigh Quarry and Cement Plant. Board Member Battey asked to go on a site visit or attend a community meeting. Assistant Executive Officer Lisa Horowitz McCann said that there is a community meeting scheduled on water quality issues related to Lehigh in Cupertino on Thursday, December 12 at 6:30 pm. Mr. Montgomery mentioned the NuStar Energy Facility and post-fire water quality protection. He also provided a status on the San

Francisco Oceanside Permit challenges and the Water Board's position that the permit is effective as adopted.

Informational Items

Item 5A – Discussion of Work Plans and Priorities for the 2019-2020 Fiscal Year

Mr. Montgomery introduced the item. He said this is an opportunity to remind the Board about the core programs and invite some dialogue about areas where more information or exploration is of interest to the Board. He said the report includes program priority descriptions and some strategic or cross-cutting priorities.

Mr. Montgomery introduced Supervisor Cheryl Prowell who presented on the first priority, safe development at contaminated sites. Division Chief Keith Lichten presented on stormwater challenges. Division Chief Xavier Fernandez presented on climate change and water resilience.

Board Member Ajami said she appreciated the brief and issue-focused discussion of the cross-cutting priorities. Board Member Battey said she agreed with the priorities and they make sense for this region. She asked for an update on the Cannabis Program. Mr. Montgomery explained that the program ramped up and over-reached expectations of counties allowing growing facilities so fewer facilities are enrolling than expected. Board Member Kissinger said he is looking forward to the update of vapor intrusion mitigation guidance. Board Member Ogbu said she appreciated the way the information was put together. Chair McGrath commented that he wants staff to think about fire management as part of climate change. He also said he is concerned about culverts in small watersheds as they will be inadequate for increased flows expected from increased rainfall and runoff and from sediment transport. He wants staff to think about how sediment cleaned out of culverts can be used to supply sediment for shoreline restoration. Mr. Lichten said the Coastal Hazards Adaptation Resiliency Group may take up challenges of culverts and that small creeks will have similar challenges and rehabilitation needs related to flooding and sea level rise. Mr. Fernandez explained the process to change criteria and testing for suitability of dredged sediment for reuse in shoreline resiliency projects.

Board Member Ajami asked about status of the unfunded mandate law suits related to our stormwater permits. Attorney Marnie Ajello and Mr. Mumley explained the status and that our permits are still in effect. Mr. Mumley said we are developing our new permits aware of the uncertain future of the issues. Board Member Ajami asked about status of the BRRIT (Bay Restoration Regulatory Integration Team) and Mr. Lichten responded that it is progressing well.

Item 5B – Enforcement Actions and Priorities for the 2019-2020 Fiscal Year

Board Member Battey said she is happy we are enforcing and wants us to provide additional assistance to under-resourced communities. She recommends looking ahead to infrastructure that is under capacity or inadequate in communities that do not have technical, managerial or funding ability to address their needs. She wants staff to consider root cause of spills and enforceable problems to see if staff can provide any guidance or assistance. Division Chief Bill Johnson said that we have urged consolidation of treatment facilities where appropriate but have not yet made a parallel effort with collection systems. Board Member Battey recommended that staff get involved with facilities that end up with significant enforcement penalties as stewards.

Basin Plan

Item 6 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) to Establish a Total Maximum Daily Load (TMDL) and Implementation Plan for Bacteria in the Petaluma River Watershed – Hearing to Consider Adoption of Proposed Basin Plan Amendment and Substitute Environmental Document.

Mr. Montgomery introduced the item and Environmental Scientist Farhad Ghodrati made the presentation.

Board Member Battey asked several questions about actions to address homeless encampments and pet waste. She advocated for responsible parties to have flexibility to propose methods to address homeless population versus prescribing. Supervisor Kevin Lunde indicated this flexibility exists. She further commented that septic system inspections should occur when a property changes ownership.

Board Members Kissinger and Ajami asked several questions about the data and long-term monitoring. Staff explained the Water Board's past sampling program that indicated impairment and the TMDL's plan for responsible parties to monitor effectiveness of their actions and for the Water Board to come back and monitor waters in the watershed again every five years.

Chair McGrath asked questions about the data and interpretation of the data that defined the impairment. Mr. Ghodrati and Planning Division Chief Xavier Fernandez explained how the data was interpreted, specifically that impairment is when more than 10% of the samples analyzed exceed the water quality objective for bacteria. Mr. McGrath also asked about the establishment of the grazing program for this watershed and Mr. Ghodrati responded that staff will propose an order and program for grazing within three years. Board Member Kissinger asked about the long-term monitoring plan and who is responsible. Mr. Lunde explained the proposed monitoring plan, indicating the Water Board will monitor every five years and some of the responsible parties will monitor more frequently pursuant to permits and monitoring programs.

William Barkes said he is concerned about Novato Sanitation District spraying human waste on grass, bringing in cows and flooding that transports the bacteria. He said there is also a dump that claims it is catching all runoff and they cannot. He said he is concerned about septic systems in the Black Point area and the fifty houses built on the golf course.

Ben Eichenberg, attorney with San Francisco Baykeeper, said that the concerns they raised in their comment letter and discussions with staff have not been adequately addressed. He said the shortcomings of the proposed TMDL and plan include that it does not establish an actual "Total Maximum Daily Load" as it does not allocate the load, it does not have an adequate monitoring plan, and it does not use waste discharge requirements to compel load reductions where most needed.

Board Member Battey asked staff to respond to these comments. Mr. Lunde said the TMDL identifies septic systems at Black Point that must control discharges, does not consider the dump as a source of bacteria, nor the water from the Novato Sanitation District because it is treated prior to irrigation. In response to Mr. Eichenberg, Mr. Lunde said that the approach to allocations, implementation and monitoring in this TMDL is similar to other TMDLs in this region and throughout the state, and it is appropriate for the dynamic nature of bacteria.

Chair McGrath asked if, per Mr. Eichenberg's comments, it would take more or less time to establish regulatory programs for sources instead of doing a TMDL. Mr. Lunde said it might take less time to establish the programs but may not get implementation success sooner and may prevent access to USEPA grant funds to help pay for source reduction. Mr. McGrath said he supports relying on best practices with agriculture as in other watersheds and wants a light touch on homeless population (but wants to know the magnitude of the problem region-wide). Board Member Ajami also supports transferring best practices from other watersheds to agriculture and recommends considering new technologies when looking forward to future monitoring and assessment. Board Member Battey said we must find ways to implement these plans so that communities can keep up with this plan amidst other environmental and economic pressures. She asked if staff will involve stakeholders in adapting the plan and monitoring program.

Mr. Montgomery recommended adoption of the TMDL with three changes: 1) on page 2, Finding 8, delete "January," 2) page A-12, change "or" to "on" in first sentence of Section 7.8.5.9, and 3) direction to Water Board staff to include add that Baykeeper and other stakeholders when adapting implementation and monitoring plans.

Board Member Kissinger moved adoption with the changes. Board Member Ajami seconded the motion.

Ayes- McGrath, Ogbu, Kissinger, Ajami, Battey

Nays- none

ITEM ADOPTED

Site Cleanup Requirements

Item 7 – Champion Laboratories, Inc., Maxion Wheels, a division of Lochpe-Maxion, Cranbrook Realty Investment Fund, L.P., EOP-Industrial Portfolio, L.L.C., for the property located at 4186 Park Road, Benicia, Solano County – Adoption of Site Cleanup Requirements.

Mr. Montgomery introduced the item and Engineering Geologist Bill Cook made the presentation.

Todd Maiden, environmental attorney for Champion Laboratories, commented that Champion went through bankruptcy in 2016, which resulted in a reorganization plan that discharged Champion's cleanup obligation and an injunction against actions on discharged claims, over which the bankruptcy court retains jurisdiction. The bankruptcy court is scheduled to hear Champion's motion that the cleanup obligation was discharged on November 25. Champion requested that the Board defer action until after the bankruptcy hearing.

Board Member Kissinger asked what the harm of going forward today is and the rationale for the delay. Mr. Maiden said that it is against the injunction. Board Member Kissinger asked if, in Mr. Maiden's environmental work, he has had an environmental claim discharged. Mr. Maiden said no, but he has been in bankruptcy hearings to estimate the value of an environmental claim. Attorney Yuri Won explained that she and the Attorney General's Office do not believe that there is injunction, the cleanup obligation was not discharged, and Champion assumed responsibility for the cleanup. She said the downside to the delay is that there are potential risks to people from vapor intrusion that need to be addressed, in addition to the ongoing discharge to the environment.

Robert Hines, attorney for EOP, commented that discussions with staff were extensive and were productive. He said that if the Board postpones this matter until bankruptcy issues resolved, all parties and the Board will have more clarity and the item would go on the agenda as uncontested. He said EOP appreciates the change made to the Order to make EOP secondarily responsible and asked the Board to retain that. He said that he disagrees with staff and counsel's view that once a discharger always a discharger and does not think the Water Code supports that interpretation. He said that EOP was an intervening owner that contributed millions of dollars to investigation and cleanup when it owned the property. He encouraged the Board to be bold and let EOP out of its obligation because it did not cause contamination and performed all its obligations. Board Member Kissinger asked if Mr. Hines was asking to be removed from the Order altogether or be identified as secondarily responsible. Mr. Hines said he was asking the Board to remove them from the Order. There was discussion confirming that the Order names EOP secondarily responsible. Board Member Battey asked about the time and effort on cleanup while EOP owned the property and observed that the site did not get cleaned up in that time. She also asked if EOP knew about

the site conditions at the time of purchase and sale of the property and Mr. Hines responded affirmatively. There was discussion on why EOP belongs on the Order.

Ralph Swanson, attorney for Cranbrook, said that Cranbrook is the current owner of the property and he will make comments for Cranbrook and also for Maxion, another party. He said the Cranbrook also filed an objection to Champion's bankruptcy motion and, in acquiring the property, took an assignment of responsibility for cleanup of the property. Cranbrook's responsibility under a private agreement is very small and Champion has the bulk of the responsibility, which was incentive to purchase the property. Cranbrook agreed to the Order until it found out in October that Champion was claiming its cleanup responsibility was discharged. He also asked the Board to delay adoption of the Order to after the bankruptcy hearing to provide more clarity for parties and the Board. He said that since the property has been contaminated for two decades, waiting a few more weeks to approve the Order won't have much significance. Mr. Swanson read a statement on behalf of Maxion which asked the Board to delay the Order until after the bankruptcy hearing for clarity and asked for an amendment to state that additional dischargers could be named. Board Member Kissinger asked Mr. Swanson what he thinks is the downside of adopting the Order. Mr. Swanson thinks it is a lack of clarity about how the Order will be implemented since Champion carries most of the responsibility. Board Member Kissinger asked if he will be back to ask the Board to delay again if the bankruptcy court does not rule in November and he said he probably will.

There was discussion on Maxion's late written comment letter. Chair McGrath declined to accept it since Mr. Swanson read Maxion's statement, which conveyed to same points as the letter.

Chair McGrath described his experience at the Port of Oakland in making these business agreements regarding clean up. He supports moving forward since the cleanup needs to occur.

Ms. Won commented that the Order should be adopted today because the first due date is coming up soon, the work needs to be done, and the bankruptcy court decision and timing is uncertain. Board Member Battey asked if there is any risk in adopting the Order today. Ms. Won said she did not think so and that the Order could be amended to remove Champion if that is the result from the bankruptcy court.

All Board members discussed the reasons that the Order should be adopted today and the need for cleanup to proceed.

Mr. Montgomery recommended adoption of the Order.

Chair McGrath called the vote.

Ayes- McGrath, Ogbu, Kissinger, Ajami, Battey

Nays-

ITEM ADOPTED
Item 8 – Correspondence There was no correspondence presented at this meeting.
Item 9 – Closed Session – Personnel The Board did not meet in closed session to discuss personnel matters.
Item 10 – Closed Session – Litigation The Board did not meet in closed session to discuss litigation.
Item 11 – Closed Session – Deliberation The Board did not meet in closed session to deliberate.
Item 12 – Adjournment Meeting adjourned at 2:19 p.m. until the next Board Meeting – December 11, 2019.