

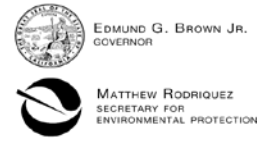
*STATE OF CALIFORNIA*

**REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

MEETING DATE: October 10, 2018

ITEM: 4

SUBJECT: **MINUTES OF THE SEPTEMBER 12 AND 13, 2018 BOARD MEETINGS**



San Francisco Bay Regional Water Quality Control Board

September 12, 2018 Board Meeting
Draft Minutes for Board Consideration

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 (415) 457-4417.

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 9:03 a.m. in the Elihu M. Harris Building, First Floor Auditorium.

Table with 3 columns: Board Members Present, Board Members Absent, Status. Lists names of board members and their status (e.g., Chair Terry Young, Jayne Battey, QUORUM).

NPDES Wastewater Division Supervisor Mary Boyd introduced Scientific Aid Diana Ytbarek, who joined the NPDES Wastewater Division.

Toxics Cleanup Division Supervisor Cheryl Prowell introduced Water Resource Control Engineer Kimberlee West, who joined the Central Bay Toxics Section.

Toxics Cleanup Division Supervisor Laurent Meillier introduced Scientific Aid Simerpreet Matharu, who joined the North Bay Toxics Section.

Management Services Division Chief Anna Torres introduced Seasonal Clerk Eva Dong, who joined the Management Services Division.

Item 2 – Public Forum – No members of the public asked to speak.

Item 3 – Annual Award Presentation – 2018 Dr. Teng-Chung Wu Pollution Prevention Award – Presentation of Award to Annie Joseph for Leadership in Pollution Prevention

Executive Officer Bruce Wolfe introduced the item and Water Resource Control Engineer Debbie Phan made the presentation. Ms. Phan described Ms. Joseph's enthusiastic work over many years with the Our Water Our World Program, or OWOW, to promote less-toxic alternatives to conventional pesticides at the point of purchase. Geoff Brosseau, Executive Director of the Bay Area Stormwater Management Agencies Association, acknowledged Ms. Joseph's contributions and accomplishments. The Board members presented Ms. Joseph with the award, and Ms. Joseph thanked the Board, her colleagues, and her family for the award and recognition.

#### **Item 4 – Minutes of the August 8, 2018 Board Meeting**

Mr. Wolfe recommended adoption of the minutes from the August 8, 2018, Board Meeting.

Chair Young asked if all were in favor of adoption of the minutes – all Ayes. Chair Young then asked if anyone was opposed - none opposed.

ITEM ADOPTED

#### **Item 5 – Chair's, Board Members', and Executive Officer's Reports**

Board Member Kissinger said he met with Andria Ventura of Clean Water Action and Michelle Pierce of Bayview Hunter's Point Community Advocates via phone to discuss tribal beneficial uses. He said they expressed appreciation for their interactions with Board staff and their desire for tribal beneficial uses to remain a priority in the Triennial Review.

Board Member Lefkovits said he met in person with three representatives about tribal beneficial uses.

Mr. Wolfe gave an overview of this month's Executive Officer's Report. He mentioned the Mission Clay Site in Fremont where he issued a Cleanup and Abatement Order. He said he moved this Order along quickly because petroleum was getting into Alameda Creek and that Mission Clay has been responsive. He also called out the item on Hunter's Point and said that Board staff contacted all of the landfills in the region to find out if any had accepted waste from Hunter's Point and determined that two did: Ox Mountain Landfill accepted only construction debris so had no radiological wastes; and Keller Canyon Landfill accepted soil as well as construction debris, but their screening at the time did not indicate any radiological wastes were disposed. Keller Canyon will do follow up monitoring. Mr. Wolfe added that Board staff will continue to work with all landfills to screen waste effectively before accepting waste for disposal at their facilities and with all cleanup sites to properly screen wastes before removing them and disposing them offsite. Board members commented on the ongoing investigation.

Mr. Wolfe reported the status of the Hillview Cleaners cleanup site. He noted that a settlement between the designated parties was filed, and, based on that, he issued an order to the property owner, Burrell, for cleanup, consistent with the direction the Board provided at the July Board meeting. He also said that the attorney for Burrell commented to staff that the task dates should be extended. Board staff reviewed the notes and minutes from the July

Board meeting and said the dates were not supposed to be changed. The attorney is reviewing the transcripts of the meeting to see if the Board intended to do that.

Mr. Wolfe said that the Board meeting date for January will be changed to January 16, 2019, to simplify meeting preparation during the holidays.

Mr. Wolfe noted that the case of James Tong, which comes out of the Dublin Ranch Cleanup and Abatement Order, was settled for \$1.1 million with 23 acres set aside onsite for mitigation and 6 acres offsite for tiger salamander habitat.

Chair Young administered the oath.

**Item 6 – 2018 Triennial Review of the San Francisco Bay Basin Water Quality Control Plan (Basin Plan) – Adoption of Resolution and Prioritized List of Basin Planning Projects**

Mr. Wolfe introduced the item and Water Resource Control Engineer Richard Looker made the presentation.

Board Member Kissinger asked for an explanation of how these projects translate into Board actions. Mr. Looker clarified that the projects still need to be scoped out and developed to specify the actions. The Board will have to approve any plans or actions to amend the Basin Plan. Planning Division Chief Naomi Feger gave the example that changing the dissolved oxygen standards for Suisun Marsh in its Total Maximum Daily Load was an outcome of the last Triennial Review. Board Member Ajami asked about scheduling and resources for the projects and if staff can take up a different project as staff completes the projects on the list. She **requested information on the past triennial review priority projects and the status of those projects as background for considering these newly proposed projects.** She asked if revisions of dissolved oxygen levels will **consider drought and future climate conditions.** Mr. Wolfe explained that we will likely address these issues as we incorporate revised water quality objectives into NPDES permits that best protect the near shore environment to sustain beneficial uses in different climate or water resources conditions. Chair Young commented that staff consider ranges for dissolved oxygen or temporal conditions where different values apply to address the fluctuations of conditions and resiliency of systems. Board member Ajami said we need to **consider operational adjustments to changing water resources and supply as climate change impacts ensue and wants staff to consider this in setting policies and changing water quality objectives.** Chair Young **requested staff note everything in the Basin Plan that might need to be changed to promote improved wetlands projects and shoreline resiliency.**

Jackie Zipkin of the East Bay Dischargers Authority and the Bay Area Clean Water Agencies (BACWA) commented that she is in support of the projects. She said BACWA supports including climate change actions in the Basin Plan, working on vulnerability assessments, and making adaptations such as reducing greenhouse gases and using biosolids in addition to dredged material for reuse. She said BACWA also supports the chlorine project, even though it is low priority, to reduce money and the impact of additional chemicals entering the Bay. She

requested that the Board consider establishing mixing zones at outfalls for new bacteria objectives as the recreational use does not exist at outfalls.

Erica McHarg, attorney with Baykeeper, stated that she appreciated staff's consideration of tribal subsistence fishing issues and requested making that project a priority for the next three years. She said the implementation can be addressed later. She said Baykeeper believes the designations can be accomplished easily in the next three years.

Chair Young asked her to comment on dischargers' concerns that implementation of mercury objectives to address these beneficial uses will result in more actions and money spent without actually reducing mercury loading. Ms. McHarg responded that there is not an automatic requirement to reopen Total Maximum Daily Loads to change dischargers' requirements.

Alvaro Casanova with the Center for Environmental Health thanked the Board for considering tribal beneficial uses and urged designating these uses for San Francisco Bay.

Andria Ventura with Clean Water Action said she wants designations on the books because the users are not covered by cleanup plans that are in place. She said if the beneficial uses are not recognized, we will never protect these people. She also said that alternative implementation strategies and water quality objectives may not be established for decades but, by designating uses now, the Board launches an adaptive management process that can ensue over a long period of time. She stated that she has no intention or expectation of requiring more mercury reduction from dischargers.

Chair Young asked if more funding might be provided if beneficial uses are set without having information on protective mercury levels or how to achieve them. Ms. Ventura responded yes.

Sherri Norris with the California Indian Environmental Alliance commented that she recognizes the work that went into the staff report and supports adoption of the recommendation. She said her organization has funding to find out who is eating the fish; they mostly work with tribes but can also do some outreach. She said they have less information on cultural uses. She also noted that she sees the intersection between practices to protect the beneficial uses and climate change, such as protecting willows, which helps slow water down.

Chris Malan, North Coast Stream Flow Coalition, commented that they are a multi-organization group working on flows and promoted Board work on flows. She commented that the scores could be elevated for the flow project based on her analysis of the scores for several criteria. She also recommended incorporating flow into other related policies such as climate change, wetlands policy, and dissolved oxygen water quality objectives. She challenged the Board to make a flow project to a higher priority.

Chair Young asked staff if it is doing any total maximum daily loads related to flow at this time. Mr. Lunde said we are beginning a project on nutrient reduction where flow considerations

will be relevant. Chair Young asked if we can incorporate flow in an action even if not making a change to the Basin Plan. Mr. Lunde said he would welcome that challenge and noted that it is data intensive and requires working with the State Water Board on water rights, but we are looking at the focused effort in the North Coast Region as an example. Chair Young said she is **looking at best way for us to incorporate flow considerations into our ongoing business.**

Vice-Chair McGrath **requested staff combine projects 11 and 18 in the future and consider them with the first project** as we must look at our streams related to climate change as we update our policies. Board Member Ajami **encouraged integrating related issues between existing and new projects for consideration**, such as climate change and flow. Chair Young emphasized the Board's interest in flow and also stated consideration of the huge changes in land use issues, noting that as development expands, reduced groundwater recharge will also impact natural habitats.

Kelly Anderson, resident of Angwin in Napa County, commented on the land use conversion from natural forests and streams to vineyards. She said the forests and watersheds are already destroyed, and Napa County has made exceptions and allowed violations of policies. She asked for oversight of impacts created by projects approved by the County. She concluded that, if you want to have flow in the Napa River, you need to have forests.

Mr. Wolfe noted the helpful input from commenters and the direction from the Board, but, as they do not suggest any changes to the staff recommendation, he recommended adoption of the item as proposed.

Board Member Ajami moved adoption and McGrath seconded the motion.

Vice-Chair McGrath recognized Mr. Looker for bringing science to policy decisions. He said these are the right projects and appreciated that staff raised the priority for the tribal beneficial uses. Board member Kissinger commented that they were adopting a project that will not accomplish anything and responds to a societal problem (food insecurity that leads to subsistence fishing) that is beyond our challenges to improve and protect the Bay. Board Member Ajami commented that decisions we make now will affect future generations. Board Member Lefkovits **noted that we do not call out habitat protection in ranking criteria and that we should think more strategically about criteria for prioritizing.** Board Member Ogbu said that taking the step to acknowledge tribal beneficial uses for the future is valuable and **wants staff to present the status of projects from this triennial review when we do the next triennial review.** Chair Young reiterated that we can approve a project to investigate designation of tribal beneficial uses, later decide to designate, and still later reasonably consider steps to protect the beneficial use, without necessarily changing all total maximum daily loads or permit limits.

Ayes: Young, McGrath, Ogbu, Ajami, Kissinger, Lefkovits

Nos: None

ITEM ADOPTED

**Item 7 – JCI Jones Chemicals, Inc., for the Property Located at 985 Montague Expressway, Milpitas, Santa Clara County –**

Updated Site Cleanup Requirements and Rescission of Order No. 90-072

Mr. Wolfe introduced the item and Water Resource Control Engineer Nathan King made the presentation.

Board Member Kissinger stated that he was surprised that previous work on the site did not result in cleanup levels or deed restrictions related to the possibility of residential development. Board Member Ajami asked what changed that caused us to relook at this site. Mr. King said that U.S. EPA set new levels to protect for short-term health impacts from indoor air exposure to trichloroethylene. Supervisor Alec Naugle explained that the City of Milpitas developed plans to allow residential development in former commercial/industrial areas, which then required vapor intrusion mitigation systems. Chair Young expressed concern about not including responsibility for vapor intrusion mitigation systems in the order and wanted assurances that the systems will be monitored. Division Chief Terry Seward explained that **vapor intrusion mitigation systems are being upgraded and monitored for effectiveness and that we have authority to prevent occupancy if data suggests indoor air is unacceptable.** Chair Young also expressed concern about the residents being informed. Mr. King said that homeowners are informed. Board Member Ajami asked if new information about health risks of vapor intrusion, in concert with expanded residential development, is leading us to change how we approach cleanups in general. Board Member Kissinger commented that residential development is continuing to expand regardless of the increased risk of exposure from conditions at cleanup sites. Vice-Chair McGrath stated that he is confident that these vapor intrusion mitigation systems will be effective for a time but accelerated cleanup is needed so vapor intrusion mitigation systems will not continue to be necessary.

Mr. Wolfe indicated that Tables 1 a, b, c, d, and e provide the status of implementation of the active systems. He also noted that we were notified yesterday afternoon by a representative of one of the landowners that they did not have a chance to review the tentative order and had some changes; staff did not find the suggested changes substantive and will work with the commenter to consider their input. He added that **we have changed our prioritization of cleanup sites due to new information on vapor intrusion health hazards.** He recommended adoption of the item.

Mr. Wolfe recommended adoption of the item as proposed.

Vice-Chair McGrath moved adoption, and Board Member Ogbu seconded the motion.

Ayes: Young, McGrath, Ogbu, Ajami, Kissinger, Lefkovits

Nos: None

ITEM ADOPTED

**Item 8 – Land Disposal Program Update – Status Report**

Mr. Wolfe introduced the item and Senior Engineering Geologist Keith Roberson made the presentation.

Vice-Chair McGrath asked if we have ample capacity in the Bay Area for adding recycled waste, given markets for recycling are difficult. Mr. Roberson said yes, but we do not want to use the landfill space that way, and it is not as cost-effective for landfill owners. Board Member Kissinger asked about managing landfill gas and if he can review monitoring data to see the conditions of leachate. Mr. Roberson said that he can, but most landfills are not discharging leachate. Mr. Wolfe also mentioned that we are requiring landfills to review their protection of waste containment related to sea level rise every five years.

**Item 9 – Correspondence** – There were no correspondence items.

The Board went into a closed session at 1:23 pm.

**Item 10 – Closed Session – Personnel**

The Board met in closed session to discuss personnel matters, including consideration and interviews of candidates for the position of Executive Officer and appointment of an Executive Officer. [Authority: Government Code Section 11126(a)]

**Item 11 – Closed Session – Litigation**

The Board did not meet in closed session to discuss litigation. [Authority: Government Code sections 11126(e)(1) and 11123(e)(2)(A)-C]

**Item 12 – Closed Session – Deliberation**

The Board did not meet in closed session to deliberate. [Authority: Government Code section 11126(c)(3)]

**Item 13 - Adjournment**

Meeting adjourned at 2:30 pm.



## **September 13, 2018 Board Meeting Draft Minutes for Board Consideration**

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### **Item 1 – Roll Call and Introductions**

Meeting called to order at 9:15 a.m. in the Elihu M. Harris Building, First Floor Auditorium.

<b><u>Board Members Present</u></b>	<b><u>Board Members Absent</u></b>	<b><u>Status</u></b>
Vice-Chair James McGrath Newsha Ajami	Chair Terry Young Jayne Battey Cecilia Ogbu William Kissinger Steve Lefkovits	No Quorum

### **Item 2 – Staff Meeting: Update on Process for Hiring Next Executive Officer**

Vice-Chair McGrath and Board member Ajami initiated a discussion with Board staff about the Board's process for hiring the next Executive Officer, noting that an advertisement for the Executive Officer position had been posted with a closing date of September 26, 2018, that the Board encouraged staff input on the qualities the Board should consider when hiring the next Executive Officer, and that the Board felt that the staff was currently operating very efficiently and effectively and did not anticipate hiring "a change agent" for the next Executive Officer.

Division Chief Bill Johnson, as chair of the staff meeting, encouraged all staff to comment. Staff members John Wolfenden, Leslie Ferguson, Elizabeth Wells, Dale Bowyer, Alan Friedman, Setenay Bozkurt Frucht, Cheryl Prowell, Max Shahbazian, Nathan King, Keith Lichten, Richard Looker, Naomi Feger, Alec Naugle, Yan Nusinovich, Tina Low, Maggie Beth, Laurent Meillier, Brian Thompson, and Habte Kifle commented.

The Board members thanked the staff for their input and encouraged staff to complete the online survey that would be circulated to all staff shortly after the staff meeting.

### **Item 3 – Adjournment**

Meeting adjourned at 10:20 a.m.