



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

January 11, 2017 Board Meeting
Draft Minutes for Board Consideration
ADOPTED FEBRUARY 8, 2017

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 9:04 a.m. in the Elihu M. Harris Building, First Floor Auditorium.

<u>Board Members Present</u>	<u>Board Members Absent</u>	<u>Status</u>
Cecilia Ogbu		QUORUM
Steve Lefkovits		
Newsha Ajami (left at 2:38)		
William Kissinger (left at 6:05)		
Vice-Chair James McGrath		
Chair Terry Young		
Jayne Battey		

Senior Environmental Scientist Xavier Fernandez introduced Scientific Aide Nicole Fairley. Senior Engineer Dale Bowyer introduced Scientific Aide Lily Tieu. Engineering Geologist Ron Goulobow introduced Scientific Aide Skylar Valle. Senior Engineering Geologist Laurent Meillier introduced Scientific Aide Sunny Grunloh. Division Chief Bill Johnson introduced Scientific Aide Lena Germinario. Senior Engineer Robert Schlipf introduced Engineer Will Burrell and Engineering Assistant Jerry Xu.

State Board Member Tam Doduc updated the Board about the Governor’s proposed budget, new positions for the agency, and progress on the Bay Delta Water Quality Control Plan.

Item 2 – Election of Chair and Vice-Chair

Chair Young turned the floor over to Board Member Kissinger to conduct the Board Chair election. Board Legal Counsel Tamarin Austin described the election process. Vice Chair McGrath nominated the current Chair, Dr. Young. Board Member Ajami seconded the nomination. Board Member Kissinger nominated Board Member McGrath for Vice Chair and Chair Young seconded. She also noted how engaged and helpful Vice Chair McGrath has been and appreciation of the Board’s confidence in both of them.

Ayes: Ogbu, Lefkovits, Ajami, Kissinger, McGrath, Young, Battey
Nos: none
RESULT: Board Member Young elected Chair

Ayes: Ogbu, Lefkovits, Ajami, Kissinger, McGrath, Young, Battey
Nos: none
RESULT: Board Member McGrath elected Vice Chair

Item 3 – Public Forum

Parties presented comments pertaining to the Marinwood Plaza cleanup. Bill McNicholas, Chairman of Cleanup Marinwood Plaza Now, raised the need for enforcement and concerns about the easement process. Robert Graham, member of Cleanup Marinwood Plaza Now, raised concern about slipping deadlines and the February 1 deadline. He also read a statement into the record from resident Marcie Williams urging the Board to levy fines.

Item 4 – Minutes of the December 14, 2016 Board Meetings

Assistant Executive Officer Dyan Whyte informed the Board that the minutes of the December 14, 2016, Board Meeting would be presented for adoption at the February 8, 2017, Board Meeting.

Item 5 – Chair’s, Board Members’, and Executive Officer’s Reports

Board Member Battey reported that she attended training on Board Member roles and responsibilities. Board Member Ajami attended a meeting at the Brookings Institute on public investment and gave a presentation on water infrastructure needs.

Consideration of Uncontested Item

Item 6A – Cleanup Programs – Status Report Including Case Closure

Ms. Whyte noted that no action is required. Vice Chair McGrath noted appreciation for the report. Board Member Battey asked about trends and Board Member Kissinger asked about the total number of cases. Division Chief Stephen Hill provided background information and agreed to provide more comprehensive trend information to the Board in his next report.

Waste Discharge Requirements

Item 7 – Santa Clara Valley Water District and U.S. Army Corps of Engineers, Upper Berryessa Creek Flood Risk Management Project, Santa Clara County – Adoption of Waste Discharge Requirements and Water Quality Certification

Ms. Whyte noted that staff received a comment letter the night before and Legal Counsel Tamarin Austin added that two other comment letters came in after the comment period closed. Ms. Whyte recommended that the Board exclude all late comments, and Chair Young agreed. Chair Young announced that she has had conversations with staff at the Governor’s office on this matter but that these conversations were strictly procedural and not substantive.

Staff Scientist Susan Glendening gave the presentation to the Board. Ms. Glendening described the project purpose and how the two-phase permitting approach developed by Board, Army Corps, and District staff allows the construction to be completed on time. She discussed the resources being impacted by the project, the need for mitigation, requirements in the proposed Order, significant comments received, and staff's responses to these comments.

Board members asked a number of clarifying questions about the photos presented and the quality of habitat. Board members Kissinger and Ajami asked about flows in the reconstructed channel and Vice Chair McGrath asked about flow velocities. Vice Chair McGrath asked about required vegetation management practices and stream condition assessments. Chair Young described her experience with habitat condition assessments. Division Chief Keith Lichten described the limitations associated with Army Corps single-purpose flood control channel designs. Board Member Battey asked for clarification regarding wetland delineations and definitions. Senior Environmental Scientist Xavier Fernandez showed a slide illustrating jurisdictional boundaries and riparian wetlands. Board Member Battey asked about staff's involvement in commenting on the EIR. Chair Young asked for staff to confirm their rationale for developing a two-phase permitting approach. Ms. Whyte provided background on the history of dialogue with the Water District on mitigation options. Vice Chair McGrath noted that he wanted to move the discussion to focus on the appropriate amount of mitigation for the impacts. Chair Young asked for clarification on sediment removal needs and mitigation and the operations and maintenance manual.

Chair Young allowed Joseph Sanchez, representing the Santa Clara Building and Construction Trade Council, to provide public comments early because he had to leave. Mr. Sanchez urged the Board to not adopt the Order because it would delay the project, deprive the community of critical jobs, and increase vulnerability to flood damage.

Tom Kendall, Chief of Planning with the San Francisco District of the Army Corps of Engineers, addressed the Board. He noted appreciation for the Board's timeliness in issuing the certification but objected to the Corps being included on the Order. Mr. Kendall stated that they were supportive of exploring environmental restoration opportunities consistent with collective goals. He also highlighted all the benefits of the project and described the Corps approval process. Board members Ajami and Kissinger asked for more detail on the history of the project. District Counsel for the Corps, Mary Goodenough, summarized the Corps' legal opinions and noted that the mitigation requirement is very problematic. Board members asked Mr. Kendall and Ms. Goodenough a number of questions pertaining to their comment letter. Chair Young asked for clarification as to how adopting the Order today would stop the project. Vice Chair McGrath asked a number of questions about NEPA and mitigation for State-listed species. Mr. Kendall described ways of calculating cost benefits ratios.

Santa Clara Valley Water District Chair Richard Santos expressed concern that adoption of the Order would endanger the project and deny the community flood protection. Santa Clara Valley Water District Interim Chief Operating Officer Melanie Richardson described the District's funding situation and why conducting mitigation is problematic. She noted that the District

fundamentally disagrees with the Order and has proposed mitigation that adequately addresses impacts. Ms. Richardson described her understanding of the two-phase permitting process. Board Member Kissinger asked Ms. Richardson about her understanding of the wording in the Certification. Santa Clara Valley Water District Environmental Planner Jim Manidakos discussed why the mitigation could cost \$20 million. He presented a number of photos and described the condition of the channel. He described how the channel banks would be laid back creating grassland habitat and the replanting plan. He stated that a low flow channel will form and the hydrology will not change, therefore open water habitat will not change. Board Member Kissinger asked about comparisons drawn between the project and Lower Silver Creek. Vice Chair McGrath asked clarifying questions about the channel design. Board Member Ajami asked for clarification about the removal and replacement of concrete in the channel.

LUNCH BREAK at 1:45 p.m.; Reconvene at 2:38.

Upon request, Chair Young agreed to let members of the Public testify before the District finished its presentations. Linda Locke with the Berryessa Citizen's Advisory Council expressed concern about flooding and the need to get the project done in a timely manner. Frank Caneille, president of the Berryessa Business Association, discussed the impact on local businesses due to flooding. Reverend Moore, president of the San Jose Silicon Valley NAACP, expressed that the Board does not have concern for the people who would be affected by flooding. Chair Young thanked the speakers for attending the meeting and assured them that the Board has no intention of delaying the project and that is why the agencies agreed to implement a two-phase permitting approach.

Jack Xu, with the Hydrology, Hydraulics, and Geomorphology Unit at the Water District, presented photos and described why he believes the channel is erosional as opposed to aggradational. Vice Chair McGrath asked a number of questions about the engineering design of the project. Ms. Whyte described staff's concern about the lack of a low flow channel in the design and uncertainty about dry season flows due to the bottom riprap.

Rita Chan, Santa Clara Valley Water District legal counsel, described the NEPA/CEQA process, summarized the District's legal arguments, and reiterated that the District fundamentally disagrees with Water Board staff's analysis of impacts and mitigation requirements. Peter Prows, outside counsel for the Water District, highlighted areas in which the District disagrees with staff's legal interpretation of Water Board authorities and procedures. Board Member Kissinger asked a number of questions regarding the legal arguments presented. Ms. Austin summarized the Water Board's responses to the legal issues raised by the District. Chair Young asked Board staff for closing remarks. Vice Chair McGrath asked about annual sediment removal rates. Board Member Battey asked about comments from the resource agencies.

Chair Young convened a closed session to allow the Board to deliberate.

CLOSED SESSION AT APPROXIMATELY 5:00 p.m.; RECONVENE at 6:05 p.m.

Chair Young re-opened the meeting. She stated that the Board agreed that mitigation is required but was not able to put together language to describe the mitigation requirement it feels is appropriate. She continued the hearing to March.

Other Business

Item 8 – Estuary Blueprint – The 2016 Comprehensive Conservation and Management Plan – Presentation on the 2016 CCMP Update by Caitlin Sweeney, Director of the San Francisco Estuary Partnership

This informational item was postponed till February.

Item 13 - Adjournment

Meeting adjourned at 6:11 p.m. until the next Board Meeting – February 8, 2017