

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

MEETING DATE: April 14, 2021

ITEM: **3**

SUBJECT: **Minutes for the March 10, 2021, Board Meeting**

**March 10, 2021 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 (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		
Alexis Strauss Hacker		
Andrew Gunther		

From the Toxics Division, Supervisor Laurent Meillier introduced Scientific Aid Ellen Mills and Supervisor Elizabeth Wells introduced Staff Sherry Gamboa.

Item 2 – Public Forum

Robert Johnston, concerned citizen, spoke about water quality issues in the Point Reyes National Seashore as it relates to cattle grazing. Division Chief (DC) Xavier Fernandez provided a reply about the current status of the Water Board grazing waiver and permits in the Tomales Bay Watershed and potential next steps to expand to the entire park.

Catherine Portman, advocate for wildlife and public lands, spoke about water quality in Point Reyes National Seashore as it relates to cattle grazing activities. Chair McGrath suggested that a report out on this item could be included in a future Executive Officer's Report. Board Member Alexis Hacker added two questions to include in the report. Board Member Jayne Battey asked that regenerative agriculture be included in the report.

Kelly Abreu, Mission Peak Conservancy, reminded the Board about his visit during the September, 2020, Board Meeting. He spoke about a tributary of Alameda Creek that was dammed and the environmental effects that resulted.

Josh Quigley, Save the Bay, commented on Caltrans compliance of the Cease and Desist Order regarding pollution prevention in San Francisco Bay. Chair Jim McGrath replied that this topic will be discussed in the Executive Officer's Report item.

Item 3 – Minutes of the February 10, 2021 Board Meeting

Correction to report out from Board Member Battey. The comment on the Climate Action Subcommittee address the need to prioritize our climate related activities based on risk and need.

Motion to approve with amendment: Board Member Andrew Gunther

Second: Board Member William Kissinger

Ayes: McGrath, Battey, Kissinger, Hacker, Gunther

Nos: none

ITEM APPROVED

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

State Board Member Tam Doduc shared with the Board two items. There will be an informational item on the State Water Board's climate change efforts, including priorities for next year and a new focus on metrics to gauge results of the proposed activities. State Board Member Doduc was recently briefed on the Statewide Restoration General Order and provided commentary that the work evolved to balance the needs of statewide consistency with regional-specific concerns. Board Member Battey echoed State Board Member's Doduc's comments on the importance of balancing Statewide vs. Regional needs. She asked about the timeline of the General Order. State Board Member Doduc said a public draft should be available in the Spring and the State Board may consider the Order in the Fall. They spoke about the "Cutting the Green Tape" Initiative. Board Member Hacker inquired about suggestions as they relate to metrics on the Climate Change item. State Board Member Doduc replied. She echoed the need to find common ground as it relates to the Restoration General Order. Executive Officer (EO) Michael Montgomery stated support for this Order and the need for some guardrails to ensure the Order incentivizes restoration but does not umbrella infrastructure projects (transportation, bridges, etc.) with limited or questionable restoration value. Chair McGrath stressed two items: the region's sediment needs as it relates to Sea Level Rise and the sensitivity of restoration costs.

Board Member Andrew Gunther reported on lessons he has taken form the recent Texas energy crisis, in particular the role of regulatory agencies like the Regional Water Board in creating incentives to build resilience to climatic extremes.

Board Member William Kissinger reiterated Board Member Gunther's point on the need to prepare well in advance of a crisis.

Vice Chair Battey expressed support for Board Member Gunther's statements. She shared her feedback from two seminars she attended recently put on by Peninsula Open Space Trust. Vice Chair Battey and Board Member Gunther briefly discussed a recent article by Michael Mann.

Chair McGrath reported about his conversation with the Bay Area Clean Water Agency about the Regional Water Board's priorities for the year and potential areas for collaboration. He also spoke with students at University of California, Berkeley, about the reintroduction of sea otters to San Francisco Bay. He also drew the Board's attention to the State Auditor's report on homelessness and the San Jose Mercury's report on the use of NGOs for clean up along Coyote Creek. Lastly, he reported on his speech to the East Bay Regional Park District's Executive Committee on Managing Shoreline Parks in a Changing Climate.

EO Montgomery shared information on a stranded vessel on the coast near Dillon Beach that remains an environmental concern. Board Member Hacker inquired about disposal plans for the vessel. EO Montgomery provided a reply. He continued with the Executive Officer's Report, sharing a status update on the Caltrans compliance item and the corresponding letter from Save the Bay. He advised to stick to the current workplan and prioritize the Municipal Stormwater Permit. Board Member Hacker asked for quarterly updates moving forward. Board Member Kissinger echoed Board Member Hacker's comments, pushing to know progress is being made prior to the report out at the end of the year. Vice Chair Battey expressed her understanding of Save the Bay's desire for enforcement, and also expressed concern about pursuing enforcement due to the relationships between trash and homelessness. She urged the Water Board to understand and consider the context we work in relative to causes and solutions of the bigger problem of homelessness. Chair McGrath concurred with previous statements made by the Board, particularly the importance of an overall plan to manage the homelessness issue. He agreed with EO Montgomery that the priority for the Board should be the MS4 (Municipal Stormwater Permit 4).

EO Montgomery shared an update about the Oakland Army Base. He congratulated the Point Buckler team on their successful court case ruling. He discussed the Summerhill item, primarily to illustrate the importance of Vapor Intrusion mitigation systems when dealing with developers. He updated the Board on staffing, including updates related to the pandemic and an upcoming all staff training. He wished the Board a happy Women's History Month.

Chair McGrath added to EO Montgomery's words about Women's History Month and congratulated Sarabeth George on her recognition.

Board Member Gunther thanked EO Montgomery for the monitoring data on PCBs and Mercury and encouraged continued reporting on scientific data related to decisions made by the Board.

Break at 10:25 a.m.

Back in session at 10:35 a.m.

Item 5 – Streamlining and Considerations for Enforcement

5A. Resolution to Delegate Authority to the Executive Officer to Hold Hearings On and Issue Mandatory Minimum Penalties (MMPs)

EO Montgomery provided background on the initiation of this item, including the desire to increase efficiencies. DC Bill Johnson contributed feedback based on NPDES experience with MMPs. Kelly Abreu, Mission Peak Conservancy, provided public comment on his experience with stormwater issues and shared his learnings. Vice Chair Battey inquired as to how much of a change this resolution would do to current practices. DC Johnson provided a reply, including sharing a brief history of similar penalties. Attorney Yuri Won provided additional commentary on the process the resolution would initiate. Chair McGrath expressed his support for the resolution.

Chair McGrath asked for a motion.

Motion to approve: Vice Chair Battey

Second: Board Member Hacker

Ayes: McGrath, Battey, Kissinger, Hacker, Gunther

Nos: none

ITEM APPROVED

5B. General Discussion on the Use of Hearing Panels

EO Montgomery shared background on the decision to bring this item to the Board. Attorney Won provided additional information on the creation of an enforcement subcommittee. Chair McGrath asked if the process resembles a similar process undertaken by BCDC (SF Bay Conservation and Development Commission). Attorney Won provided a detailed reply. Board Member Gunther shared his experience with similar processes. Board Member Kissinger asked about the administrative logistics of the separate panel hearing. Attorney Won provided a reply. They continued discussing the matter. Board Member Hacker suggested establishing Hearing Panels and using them on an as-needed basis. Chair McGrath shared his feedback on both the pros and cons. Assistant Executive Officer (AEO) Thomas Mumley presented circumstances when the Hearing Panels would be more efficient. EO Montgomery added that circumstances will be different when the Board has seven members and a wider range of experience with enforcement. Vice Chair Battey expressed her bias to maintain the current practices of using the full Board. In conclusion, Attorney Won recommended expanding the existing resolution to allow the Chair to appoint the panel members beyond when a full quorum can not be convened. This will be done at the next Board meeting.

Item 6 – Wetland Regional Monitoring Program (WRMP)

DC Fernandez introduced Heidi Nutters, San Francisco Estuary Partnership, Chair of the steering committee and Christina Toms, SF Bay Regional Water Board, Chair of the Technical Advisory Committee. Both Heidi Nutters and Christina Toms made a presentation to the Board.

Board Member Gunther made a couple comments about the presentation. He hoped lessons will be taken from the RMP's (Regional Monitoring Program) success. He stressed the importance of long-term funding and a long-term vision, in particular how it relates to the presentation of data and decision making. Vice Chair Battey inquired about the accessibility of information as it relates to decision makers and the public. Heidi Nutters provided a reply. DC Fernandez contributed to the discussion. Vice Chair Battey emphasized the need to reach non-traditional partners. Chair McGrath echoed Vice Chair Battey's comments on non-traditional partners. Board Member Gunther asked about the value in delivering this information by OLU (operational landscape unit). Staff Toms provided a reply.

Break at 11:55 a.m.

Back in session at 12:05 p.m.

Item 7 – Bay Adapt Joint Platform

EO Montgomery introduced Jessica Fain, Bay Conservation and Development Commission (BCDC). Jessica Fain made a presentation to the Board.

Board Member Gunther commented on the improvement of the Bay Adapt story over time and congratulated them on the release of the new Platform. Vice Chair Battey asked about the biggest challenge for Bay Adapt moving forward, especially in regard to implementation. Jessica Fain, Dana Brechwald, BCDC, and Larry Goldzband, BCDC, provided replies.

Board Member Hacker asked Larry Goldzband about opportunities in the dredging programs to advance broader goals. Mr. Goldzband and DC Fernandez provided replies. Chair McGrath contributed to the discussion on beneficial reuse of sediment.

AEO Horowitz-McCann acknowledged the work of BCDC staff in guiding the Bay Adapt effort. She also acknowledged the investment of partner organizations.

Item 8 – Correspondence

None

Item 9 – Closed Session – Personnel

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

Item 10 – Closed Session – Litigation

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

Item 11 – Closed Session – Deliberation

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

Item 12 – Adjournment

EO Montgomery concluded with a preview of the April Board Meeting.

Vice Chair Battey motioned to adjourn, and Board Member Gunther seconded.

The meeting was adjourned at 12:39 PM

