

North San Francisco Bay Selenium Total Maximum Daily Load
Advisory Committee
DRAFT MEETING SUMMARY
Meeting #1
December 12, 2007

I. Welcome

Dave Ceppos, California State University Sacramento, Center for Collaborative Policy (CCP), opened the meeting, welcomed participants and reviewed the agenda. Self-introductions of all attendees followed.

Tom Mumley, Assistant Executive Officer, San Francisco Bay Regional Water Control Board (Water Board), welcomed the group. Mr. Mumley said that the Advisory Committee effort is part of the Water Board's overall effort to conduct the North Bay Selenium Total Maximum Daily Load (TMDL) process. He further explained that the Water Board has accepted financial support from the Western States Petroleum Association (WSPA) to support the North Bay TMDL process but that the Water Board retains oversight authority of the project. The Water Board decided to use the Advisory Committee process to engage the public. In response to a question about whether WSPA or other affected stakeholders will have access to draft project documents, Mr. Mumley stated that no one except the Water Board's project manager, Ms. Barbara Baginska and related Water Board staff will see draft documents. WSPA will be provided no preferential treatment. He noted that another project, the South Bay Copper and Nickel TMDL, had been funded by the City of San Jose and is similar to the North Bay TMDL. That project was successful but time intensive. Mr. Mumley described his expectation that the North Bay TMDL Advisory Committee will strive for consensus and the Water Board will rely on consensus outcomes from this stakeholder process. In closing, Mr. Mumley asked participants to partner with the Water Board on this important TMDL effort.

A question was asked as to what WSPA stands for and who they represent? In response it was explained that the trade association represents a majority of petroleum manufacturers throughout the western United States including several refineries in the northern San Francisco Bay region.

II. Water Board's Perspective on the Project Approach

Barbara Baginska, Water Board Project Manager and engineering geologist, introduced herself. She described her role on the project including her oversight and management of the technical consultant (TetraTech) and the public process consultant (CCP). Ms. Baginska provided a PowerPoint presentation addressing a variety of project topics including (but not limited to) the Water Board's expectations and ideas for the North Bay TMDL project, the proposed role of the Advisory Committee, and related items. A primary topic in the presentation was

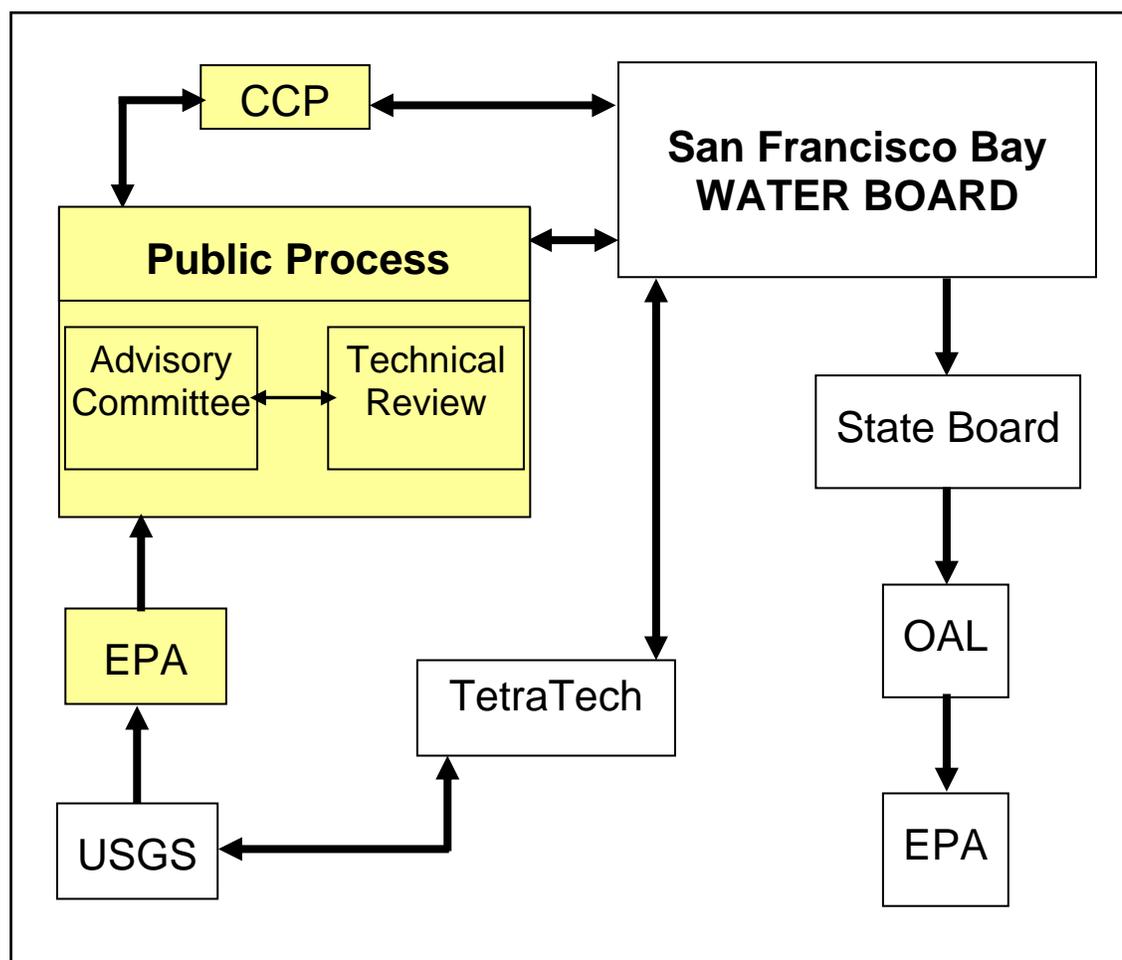
to convey how important public participation in the North Bay TMDL is to the Water Board.

To view Ms. Baginska's presentation go to:

<http://www.waterboards.ca.gov/sanfranciscobay/TMDL/seleniumtmdl.htm>

Some key points from the presentation include:

- This project will only be about selenium in the North San Francisco Bay. Participants might have other concerns not directly related to this TMDL and staff will work to set up appropriate ways to address these other issues but this group will focus solely on selenium.
- TMDL development is a standardized, 8-phase process. All Water Boards follow the designated process as set forth by the State Water Resources Control Board.
- Project process diagram (revised to reflect changes suggested during the meeting):



- The Water Board would like to receive interest-based advice on the preparation of the TMDL. There is not an expectation that everyone will

- agree on everything around the table. But the idea is to create an environmentally beneficial TMDL and to identify the key items that must ideally be addressed to make the selenium TMDL sustainable and effective.
- Role of the US Geological Survey (USGS): The USGS will work with TetraTech and Water Board staff in the development of work products. They will provide input on the adequacy of scientific information and conclusions.
 - Flow of work products (memorandums): Ms. Baginska will receive documents from Tetra Tech first, and will then provide them to USGS. Experts in the field will be sought after to provide insight and consultation at specific points in the TMDL development. Staff reports will also be done as part of the regulatory process. Scientific peer review of the Staff Report describing all technical analysis will be also conducted as part of the regulatory process.
 - Technical Review Process: Staff will talk to Advisory Committee members and will ask for advice and endorsement of appropriate selenium experts. Water Board staff have already begun to compile a list of selenium experts. Advisory Committee members are not expected to be selenium experts.
 - The effort at hand is great. The Water Board realizes it is a lot of work for participants. It is a lot of work on the staff side too. It is hoped that all participants will stay engaged for the entire process (including the December 2008 California Environmental Quality Act [CEQA] scoping meeting).
 - Documents will be distributed to participants as soon as possible for review prior to meetings.
- *Question: Will the group be dealing with (National Pollutant Discharge Elimination System) NPDES permit issues that go into effect in May 2010?*
 - Yes.
 - *Question: Have you had discussions with Central Valley Regional Water Quality Control Board staff to characterize where they are at regarding upstream selenium issues? Will the Central Valley Board be included in the process and support the plan? What if they do not reach the goals that we require? Then what?*
 - The Central Valley Board already has a selenium TMDL and the related implementation plan. The Water Board (San Francisco) works with other geographically related Boards and expects to work with the Central Valley Board. This project is recognized as a project to work on together. But, in a worst-case scenario (wherein the Central Valley Board was resistant to Water Board recommendations) the North Bay selenium TMDL would still be sent to the State Board for consideration. That said, we don't expect to be in conflict with the Central Valley Board; rather we expect that we have a lot to gain working together.

III. Advisory Committee Process & Needs

Mr. Ceppos handed out the “Proposed Draft Advisory Committee Operating Rules” and the Final Stakeholder Assessment Report, both prepared by CCP.

Assessment

Mr. Ceppos started with the Assessment Report and explained that CCP functions with complete independence, both contractually and in general practice from the project sponsors and leaders. A Summary Memorandum of the assessment findings had been distributed several weeks prior to the meeting, so many participants would have already seen that. He explained that the report can be found on line at:

http://www.csus.edu/ccp/publications/North_Bay_Selenium_TMDL_Assessment_Report_Final.pdf

Mr. Ceppos explained that conducting a stakeholder assessment is a common undertaking for CCP. The assessment conducted for the North Bay TMDL project was not exhaustive in terms of numbers of participants (fourteen) but that it was comprehensive and confidential. Mr. Ceppos explained that the recommendations in the report are simply that, recommendations. It is up to the Water Board and Advisory Committee to address these recommendations. Key recommendations include:

- The proposed stakeholder group should be advisory in nature and should be preferably referred to as “Advisory” by name.
- Key stakeholders may be invited to participate in the Advisory Committee but the Committee cannot be formally “chartered” or “seated” by the Water Board. Rather, such an Advisory group must remain essentially “ad hoc”.
 - The best that this group can do is be advisory, as there can be no binding decisions.
- The Advisory Committee should be “consensus-seeking” but not at the expense of timely progress. More specifically (and in support of the proposed purpose), the group should try to identify topics where there is existing agreement and should also spend a reasonable amount of time identifying where agreement can take place on key items. That said, attempts to reach agreement / consensus can not be unwieldy and unduly time consuming as such agreements are at best, advisory and non-binding.
 - CCP does recommend adopting decision rules.
 - It will be key to gauge where there are levels of agreement. There are no expectations that there will be agreement but it is likely there could be and systems need to be in place to deal with that.

Operating Rules

The group then turned to the proposed draft Operating Rules. (Go to <http://www.waterboards.ca.gov/sanfranciscobay/TMDL/seleniumtmdl.htm> for a copy of the draft.) Mr. Ceppos stressed that the list was draft and that feedback was needed from both those in attendance and those who could not make the first

meeting. Between the December meeting and committee's next scheduled meeting in March, 2008, CCP will work with participants to refine the rules. In March the Advisory Committee can ratify a final document.

Mr. Ceppos then went through the draft section by section. He began by reiterating a key finding of the assessment: there is a compelling lack of shared understanding regarding selenium issues among stakeholders. There are interesting parallels with the various ideologies; many are very concerned about Central Valley flows. The Central Valley Board has different opinions about the importance of those flows. Secondly, there is a broader issue of why selenium was placed on the 303d list for the North Bay. Before this group can get into a meaningful discussion on selenium issues, CCP advises that the committee needs to address these topics.

Key items / Questions

- Section 4: Roles and Responsibilities
 - All parties that sit at the table are considered participating and affected.
 - Members are expected to communicate with and be informed by their stakeholders through their respective, customary communication methods.
- Section 5: Decision Making
 - The idea here is consensus with accountability.
 - There are varying levels of effort that any group can exert to seek consensus. This can include enormous amounts of time getting people to agreement. That is not expected here. This is not a negotiation.
 - Where agreement can be reached, it will be memorialized as such and where agreement cannot be reached, the different perspectives will be identified too. It will be the responsibility of the Water Board to decide how to address different perspectives.
 - Ms. Baginska noted that the Water Board will try to address recommendations and will come back to the Advisory Committee with results.
- *Question: Is there a role the Advisory Committee might have in coming up with what the uncertainties might be? Framing what information is needed?*
 - The matter at hand is complex. Informed assumptions will have to be made and participants will have to decide how much support they can provide for such assumptions. The effort is taking place with a short timeframe. The chemistry of selenium in the Bay is very complicated.
 - Don't forget that everyone has the 'fail safe' of the formal public process.
 - The group will need to be careful to differentiate between scientific research that is interesting and what is needed for the TMDL.
- *Question: Regarding "Accountability" – what does this mean?*

- Philosophically, “consensus” is actually vesting power to the smallest minority because it only takes one party to break a unanimous result. Any process that allows a party to do so without having the responsibility to resolve the impasse essentially creates a situation where parties are not accountable for their actions. The suggested approach could be called ‘Consensus with accountability’. Mr. Ceppos used the ‘straw poll’ tool as an example. If a participant ‘votes’ with a thumbs-down they will also need to bring forward an alternative that accommodates everyone’s point of view while still addressing their interest as well. But Mr. Ceppos said he doesn’t anticipate that this group will do this that much. It’s a good faith effort. No one will be asked to ‘sell out’.
- Section 6: Communications
 - Some items still need to be decided in this section. For example, 6.3, Information Publication.
 - *Question: Assuming everyone comes forward. How open are the proceedings for guests who are not on the Advisory Committee?*
 - These are public meetings. The Water Board has a list of interested parties and sent a flyer with notice of this meeting to those on that list.
 - At each meeting, every agenda item will have a public comment opportunity. Mr. Ceppos explained that first he’ll check in with the committee, and then he’ll check in with the public. The Advisory Committee needs to be informed by what others are saying as well.
 - *Question: We are here for shared perspectives but the one issue can be difficult is when new people come in and want to re-hash issues that have been closed in previous meetings.*
 - We won’t have that much time to spend answering questions that have already been discussed. For this project to be successful, the committee will have to stick to the deadlines proposed.

IV. Discussion of Selenium Conditions and Questions

Mr. Ceppos opened the meeting for discussion among the invited Advisory Committee members and the general public.

- *Question: I’ve heard some comments and questions about the role of Central Valley Region 5 and the importance of the water coming from that upper water shed. Can you clarify what we need to know; what information is available; what certainties are there? When you look at that question and taking the timeframe into perspective, what’s important? Further, the flows and how the Delta is operated changes over time.*
 - Time will need to be taken to share and normalize perspectives.

- Future water supply decisions are more critical than Region 5 water quality decisions. By design we can only work with what we know.
- *Comment: I came here today in good faith because I want selenium cleaned up. I know we can't do everything at once. We are very uncomfortable with a discharger totally funding an initiative. In response to Mr. Mumley's previous comments, I'd make a distinction between the City of San Jose, a public entity, versus WSPA, a private association. We do support the concept of polluter pays. I'm concerned also about unintended consequences. There are a variety of issues that the refineries do that communities are not supportive of. We wouldn't want participation in this effort to seem like tacit support of other activities.*
- *Question (Mr. Ceppos): What, if anything, could be done to help a participant have more confidence in the process?*
 - Only the results will tell.
- *Comment: A collaborative process doesn't mean everyone is there. Time and time again discharger-funded studies don't provide the most accurate information. I think a lot of it has to be about the end result.*
 - WSPA response: the mission that WSPA's been given (by it's members), is to support the development of the TMDL based on the best science available that results in appropriate water quality limits. The Water Board has limited resources and they didn't have an effective timeline.
 - Valero additional response: 3 companies put a lot of money forward in the 90's to fix the problem and now maybe we have to do more. Maybe we should. I don't think the process in the 90's was that effective in taking various perspectives into view. The result didn't really improve the water quality. We really view getting the best science as the way to do it and it benefits everybody – us, the board, the public. The process wasn't moving quickly and we wanted to move it along. The TMDL is completely under control by the Water Board. We are putting our faith in the process.
- *Question: What if WSPA doesn't like the 'reasonable' results?*
 - Reasonable is scientifically defensible.
- *Question: What studies are being done regarding selenium impacts on waterfowl health and population dynamics (provided by Mr. Ceppos based on his discussions with other stakeholders not in attendance)?*
- *Question: What might be the impact of future TMDL implementation actions on waterfowl habitat and wetland management (provided by Mr. Ceppos based on his discussions with other stakeholders not in attendance)?*
- *Question: What are the potential implications to a South Bay discharger like the City of San Jose?*

- Until we have the TMDL it is hard to address this question. This process will not add an immediate impact.
- *Question: Funding issue – I was under the impression that Tetra Tech reported directly to the Water Board. Does WSPA see anything prior to the Advisory Committee?*
 - WSPA gets what everyone else gets, at the same time and has no privileged access.
- Can WSPA pull the plug on the project?
 - No.
 - Tom Grieb (TetraTech Project Manager): There is a Memorandum of Understanding (MOU) between WSPA and the Water Board to make sure TetraTech has the independence it needs. We've been working closely with Ms. Baginska and sharing information and draft reports. The MOU is posted on the Board's website if anyone wants a copy. <http://www.waterboards.ca.gov/sanfranciscobay/TMDL/seleniumtmdl.htm>

V. Discussion of TMDL Technical Steps

Ms. Baginska gave a second PowerPoint presentation. To view her full presentation please go to: <http://www.waterboards.ca.gov/sanfranciscobay/TMDL/seleniumtmdl.htm>. Ms. Baginska began by reviewing a map of the project area. She also clarified the 1998 303(d) listing.

Over the last ten years much has been learned about Bay Delta hydrology and how different segments of the Bay respond to freshwater inflows and the loads of pollutants that come with these inflows.. More has also been learned about what the major sources are and how they mobilize. After considering all these factors the Water Board decided to address selenium in the North Bay first (and will address selenium in other parts of the Bay subsequently).

Despite concentrations of selenium in the North Bay being lower than the concentrations in the South Bay the observed adverse impacts of selenium on aquatic life are more pronounced in the North Bay. Agricultural water runoff is an important factor as has been discussed. In the North Bay, both human health and wildlife can be affected by the presence of selenium.

Ms. Baginska reviewed the Project Plan including the problem statement, numeric target, and source analysis. In the end the TMDL will need to show the steps that will result in a reduction of concentrations of selenium in fish and other species' tissue.

Mr. Mumley explained that the Water Board's proposed plan is to establish numeric fish tissue targets that are consistent with the standards that EPA is expected to develop for the Bay. The Water Board is relying on the outcomes of the work by EPA, USGS, and others on the Federal level, in establishing the targets for the North Bay TMDL.

Ms. Baginska stressed that a key to success is a strong implementation process. The Water Board's goal is always to consider implementation as an adaptive implementation. This is a complex and non-linear process. Everyone needs to think about implementation from the beginning.

In closing Ms. Baginska reviewed the schedule and took questions.

- Regarding waterfowl as species of concern.
 - Waterfowl were emphasized because of the 303 listing. But the issues aren't just limited to waterfowl and the Water Board recognizes that. We also are following some processes used in the mercury TMDL. The guidelines that EPA is using will help.
- Is there going to be a connection from the fish tissue to the waterfowl?
 - Yes. In March we'll talk about all these components, cycling and why it's all-important.
- During stakeholder interviews bioavailability of different selenium species was not mentioned among issues of concern. The differences around the higher bioavailability in selenite than in selenate need to be addressed.
- What about the water quality impact with the invasive species versus water quality issues? The Asian clam issue and what that's doing to the whole ecology of the North Bay. We shouldn't assume that all problems are associated with water quality. If there is stuff we can't control we should be saying it now.

VI. Next Steps

- CCP will post a revised version of the Assessment Report on the web by December 15. Go to: <http://www.csus.edu/ccp/publications.htm> (It is the first item listed.)
- Please email Dave Ceppos if you would like a hard copy mailed. DCeppos@ccp.csus.edu
- Ms. Baginska will send out dates for the future meetings.
- If you have any comment or idea please send them to Ms. Baginska at bbaginska@waterboards.ca.gov, and she will forward them to Mr. Ceppos. The conveners want to be sure there is a transparent feedback loop.
- Consider various online tools that could be beneficial for the group
- CCP will revise the AC rules after receiving comments from the stakeholders and distribute the revised document for the AC final approval.

Attendees:

Advisory Committee

Bill Beckon	US Fish & Wildlife Service
Kevin Cullen	Fairfield-Suisun Sewer District
Dennis Bolt	WSPA
Andria Ventura	Clean Water Action
Diane Fleck	US EPA
Carolyn Yale	US EPA
Al Middleton	Valero Refinery
Michele Pla	Bay Area Clean Water Agencies

Members of the Public

Tom Mongan	Grassland Growers
Rich Sandman	Chevron-Richmond Refinery
Steven Yang	Chevron-Richmond Refinery
Eric Dunlavey	City of San Jose
Monica Oakley	Oakley Water
Craig Johns	PSSEP
Grant Kimura	Chevron
Marcus Cole	Valero
Louis Brzuzy	Shell
Steven Overman	Shell

Water Board Staff

Tom Mumley
Naomi Feger
Barbara Baginska

Project Consultants

Tom Grieb	Tetra Tech
Dave Ceppos	CCP
Sarah Rubin	CCP