

San Francisco Bay Regional Water Quality Control Board

August 13, 2014 Board Meeting Draft Minutes for Board Consideration

ADOPTED September 10, 2014

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.

Item 1 - Roll Call and Introductions

Meeting called to order at 9:03 a.m. in the Elihu M. Harris Building, First Floor Auditorium.

<u>Board Members Present</u>	<u>Board Members Absent</u>	<u>Status</u>
Newsha Ajami		QUORUM
William Kissinger		
Margaret Abe-Koga		
John Muller		
Vice-Chair James McGrath		
Chair Terry Young		

Board Senior Environmental Scientist Christine Boschen introduced recently hired Water Resources Control Engineer Melissa Gunter.

State Board Member Tam Doduc updated the Board on draft permits released for public comment. She noted that the wetland and anti-degradation policies are under internal review. Ms. Doduc also discussed the transition of the State's Drinking Water Program to the State Board, effective July 1.

Item 2 - Public Forum

Richard Keith McMurtry addressed the Board. He discussed a gap in the Water Board's regulatory program in that there are direct discharges to Coyote Creek that are not being addressed under the municipal regional stormwater permit. He further described direct discharges of human waste to Coyote Creek and urged the Board to take action.

Item 3 - Minutes of the June 11, 2014 Board Meeting

Executive Officer Bruce Wolfe recommended adoption of Item 3.

Vice Chair McGrath moved for adoption of Minutes; Board Member Abe-Koga seconded the motion.

Ayes: Ajami, Kissinger, Abe-Koga, Muller, McGrath, Young

Nos: none

ITEM ADOPTED

Item 4 - Chairman's, Board Members', and Executive Officer's Reports

Board Member Ajami discussed water conservation awareness in Greece.

Mr. Wolfe gave an overview of this month's Executive Officer's Report. He further discussed the issue of homelessness in Santa Clara County and staff's proposal to follow up with the City of San Jose and respond to a recent letter submitted to the Chair. Chair Young summarized the discussion and reiterated that while the Water Board is not a social services agency, we do need to take the water quality issues of homeless encampments seriously. She suggested the following: 1) follow up with San Jose to explore all options to address short term needs and posting to alert the public to the problem; 2) evaluate the scale of the problem regionwide; 3) schedule a Board item for discussion to explore regulatory options. The Board members also requested a status update next meeting. Vice Chair McGrath requested that the EO Report item regarding the Bay Bridge decommissioning be distributed to the Chairman of the Senate Rules Committee.

Item 5 - Consideration of Uncontested Items

Item 5A – Delta Diablo, Delta Diablo Wastewater Treatment Plant and Wastewater Collection System, Antioch, Contra Costa County – Reissuance of NPDES Permit

Item 5B – Authorizing the Executive Officer to Enter into an Agreement for Mutual Release and Covenant Not to Sue with Watt Investments at Sunnyvale LLC, for the property located at 915 DeGuigne Drive, Sunnyvale, Santa Clara County – Adoption of Resolution

Mr. Wolfe recommended adoption of the uncontested items.

Vice Chair McGrath moved for adoption of items 5A and 5B as supplemented; Board Member Ajami seconded the motion.

Vice Chair McGrath requested assurance on item 5B that, if situations change and there are vapor concerns, those would be addressed appropriately. Board staff Stephen Hill confirmed that this would be the case.

Ayes: Ajami, Kissinger, Abe-Koga, Muller, McGrath, Young

Nos: none

ITEM ADOPTED

Item 6 – Correspondence

Item 7 – San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, Santa Clara and San Mateo Counties – Workshop on Pending Water Quality Certification Application for Flood Protection Project

Chair Young requested Board Member Abe-Koga to chair the workshop. Acting Chair Abe-Koga introduced the item. The Board members disclosed any communications they had had with

stakeholders on this item in general. They noted that their discussions focused on the project's permitting process as opposed to the details of the project. Board staff Maggie Beth and Shin-Roei Lee made the staff presentation. Ms. Beth gave an overview of the proposed project and the Water Board's regulatory authority. Ms. Lee discussed future permitting opportunities based on a stakeholder-based watershed approach. Mr. Wolfe summarized potential next steps. He also noted that the Army Corps of Engineers (Corps) had not yet determined the definition of the "project" it would be considering permitting, the Corps had not yet issued a public notice asking for public comment on the project, and that federal resource agencies had not yet issued their biological opinions on the project. Vice Chair McGrath asked for clarification on concerns regarding rare and endangered species. He also identified a number of technical issues/questions that will need to be addressed and the importance of having input from FEMA and the FAA. Board Member Kissinger asked about permitting approaches.

Len Materman, Executive Director of the San Francisquito Creek Joint Powers Authority (JPA), gave a presentation. He played the audio from a KTVU video about flood concerns along San Francisquito Creek. He also presented the history of the project and an overview of recent modifications. He also played a short video from creek flooding in 1998. Vice Chair McGrath asked about the Corps' involvement. Board Member Kissinger asked about deadlines and for clarification on a number of points made in the presentation. Board Member Muller asked about accessibility to the project for construction. Board Member Ajami asked about green infrastructure. Chair Young asked for clarification on pending decisions from other agencies. Vice Chair McGrath advised that the mitigation plan and impacts needs to be clarified.

Jeremy Dennis, District Director for Assemblyman Rich Gordon, addressed the Board. He highlighted that the project needs to move forward and that the proposal constitutes the least environmentally damaging practicable alternative (LEDPA). Brian Schmidt, Vice Chair of the Santa Clara Valley Water District and Vice Chair of the JPA, addressed the Board. He noted that while recent changes to the project are improvements, he urged the Board to approve the project as soon as possible. Mr. Pat Burt, Palo Alto City Council member and JPA board member addressed the Board. He urged the Board to approve the project and stated that the DWR grant funding of \$8 million would be lost in 2016 if the project is not permitted soon. Kirsten Keith, Chair of the JPA, addressed the Board and highlighted the need for the permit to be issued as soon as possible. Carlos Romero, former mayor of East Palo Alto and JPA alternate board member, discussed environmental justice issues. He stated that the protections for the golf course and East Palo Alto are equal and assured the Board that the project designs were fair for all in the area. He asked the Board to approve the project. Vice-Chair McGrath asked clarifying questions of Mr. Romero. Mr. Romero responded that he was specifically addressing a malicious rumor of partiality towards the City of Palo Alto golf course, due to higher proposed height of flood wall on that side. He said that that all parties involved agree that both sides of the creek will be equally protected from flooding.

A number of residents addressed the Board. Spencina Simms, East Palo Alto resident, shared her personal experiences of flooding in her neighborhood. Mrs. Simms asked the Water Board to help the project move along and expressed willingness of residents to cooperate with the

Water Board. Dennis Parker, an East Palo Alto resident, urged the Board to move forward. Mr. Parker also commented on the low household income of East Palo Alto residents and the one-thousand dollar FEMA insurance requirement, along with property losses, that have burdened residents. He also noted that East Palo Alto has the smallest capacity to move water from the creek, making it susceptible to higher flood damage. Board Member McGrath asked clarifying questions about flood insurance. Luella Parker addressed the Board and encouraged it to move the project along quickly and create a model that would work for humans, property, and animals alike. Vera Brulé, East Palo Alto resident, emphasized that the residents are in danger. She described how water backs up in East Palo Alto during high tide, so the city gets double the impact from the water rise, making it especially dangerous for residents in the area. Lorraine Holmes, East Palo Alto resident, expressed concerns about the potential for future flooding. Eve Sutton, East Palo Alto resident, described prior flooding events. Helen Hymes read a letter from her mother, Georgianna Hymes, who is a resident of East Palo Alto and a member of the Senior Center Board of Directors. Millicent Grant, Director of the East Palo Alto Senior Center, resident of East Palo Alto, and also representing Florence Finley, addressed the Board. She commented on her personal experiences with the flood and asked the Board to consider issuing the permit, so that the seniors no longer have to worry about the flood. She also described how many residents congregated at the Senior Center during the 1998 flood. Charlie Knight, East Palo Alto resident, urged the Board to approve the project. Connie Linton, Palo Alto resident, talked about the 1998 flood and ongoing fears about flooding. Rafael Chatar, Palo Alto resident, emphasized the issue of human suffering and urged the Board to approve the permit. Carol Munch, Palo Alto resident, reiterated the danger of the floods and asked the Board to approve the permit.

Michelle Daher, Environmental Coordinator for the City of East Palo Alto, discussed the pollution discharges associated with flooding events. She commented that moving forward with the permit would be an environmental improvement. Board Member Ajami asked Ms. Daher if the JPA or the counties were working on upstream improvements to protect and decrease water flow downstream. Ms. Daher responded that Menlo Park has strongly encouraged the JPA to consider upstream improvements and that those concerns are being addressed. Laura Martinez, Mayor of East Palo Alto, asked the Board to permit the project. She expressed the concerns of the City, asked the Board to allow the City to protect itself, and shared how the City was able to overcome many challenges. Lisa Gauthier, Vice Mayor of East Palo Alto, thanked the Board for listening to the public's concerns and thanked all the municipalities and residents that attended the meeting. Vice-Mayor Gauthier called to attention the focus of human life versus wildlife and shared her personal experiences with the residents of East Palo Alto. She asked the Board to not delay but to approve the permitting.

Jessie Quirion, Interim Public Works Director, City of Menlo Park, noted strong support of the Project. Jim Porter, Director of the San Mateo County Public Works Department, supported the project. He commented that he thought the project met a balance of meeting the needs of protecting property, lives, and the environment. James Keene, Palo Alto City Manager, expanded on prior comments and expressed concern that Water Board staff actions and communications were delaying project permitting and urged the Board to expedite the

permitting process. Frank Fraone, Division Chief of the Menlo Park Fire Department, discussed flooding risks. Mr. Fraone asked the Board to consider people over politics and surveyed the Board members on how they would vote on the permit if it was an action item. Board Member Muller reminded Mr. Fraone that the Water Board has legal requirements to adhere to for the State of California, expressed that the Board would not neglect anyone on the matter and that the Board does care about the people involved, but stated that it was inappropriate to ask Board members how they would vote before all testimony was heard. Board Member Muller further addressed Mr. Keene and expressed his discomfort with Mr. Keene attacking Board staff and noted that any personnel matters would be handled internally through Mr. Wolfe. Board Member Kissinger asked Mr. Fraone to let the Board hear the rest of the testimony on the matter. Acting Chair Abe-Koga stated that there is a process by which the Board has to follow and needed to hear all of the testimony before discussing the matter.

Tom Rindfleisch, Palo Alto resident, spoke on behalf of 124 residents that have signed a statement highlighting flooding concerns upstream of 101 and supporting the project. Ruben Abrica, a resident who represents East Palo Alto on the JPA, urged the Board to support the project. He supported the testimony given by the residents of East Palo Alto and shared his personal experiences with the flood, as well as his frustration with project delays. John Doughty, Community and Economic Developer of East Palo Alto, discussed flooding risks and concerns and urged the Board to approve the permit.

Amanda Morrison, Fisheries Biologist for the National Marine Fisheries Service (NMFS), described the distribution of steelhead and green sturgeon in the project vicinity and noted that her agency is developing recovery plans for these species and reviewing the project in this light. She described her role in the San Francisquito Creek Watershed and the impact of the project's estuary flood plain connectivity and channel modification. Ms. Morrison said that NMFS will continue working with the JPA and the Corps to complete its Section 7 consultation, but, that due to staffing changes and workload issues, NMFS was still at an early stage of its assessment. Board Member Kissinger asked about the timeframe for consideration. She noted that by law they have 135 days to complete the consultation. Jim Wiley, representing Ian Wren, Staff Scientist at SF Baykeeper and the group, Save the Oaks, presented an overview of flood risk reduction alternatives upstream of 101 and concerns about the project. His group advocates widening of the channel in the area of the golf course. Eileen McLaughlin, representing the Citizens Committee to Complete the Refugee, raised questions regarding the possible use of the golf course as part of the floodplain for the project. Carin High, Citizens Committee to Complete the Refugee, described the fragmented public participation process for the project and urged the Board to take actions necessary to protect the residents while continuing to discuss design options. She commented on how unfortunate it was that while the permitting process had taken so long, the issue of protecting endangered species in the nearby marsh was not discussed until the past year. She asked the Board to expedite the plan for the East Palo Alto flood walls to provide immediate relief and protection to residents, while giving some time to continue plan development for the other side of the project. Arthur Feinstein, representing the Citizens Committee to Complete the Refugee, urged the Board to look for an alternative to address public safety while still exploring actions to protect the Bay's ecosystem.

Alice Kaufman, member of the Committee for Green Foothills, asked for further evaluation of alternatives to increase the width of the channel.

Francois Guedenet, Director of Finance Operations for the International School of the Peninsula in Palo Alto, discussed concerns with flooding at the school. Peter Drekmeier, a Palo Alto resident representing Bay Area Action/Acterra, highlighted the importance of the creek and noted support for the project. Joe Teresi, Senior Engineer for the Palo Alto Public Works Department, commented that the golf course plans were not dictating the width of the channel and confirmed that the project plans were at optimum LEDPA standards. He also noted that low impact development (LID) measures would only help marginally to guard against 100-year flood events. Melanie Richardson, Deputy Operating Officer for the Santa Clara Valley Water District, clarified that the project will not remove residents from the FEMA insurance requirements since the project would only protect against riverine flooding, not coastal flooding. She also clarified that the project needs to be advertised in January 2015 for construction to start later in 2015 and that there needs to be a decision within a month in order to move forward as scheduled. Mike Sartor, Palo Alto's Public Works Director, clarified that the levee heights will offer equal protection. He also noted that the golf course cannot be used as an overflow channel because of the proximity of the Palo Alto airport and the Palo Alto wastewater treatment plant.

The Board took a brief break at 1:30 and reconvened at 1:40. Acting Chair Abe-Koga clarified the purpose of the workshop and that no formal action would be taken by the Board. She opened up the discussions by Board members. Vice Chair McGrath commended the JPA for securing funding but noted concern about blaming delays on environmental issues. He highlighted the importance of evaluating alternatives and including this information in the record. Vice-Chair McGrath also discussed his concerns about the potential impact to salmonids from various project actions and encouraged the permit applicants to push researchers to analyze as quickly as possible to contribute to the direction of the overall plan. He also stated that he was amenable to allowing the Executive Officer to issue a 401 certification if there is signoff on rare and endangered species impacts.

Board Member Ajami commented that the testimony was useful in many ways, and she was glad to have the workshop to bring to light all the issues. She agreed to allow the final decision to be made by the Executive Officer. Board Member Kissinger supported this approach as did Chair Young. All Board members expressed support for moving forward in order to protect the residents and expressed sympathy for the risks they are faced. They also agreed that the Board cannot rush to judgments if facts come to bear that require further analysis. Acting Chair Abe-Koga thanked everyone for attending the meeting and discussed the Board's approach to receiving public input. She asked the Executive Officer to summarize next steps.

Mr. Wolfe noted that we are in the middle of the public comment period for the project application. He encouraged interested parties to submit written comments and confirmed that comments received will be posted on the Board's website. He confirmed commitment to a transparent permitting process. He noted that staff are still evaluating the hydraulic analysis as

part of determining the LEDPA. He further noted the need to evaluate the adequacy of mitigation and to ensure that rock riprap and project maintenance needs are minimized, and that potential impacts upstream in the watershed may need further evaluation. Mr. Wolfe noted that the next steps included compiling comments at end of the public comment period, identifying any remaining hurdles from the Corps and resource agencies, and responding to comments as part of certification issuance. Vice Chair McGrath reiterated the question as to whether a wider channel would provide any additional benefits. The Board members agreed that they would like to be kept informed on issues and decisions regarding this project.

This item was for informational purposes only and no action was taken.

Item 13 – Adjournment

Meeting adjourned at 2:30 p.m. until the next Board Meeting – September 10, 2014