

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY  
BOARD MEETING MINUTES  
December 3, 2003

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Item 1 - Roll Call and Introductions

The meeting was called to order on December 3, 2003 at 9:07 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Clifford Waldeck, Vice-Chair; Shalom Eliahu; John Reininga; and Mary Warren.

Board members absent: Kristen Addicks [Note: Mrs. Addicks joined part of the meeting by telephone]; Doreen Chiu; Josephine De Luca; and William Schumacher [Note: Mr. Schumacher arrived at approximately 9:15 a.m.].

John Muller announced that on November 5, 2003 the Board appointed Bruce Wolfe as Executive Officer.

Item 2 – Appointment of Nominating Committee for 2004 Chair and Vice-Chair

John Muller appointed Shalom Eliahu and John Reininga to serve on the nominating committee to recommend candidates for 2004 Chair and Vice-Chair.

Item 3 – Consideration of 2004 Board Meeting Schedule

Bruce Wolfe said the Schedule of Board Meetings was provided as an information item.

Item 4 - Public Forum

Robert Uram, attorney representing Waste Management of California, Inc., discussed mitigation provisions contained in a recently issued Water Quality Certification. He said mitigation required for a portion of Kirby Canyon Landfill was excessive. He said it was important that work on the Landfill commences in the spring and that staff and the applicant reach agreement.

Bruce Wolfe said the applicant could propose alternative mitigation and staff would work to move the project forward.

[Note: Mr. Schumacher arrived at approximately 9:15 a.m.]

Bob Wenzlau, Chief Executive Officer of Terradex, discussed a pilot program designed to keep land uses that are unsafe from being developed on environmentally impaired properties. He said the pilot program is being conducted in Santa Clara County.

Leo O'Brien, San Francisco BayKeeper, congratulated Bruce Wolfe on his recent appointment as Executive Officer.

[Note: Mrs. Addicks joined the meeting by telephone at approximately 9:25 a.m.]

#### Item 5 – Minutes of the October 15, 2003 Board Meeting

Mr. Muller said Josephine De Luca would like the record to reflect she wrote a letter to Loretta Barsamian on the occasion of her departure from the Water Board. Mr. Muller said he read Mrs. De Luca's letter at the October 15, 2003 Board Meeting.

In the letter, Mrs. De Luca congratulated Ms. Barsamian for a job well done as Executive Officer of the Water Board. The letter mentioned Ms. Barsamian's exceptional skills in negotiating compromises between industrial and environmental concerns, and her political astuteness in recognizing the sensitivities of stakeholders. Further, the letter commended Ms. Barsamian for her commitment to environmental protection.

Motion: It was moved by Mr. Schumacher, seconded by Mrs. Warren, and it was unanimously voted to adopt the minutes of the October 15, 2003 Board Meeting.

#### Item 6 – Chairman's, Board Members' and Executive Officer's Reports

Mary Warren said the Bay Institute recently released a Scorecard assigning grades to eight ecological indexes measuring the health of the Bay. She expressed concern that several indexes received D's and an F.

Mr. Wolfe said staff might not have graded the indexes in the same way as the Bay Institute. Nonetheless, he said staff would like to see the grades improved.

#### Item 7 - Uncontested Calendar

Mr. Wolfe said Lieutenant Colonel Michael McCormick would like to speak on item 7F. He recommended the item be heard immediately after the uncontested calendar.

Motion: It was moved by Mrs. Warren, seconded by Mr. Eliahu, and it was unanimously voted to remove Item 7F from the uncontested calendar for consideration immediately thereafter.

Mr. Wolfe said there was supplemental material to Item 7C. He recommended adoption of the uncontested calendar.

Motion: It was moved by Mr. Reininga, seconded by Mrs. Warren, and it was unanimously voted to adopt the uncontested calendar as recommended by the Executive Officer.

Item 7F – U.S. Army Corps of Engineers, San Francisco District Maintenance Dredging Program, 2004 through 2006 – Updated Waste Discharge Requirements

Lieutenant Colonel Michael McCormick, District Engineer, U.S. Army Corps of Engineers, thanked Beth Christian for her work in preparing the tentative order. He spoke in support of the proposed Dredging Program.

Bruce Wolfe recommended adoption of the tentative order.

Motion: It was moved by Mr. Reininga, seconded by Mrs. Warren, and it was unanimously voted to adopt the tentative order as recommended by the Executive Officer.

Item 11 – Santa Clara Valley Water District and U.S. Army Corps of Engineers, Upper Guadalupe River Flood Control Project, San Jose, Santa Clara County – Adoption of New Waste Discharge Requirements and Section 401 Water Quality Certification

This item was heard next on the agenda.

Paul Amato gave the staff report. He said the proposed flood control project includes a 5.7-mile section of the Upper Guadalupe River that is located within a highly developed portion of the City of San Jose. He said the project also includes more than one mile of tributaries to the Upper Guadalupe River. He said the project has 3 main purposes: (1) to provide 100-year flood protection; (2) to reduce channel erosion; and (3) to improve riparian and stream habitat. He said a bypass channel would be constructed to transport flood flows.

Mr. Amato said the proposed Upper Guadalupe the project would be the third and final flood control project along the River. He said the Downtown Guadalupe Project and the Lower Guadalupe Project are located downstream

Mr. Amato said the Guadalupe Watershed Integration Work Group has worked for more than 2 years to improve the design of the proposed project. He said the GWIG also has worked to coordinate the 3 flood control projects along the River. He said many state, federal, and local agencies are members of the GWIG, including the Santa Clara Valley Water District and the U.S. Army Corps of Engineers.

The following persons spoke in support of the tentative order: Gary Stern, NOAA Fisheries; Lieutenant Colonel Michael McCormick, District Engineer, U.S. Army Corps of Engineers; Richard Santos, Director, Santa Clara Valley Water District; Rosemary Kamei, Director, Santa Clara Valley Water District; and Julie Gantenbein, attorney for Guadalupe Coyote Resource Conservation District. They said the proposed project would provide flood control, and would also provide environmental and recreational benefits to the community. They thanked Paul Amato, Dale Bowyer, and Richard McMurtry for work in preparing the tentative order.

Mr. Reininga, Mr. Eliahu, Mr. Waldeck, and Mr. Muller congratulated the many parties involved in developing the proposed project.

Mr. Amato said project construction would begin in 2004 and would be completed by 2015.

[Note: Mrs. Addicks was no longer in attendance by telephone.]

Motion: It was moved by Mr. Schumacher, seconded by Mrs. Warren, and it was voted to adopt the tentative order.

Roll Call:

Aye: Mr. Eliahu, Mr. Reininga, Mr. Schumacher, Mr. Waldeck, Mrs. Warren, and Mr. Muller.

No: None.

Motion passed 6 – 0.

Item 8 – GTE Operations Support, Inc., 100 Ferguson Drive, Mountain View, Santa Clara County – Hearing to Consider Imposition of Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said GTE Operations Support, Inc. signed a waiver of its right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$12,000. He said \$12,000 would be used for a supplemental environmental project.

Item 9 – General Chemical Corporation, Wastewater Treatment Plant, Pittsburg, Contra Costa County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said General Chemical Corporation signed a waiver of its right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$24,000. He said \$19,500 might be used for a supplemental environmental project.

Item 10 – Delta Diablo Sanitation District, Antioch, Contra Costa County – Reissuance of NPDES Permit

Gayleen Perreira gave the staff report. She said Delta Diablo Wastewater Treatment Plant discharges effluent into an outfall located in New York Slough. She said the outfall is situated between drinking water intake points: Antioch Water District intakes water two miles east of the outfall and Contra Costa Water District intakes water five and one-half miles west.

Ms. Perreira said Delta Diablo diverts 45% of its effluent to an industrial recycling program.

Ms. Perreira said the tentative order provides that Delta Diablo may prepare a study to determine if bacteria might be regulated using limits other than total coliform. She said the amount of chlorine used as a disinfectant might be reduced if the study concluded that alternative bacteria limits should be allowed.

Ms. Perreira said the tentative order requires Delta Diablo develop a mercury reduction project. She said fluorescent tubes contain mercury and are a threat to waterways if discarded improperly. She said Delta Diablo would carry out the mercury reduction project by collecting and disposing of fluorescent tubes.

Gary Darling, General Manager, Delta Diablo Sanitation District, said the agency would attempt to collect more than 4,000 florescent tubes during the next three years. He thanked Gayleen Perreira, Shin-Roei Lee, and Lila Tang for their work in preparing the tentative order.

Samantha Salvia, Water Resources Specialist, Contra Costa Water District, expressed concern that pathogen levels in effluent discharged into New York Slough would increase if Delta Diablo used less disinfectant. She said CCWD would like to work with staff on the bacteria study and requested the water quality of CCWD's source water be protected.

Ms. Salvia said the tentative order requires Delta Diablo to notify CCWD if Delta Diablo plans to discharge blended effluent. She said the supplemental to the tentative order changed the requirement to have Delta Diablo notify CCWD after blended effluent is discharged. She requested the supplemental be amended to require prior notification.

Larry McCollum, Water Quality Superintendent, Contra Costa Water District, said pathogens in source water are a significant issue for CCWD. He expressed concern that Delta Diablo might use less disinfectant based upon conclusions in the bacteria study.

Ben Hornstein, Bay Area Clean Water Agencies, thanked staff for their efforts to resolve BACWA's concerns with the tentative order. He thanked Shin-Roei Lee for working collaboratively with BACWA while she served as Chief of the Permits Division. He wished Ms. Lee well in her role as Chief of the South Bay Watershed Management Division.

Shalom Eliahu asked whether staff would enforce total coliform limits while the discharger conducts the bacteria study.

Shin-Roei Lee and Larry Kolb said total coliform effluent limits would not be enforced. However, they said total coliform standards for receiving waters would be enforced during the study. They said the study would address the question whether the discharger could reduce chlorine levels and still meet receiving water standards.

Mr. Schumacher asked whether Contra Costa Water District would be notified before Delta Diablo discharged blended water.

Lila Tang said the supplemental to the tentative order would be amended to require notification before discharge.

Mr. Schumacher commented upon the fact that effluent is discharged between two drinking water intake points.

Larry Kolb said the location of the wastewater treatment facility was an issue before the plant was constructed. He said the location was based on a community decision.

Mr. Wolfe said an amendment would be brought to the Board if staff thinks the permit should be modified based on the results of the bacteria study.

Mr. Wolfe recommended adoption of the tentative order. He recommended the last sentence of the underlined text in the supplemental be stricken and replaced by “The Discharger shall notify Board staff and the Contra Costa Water District when the Discharger plans to discharge the combined final effluent of fully treated and partially treated wastewater, and shall conduct monitoring of the bypass as specified elsewhere in this Order.”

Motion: It was moved by Mr. Reininga, seconded by Mr. Schumacher, and it was voted to adopt the tentative order as supplemented and as recommended by the Executive Officer.

Roll Call:

Aye: Mr. Eliahu, Mr. Reininga, Mr. Schumacher, Mr. Waldeck, Mrs. Warren and Mr. Muller.

No: None.

Motion passed 6 – 0.

Item 12 – Montanera Project in Gateway Valley, Orinda Gateway, LLC (d.b.a. Montanera LLC), Orinda, Contra Costa County – Workshop and Public Hearing on Application for New Waste Discharge Requirements and Section 401 Water Quality Certification, Information Item Only

Shalom Eliahu recused himself from consideration of this item.

Elizabeth Morrison gave the staff presentation. She said Orinda Gateway, LLC submitted a revised 401-Water Quality Certification application for the proposed project located on the western edge of the City of Orinda. She said 225-245 homes would be built on a parcel of land referred to as Gateway Valley.

Ms. Morrison said 769 acres of the Gateway Valley parcel would be used for permanent open space. She said a 205-acre parcel, referred to as Indian Valley and located contiguous to Gateway Valley, would also be used for permanent open space.

Ms. Morrison said the proposed project would impact 4.03 acres of waters of the United States. She said in mitigation, 5.32 acres of wetlands and creek channels would be developed in Gateway Valley and Indian Valley. She said additional wetlands and creek channels would be preserved in Indian Valley.

Ms. Morrison said the applicant proposes to dedicate open space preservation areas to East Bay Regional Park District for long-term management. She said a mitigation plan prepared for the project calls for removal of cattle from open space areas. However, she said the Park District has expressed concern about eliminating cattle grazing.

In response to a question, Ms. Morrison said that cattle often are left on land for lengthy periods. However, she said goats could be brought in for a short time, kept within fencing put up on a temporary basis, and watched by a herder located on site.

Ann Riley said the application under consideration is very different from the project application she reviewed in January 2003. She said the applicant had made many positive changes. She said the current site plan takes landslide hazards into account.

In response to a question, staff said the current application does not call for the development of a golf course.

Mr. Muller said he would leave the meeting and Clifford Waldeck would serve as Chair. At that point, Mr. Waldeck began serving as Chair.

[Note: Mr. Muller left the meeting at 10:55 a.m.]

Mr. Wolfe said Board members who were not present to hear testimony would be given a written transcript to read.

Pete Wilson, Chairman, Save Open Space Gateway Valley; and Arthur Feinstein, Director of Conservation, Golden Gate Audubon Society, said they are working with the project applicant in order to get as much open space as possible, protect wildlife in the Gateway Valley corridor, and preserve aquatic resources.

Michael Olson, Montanera Project Manager, thanked Elizabeth Morrison, Ann Riley, and Keith Lichten for help in reviewing the project application. He discussed how the site design had changed since a 1998 proposal.

Jennifer Hernandez, attorney representing the applicant, discussed funding for long-term maintenance of the project.

Dr. Michael Josselyn, Wetlands Research Associates, said his firm helped in developing many of the mitigation measures in the proposed project.

Mr. Waldeck recommended Item 13 be continued to the January Board meeting.

Brad Olson, Environmental Program Manager, East Bay Regional Park District, said it would be helpful if encumbrances placed on the open space areas were flexible enough to allow for multiple uses and adaptive management. He expressed concern that there be adequate funding to cover long-term management expenses.

In response to a question, Mr. Olson said a special assessment district could be formed to finance management costs.

Mr. Waldeck said he would leave the meeting and John Reininga would serve as Chair. At that point, Mr. Reininga began serving as Chair.

[Note: Mr. Waldeck left the meeting at 11:25 a.m.]

Clyde Vaughn, City of Orinda resident, opposed the project and said it would adversely affect habitat of the red-legged frog and the Alameda whipsnake, two endangered species.

Yuri Won said the number of remaining Board members did not constitute a quorum. Mr. Reininga, upon the recommendation of legal counsel, adjourned the Board meeting and convened a Board subcommittee to hear the remainder of the testimony.

John Zentner, Zentner & Zentner, said many positive changes had been made to the project proposal and commended Ann Riley, Elizabeth Morrison, Keith Lichten and Molly Martindale for their work. He discussed why goats are preferable to cattle in the management of the open space areas.

Greg Schneider, Friends of Sycamore Valley, requested that cattle not be allowed in the open space and goats be allowed to graze in specific areas.

Molly Martindale, Regulatory Project Manager, Army Corps of Engineers, said many constructive changes had been made to the project proposal. She said long-term management questions are in the process of being negotiated.

Mr. Wolfe said no Board action was required today. He said staff would prepare a tentative order for the proposed project and would circulate it for public comment. He said the tentative order then would be brought to the Board for consideration.

Item 13 – South Bay Salt Ponds Restoration – Status Report

The item was continued to the January Board meeting.

#### Adjournment

The Board subcommittee was adjourned at approximately 11:45 a.m.