

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

MEETING DATE: February 10, 2021

Item: 4

Minutes for the December 16, 2020, Board Meeting and January 13, 2021, Closed Session

December 16, 2020 Board Meeting
Adopted February 10, 2021

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

Chair James McGrath called the meeting to order at 9:01 a.m. via Zoom Virtual Meeting Platform.

Board Members Present	Board Members Absent	Status
Chair James McGrath		QUORUM
Vice-Chair Jayne Battey		
William Kissinger		
Newsha Ajami		
Alexis Strauss Hacker		
Andrew Gunther		

Division Chief (DC) Xavier Fernandez introduced newly-promoted, Senior Water Control Resource Engineer Richard Looker, who gave a brief introduction to the Board. Chair McGrath shared a story about his experience with Richard.

Supervisor Kevin Lunde introduced two new seasonal staff from the Watershed Stewards Program, Erin Fairley and Morgan Williams.

Supervisor Jim Ponton introduced Scientific Aid Nicholas Fetherston.

DC Anna Torres introduced Seasonal Clerks Michael Orji, Camille Plant, Carolina Hernandez, and Liz Aguayo.

Item 2 – Public Forum

Carin High, Co-Chair of Citizens Committee to Complete the Refuge, provided a brief description of her organization and gave an update on the Area 4 development project located at the head of Mowry Slough in Newark, California. She said the project was a poster child of what not to do under sea level rise. She is expecting a decision on their CEQA lawsuit. She would like the Board to assert its regulatory authority over the project.

Item 3 – Minutes of the September 9, 2020, Board Meeting

Motion: Vice Chair Battey

Second: Board Member Kissinger

Ayes: McGrath, Battey, Kissinger, Ajami, Hacker, Gunther

Nos: none

ITEM APPROVED

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

Board Member Gunther reported on behalf of the Climate Action Subcommittee of the Board that he and Vice Chair Battey will be working with staff to develop ideas for adapting to climate change.

Vice Chair Battey applauded the recent work of Thrive, the Alliance of Nonprofits in San Mateo County, in regard to a ban on single-use plastics.

Chair McGrath shared a photograph that symbolized the end users of the work of the Regional Water Board. He wished everyone season’s greetings, emphasizing the role of science, in particular how science has worked to combat the coronavirus. Chair McGrath spotlighted the work of UnTrash East Bay. He reminded the Board that there is a proposed settlement between the City of San Jose and one of the railroads regarding cleanup of a right-of-way. Chair McGrath shared that the City Council of Berkeley authorized Measure T1. He spoke briefly about items from the Chairs’ Call on December 7. Lastly, he informed the Board that State Water Board (SWB) Member Tam Doduc will not apply for reappointment.

Board Member Ajami highlighted that State Board Member Firestone was the Co-Founder of Community Water Center in the Central Valley and is looking forward to the great work she will do. She echoed Chair McGrath’s comments on science, emphasizing the role of those who discovered mRNA.

SWB Member Tam Doduc reported that two weeks ago the State Water Board approved the Toxicity Provisions and that the Winery Order item was postponed until the January Board Meeting. She added that a preliminary staff proposal was released regarding the statewide construction stormwater permit, which may make it to the Board in the summer. SWB Member Doduc echoed Board Member Ajami’s comments on new Board Member Firestone.

Board Members Hacker, Kissinger and Ajami, Vice Chair Battey and Chair McGrath expressed their appreciation for SWB Member Doduc’s work and leadership on the State Water Board.

Executive Officer (EO) Michael Montgomery updated the Board on the recent Kinder Morgan fuel spill that occurred in Walnut Creek. US EPA has created a unified

command that Regional Water Board staff will be a part of. It will be covered in a future EO Report. Vice Chair Battey encouraged the team to look at the history and implications beyond the affected area. Assistant Executive Officer (AEO) Lisa Horowitz McCann added that staff have excelled in response, especially considering the current work-from-home conditions. Chair McGrath made a few follow up remarks, including a request for a “lessons learned” summary. Board Member Ajami questioned if a more systematic approach to asset management is possible. Board Member Hacker suggested the Regional Water Board play a larger role in the joint command of the spill response and an audit to verify the need for more active habitat restoration. Board Member Kissinger asked about the jurisdiction of the Public Utilities Commission. EO Montgomery provided a brief reply to the combined feedback. Chair McGrath concluded by reiterating that as part of the lessons learned, perhaps the state and local governments can play a more central role in future, similar scenarios.

EO Montgomery brought to the Board’s attention that CalRecycle via State Water Board has requested that personnel be provided to work on state-wide fire recovery efforts. One staff from the Toxics Cleanup Division will be volunteering for the work. Staff that are working on contact tracing for the state will also continue their service.

EO Montgomery congratulated the two Sustained Superior Accomplishment award recipients, Seniors John Wolfenden and Robert Schlipf. He acknowledged the hard work of the social media team. He also made note of the employees who have hit their 20- and 30-years of service milestones.

Vice Chair Battey thanked the staff for their lengthy service. She provided suggestions on improving the Board’s social media efforts. Board Member Gunther echoed Vice Chair Battey’s comments on staff milestones. He thanked staff for their work on Union Point Park and asked that there be follow up on the RV issue. Board Member Ajami added her suggestions on how to keep track of individuals involved in the homelessness displacement. She also emphasized the importance of a cogent social media strategy.

Item 5 – Uncontested

5A. Valero Refining Company-California, Valero Benicia Refinery, Benicia, Solano County

5B. Napa County Flood Control and Water Conservation District, Stream Maintenance Program, Napa County; San Mateo County, Routine Maintenance Program, San Mateo County; and Contra Costa County Flood Control and Water Conservation District, Routine Maintenance Program, Contra Costa County

Chair McGrath administered the oath to persons testifying.

Break at 10:16 a.m.

Back in session at 10:26 a.m.

EO Montgomery provided a summary of the two items on the uncontested calendar. He introduced representatives who came to answer questions on behalf of Item 5B. Allison Knapp, Ave Brown, Chris Lau and Sandeep Singh from Contra Costa County and Julie Casagrande from San Mateo County. Ken Schwarz and Bridget Lillis, from Horizon Water and Environment, were present as County consultants.

Vice Chair Battey shared her appreciation for standardization of practices that come from the WDRs [Waste Discharge Requirements, Item 5B] and the collaborative nature of the work. Board Member Ajami echoed Vice Chair Battey's comments regarding the streamlining of the [stream maintenance] process. Board Member Ajami commented on Item 5A's highlighting the effects of climate change and the collaborative nature of the two items.

Chair McGrath, regarding Item 5B, commented on the balance of the responsibility of local governments to deal with the built environment and preserving the environment. He appreciated the structure and detail of the work, praising the regulatory staff, Flood Control Districts, and the consultants. Chair McGrath asked Contra Costa County how they are incorporating the timeframe of sea level rise into their maintenance responsibilities moving forward. Deputy Director of Public Works Allison Knapp provided some background and directed the question to Environmental Division Manager Ave Brown. She thanked DC Keith Lichten and Horizon [Water and Environment] for their support. Ms. Brown gave a detailed response on the considerations given to sea level rise. She added her thoughts on the effects of other climate change issues, including fires and storms. DC Lichten thanked the counties involved for the work done on the programs. He also highlighted their participation in BAFPA [Bay Area Flood Protection Agencies Association], where similar questions are analyzed.

Chair McGrath asked for a motion.

Motion: Board Member Kissinger

Second: Board Member Ajami

Ayes: McGrath, Battey, Kissinger, Hacker, Gunther, Ajami

Nos: none

ITEM APPROVED

Item 6 – Advances in Remediation Technologies at Sites Contaminated with Volatile Organic Compounds

EO Montgomery introduced Staff Roger Papler. Staff Papler made a presentation on the topic.

Board Member Gunther asked about bioremediation's success with other groundwater contaminants. Staff Papler provided a reply and DC Alec Naugle expanded upon the response. There was a dialogue on the topic.

Board Member Hacker asked about the quantity and scope of work of similar sites in the region. DC Naugle provided a reply.

Vice Chair Battey asked about the availability of the presentations for public access on the Regional Water Board website. DC Naugle provided a reply.

Board Member Ajami expressed her concern about the future impact of new chemicals on water.

DC Naugle informed the Board of the work of Senior John Wolfenden in preparing the item and the general work on this topic.

Item 7 – Overview of Regional Water Board Proposed Strategic Priorities

Discussion of the Board's Programs and its Work Plan and Priorities for the 2020-2021 Fiscal Year

EO Montgomery provided background on the item. DCs Fernandez, Lichten, Bill Johnson and Terry Seward made a presentation about their program's priorities for 2021. EO Montgomery made a concluding statement.

Board Member Gunther was pleased with the emphasis placed on climate change across the division presentations. He asked about processes involved in cross-divisional collaboration. EO Montgomery provided a reply, including a few examples. Board Member Gunther spoke to DC Lichten about the utilization of sediment for beneficial uses across the region.

Board Member Hacker expressed her interest in a monthly discussion of stormwater requirements leading up to the permit issuance. DC Lichten gave feedback on the request. There was discussion on the topic.

Board Member Ajami acknowledged the hard work and accomplishments of the Board over the recent years. She touched on some issues surrounding infrastructure planning and asked about measuring performance, in particular how it can impact funding for future projects. Board Member Ajami concluded with a remark about cross-agency collaboration, specifically the BRITT [Bay Restoration Regulatory Integration Team]. DC Lichten provided a reply.

Vice Chair Battey echoed the other Board members' comments on climate change and the stormwater permit process. She highlighted the importance of aligning our priorities with our social media communication.

Board Member Kissinger echoed the other Board members' comments. He brought up potential opportunities for collaboration with the new administration.

Chair McGrath inquired about supply wells at risk from industrial plumes. DC Seward provided a reply. He made a concluding statement praising the work of the Regional Water Board during 2020.

Lunch break at 12:15 p.m.

Back in session at 12:49 a.m.

Item 8 – Enforcement Actions and Priorities for Fiscal Year 2020/21

EO Montgomery introduced DC Johnson, who made a presentation on the topic.

Chair McGrath provided some commentary to supplement the presentation. He asked DC Johnson about highlights from the enforcement actions in 2020 and DC Johnson provided a reply.

Vice Chair Battey expressed her appreciation for the use of enforcement as a tool. She asked about the process to become a SEP [Supplemental Environmental Project] and how the Regional Water Board can utilize SEPs as they relate to environmental justice issues. DC Johnson provided a reply. They continued with a discussion on SEPs.

Chair McGrath provided context as it relates to Board Member Hacker's experience with enforcement during her time at EPA. Board Member Hacker inquired about the role of inspections in bringing enforcement cases to the Board and asked what the emphasis for inspections will be in 2021. DC Johnson provided a reply. EO Montgomery and Senior Brian Thompson joined in the discussion.

Board Member Ajami asked if there was a way for the public to easily access the paperwork needed for permitting in the region. She also suggested prioritizing data management practices when aggregating projects across the Regional Water Board. DC Johnson provided a reply. They continued with a discussion on the topic.

AEO Thomas Mumley referred to Board Member Hacker's comment on coordination with Region 9 US EPA. He further responded with information on the Regional Water Board's enforcement capabilities.

Item 9 – Regional Monitoring Program for Water Quality in San Francisco Bay

AEO Thomas Mumley introduced Dr. Melissa Foley, RMP Program Manager, San Francisco Estuary Institute (SFEI). Dr. Foley made a presentation on the topic. Dr. Jay Davis, RMP Lead Scientist at SFEI, provided concluding remarks.

Board Member Ajami asked how SFEI has been incorporating effects from the recent wildfires into the monitoring program. Dr. Foley provided a reply, focusing on a study from the 2017 wildfires. AEO Mumley and Dr. Davis contributed to the discussion.

Board Member Gunther commented on the extraordinary achievement of the RMP, including the ability to present data that has been compiled over decades.

Chair McGrath shared a story about his time at the Port of Oakland as it relates to the RMP and commended program's ability to use data to continually upgrade.

Item 10 – Correspondence

No correspondence

Item 11 – Closed Session – Personnel

The Board did not meet in closed session for Personnel in this meeting

Item 12 – Closed Session – Litigation

The Board did not meet in closed session for Litigation in this meeting

Item 13 – Closed Session – Deliberation

The Board did not meet in closed session to deliberate in this meeting.

Item 14 – Adjournment

Board Member Gunther motioned, and Board Member Kissinger seconded.

The meeting was adjourned at 2:10 PM

January 13, 2021, Closed Session
Adopted February 10, 2021

Call to Order 9:05 a.m.

1. Closed Session to Discuss Santa Clara Valley Water District v. San Francisco Bay Regional Water Quality Control Board (Court of Appeal, First Appellate District, Division Four, Case No. A157127)

Authority: Discuss Pending Litigation, Gov. Code section 11126(e).

Present:

Board Members: Jim McGrath, Jayne Battey, Bill Kissinger, Newsha Ajami, Alexis Hacker, Andy Gunther

Attorneys: Tiffany Yee, Tamarin Austin, Emel Wadhwani, Yuri Won, Marnie Ajello

Staff: Michael Montgomery, Tom Mumley, Lisa Horowitz McCann, Xavier Fernandez, Keith Lichten, Liz Morrison

Board Members Kissinger and Ajami left the closed session meeting at 10:14 a.m.

Break 10:14-10:31 a.m.

2. Closed Session to Discuss City and County of San Francisco v. State Water Resources Control Board and San Francisco Bay Regional Water Quality Control Board (Alameda County Superior Court; Case No. RG19042575)

Authority: Discuss Pending Litigation, Gov. Code section 11126(e).

Present:

Board Members: Jim McGrath, Jayne Battey, Alexis Hacker, Andy Gunther

Attorneys: Marc Melnick, Dan Harris, Marnie Ajello, Emel Wadhwani, Paul Ciccarelli, Yuri Won

Staff: Michael Montgomery, Tom Mumley, Lisa Horowitz McCann, Bill Johnson

Adjourn: 11:34 a.m.