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ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

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

MEETING DATE: July 11, 2018

ITEM: **3**

SUBJECT: **MINUTES OF THE JUNE 13, 2018 BOARD MEETING**

June 13, 2018 Board Meeting

ADOPTED July 11, 2018

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 9:10 a.m. in the Elihu M. Harris Building, First Floor Auditorium.

<u>Board Members Present</u>	<u>Board Members Absent</u>	<u>Status</u>
Chair Terry Young	William Kissinger	QUORUM
Vice-Chair James McGrath		
Cecilia Ogbu		
Newsha Ajami		
Jayne Battey		
Steve Lefkovits		

Planning Division Chief Naomi Feger introduced Senior Water Resources Control Engineer Jan O'Hara, promoted from her line staff position in the Division.

Item 2 – Public Forum

David Lewis, Executive Director of Save the Bay, commented that Save the Bay has issued a new report about what makes a Bay-smart community. He said they are acutely aware that the Bay's health depends on what happens upstream. As the Bay Area grows rapidly and cities are redeveloping, to protect the Bay, they need to focus on infrastructure development, specifically green transportation development and housing.

Cathy Helgerson, Citizens Against Pollution, requested teleconferencing of Water Board meetings. She said Stevens Creek Quarry has received two letters of violations but no followup from the Board. The Santa Clara Valley Water District is not managing the water quality in the adjacent reservoir. There is dust everywhere, and it is going into the reservoir. The Quarry's permits allow the Quarry to discharge. She said she worked with Dyan Whyte for 13 years and now with Lisa and Lindsay and nothing has happened. She appealed to the Board to do something and described the personal health issues she and her family have experienced.

Chair Young asked if we can provide a status report in the next Executive Officer's Report, and Assistant Executive Officer Lisa Horowitz McCann said staff can provide an update.

Item 3 – Minutes of the May 9, 2018 Board Meeting

Executive Officer Bruce Wolfe recommended approval of the Minutes from the May 9, 2018, Board Meeting. He pointed out the new notation of items Board members discussed at length in bold font.

Board Member Battey moved approval, and Vice-Chair McGrath seconded.

Chair Young asked if all were in favor of approving the Minutes – none opposed; all ayes.

ITEM APPROVED

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

Board Member Ajami attended an event hosted by Sustainable Silicon Valley on May 31, regarding the Bay Area’s water sources and considering new sources, which discussed potable reuse, the “one water” concept, and collaboration. She commented that it is interesting to see how the Board’s role will change and focus more on water supply through source protection and stormwater management.

Mr. Wolfe gave an overview of this month’s Executive Officer’s Report. He pointed out the groundbreaking at Alameda Point as indicative of the effort staff is making at all the Department of Defense sites, where staff directs clean up to conditions that are safe for the desired property reuse. He also noted the information on staff progress addressing spills from sanitary sewer collection systems and working to get infrastructure improvements, and staff’s effort to stay engaged on shoreline resiliency related to Highway 37 by focusing on short term projects. Mr. Wolfe mentioned that staff sent a letter to all active landfills in the region asking them to evaluate whether they had accepted Hunter’s Point radioactive waste.

Mr. Wolfe attended the Resilient By Design event with Vice-Chair McGrath where the project teams presented their proposals. Local agencies plan to see what components from the various designs can be integrated into development and shoreline protection. Vice-Chair McGrath said that the ways these designs will best protect water quality was not readily apparent and acknowledged that these are long-term projects that are hard to get communities to start. He said he was frustrated that communities were not offered priorities, incentives, or information to help them get started. He also added that he appreciates the progress reported on reducing sewer overflows.

Chair Young wants **collaborative agency review of projects for Measure AA and any that come out of visioning processes like Resilient By Design so permitting is better and more efficiently coordinated**. Mr. Wolfe added that Measure AA funds were approved for coordinated planning and permitting.

Board Member Ajami expressed appreciation for the listing of statewide policies and permits.

Chair Young administered the Oath.

Uncontested Items

Item 5A – City of Burlingame and North Bayside System Unit, City of Burlingame Wastewater Treatment Facility and Collection System, Burlingame, San Mateo County –
Reissuance of NPDES Permit

Item 5B – Sausalito-Marín City Sanitary District, Sausalito-Marín City Sanitary District Wastewater Treatment Plant and Collection System, Sausalito, Marin County –
Reissuance of NPDES Permit

Item 5C – General Waste Discharge Requirements for Discharge or Reclamation of Extracted Brackish Groundwater, Reverse Osmosis Concentrate Resulting from Treated Brackish Groundwater, and Extracted Groundwater from Structural Dewatering Requiring Treatment to Surface Waters (Groundwater General Permit) – Reissuance of General NPDES Permit

Mr. Wolfe introduced all the items. He mentioned supplemental information on Item 5A.

Mr. Wolfe recommended adoption of item 5A, with the supplemental information, and items 5B and 5C.

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

Vice-Chair McGrath commented that he appreciated that there has been significant progress and funds devoted to solving the overflow problems.

Chair Young commented on Item 5A that data does not show that we are achieving **improvement on sewer overflows** in this case; improvements seem very slow. Mr. Wolfe explained the progress and said, while it may be slow, it is in the right direction. This is because systems are so extensive in our developed communities, which creates the challenge of making improvements quickly. Chair Young wants staff to target timeframes when problems can be solved and then work backward to develop aggressive strategies and funding to resolve. She wants **our facilities to be ahead of the state-wide average**. Board Member Ajami observed that numbers shown in the EO Report and Item 5A were from 2015-2016, which was during the drought and may not adequately represent reductions in sewer overflows. She suggested that the Board may need a different way to measure success and suggested event reductions instead of numbers of overflows from year to year. Vice-Chair McGrath asked for **a followup report in next few months** regarding what the City of Burlingame Wastewater Treatment Facility and Collection System has done towards further improvement. Board Member Battey requested **explanation of San Mateo County wastewater and collection system entities** where there seem to be many independent and uncoordinated efforts. Mr. Wolfe said that San Mateo County is not that different than other counties.

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

Nos: None

ITEM ADOPTED

Basin Plan

Item 6 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) to Establish a Total Maximum Daily Load (TMDL) for Sediment in the Pescadero-Butano Watershed and an Implementation Plan to Achieve the TMDL and Habitat Enhancement Goals –

Hearing to Consider Adoption of Proposed Basin Plan Amendment

Mr. Wolfe introduced the item. Planning Division Water Resources Control Engineer Setenay Bozkurt Frucht presented the item.

Mr. Wolfe mentioned a correction needed to remove a reference to the San Mateo County Flood Control District as distinct from San Mateo County.

Chair Young suggested that Caltrans is not required to do anything new and wants staff to **consider compliance with its permit to assist the parties that must implement this TMDL.** Looking at implementation measures, the first step is a planning and prioritizing process, which is not going to be clear to individual implementing parties as to what they should do. Chair Young requested staff **provide written expectations for this phase of implementation and make it publicly accessible, e.g., via the web.** Board Member Ajami asked if staff's plan to coordinate with parties means developing one coordinated watershed effort. Ms. Feger said no; staff will work with third-party entities like the Farm Bureau and the Resource Conservation District and coordinate with parties in each sector or source of sediment, such as roads or grazing. Board Member Ajami also asked if staff has modeled or understands the extent or types of actions needed to achieve the goals. Staff clarified that actions have not been modeled, in part because landowners will voluntarily select actions to control sediment. Board Member Battey mentioned the history, value, and independence of the communities and land owners in the watershed.

Kellyx Nelson, Executive Director of the San Mateo Resource Conservation District, commented that this is a well-developed plan. She said she has suggestions for edits to the Basin Plan amendment to the tables with implementation language to add focus on using reasonable and feasible industry standards to be what is acceptable to Executive Officer.

Vice-Chair McGrath commented that he is hesitant to add this language regarding the roads as they need to be addressed and managed well and technically appropriately. The Board can discuss how long and where but not suggest only feasible solutions for the roads as they must be fixed to reduce sediment loading.

Ms. Feger and Ms. O'Hara indicated that the reports currently indicate the reasonableness being requested. They further said the initial reports are due in a few years so Board staff is confident that review of the reports will be with awareness of this need for flexibility. Board members commented that they were impressed by the report, the watershed characterization, and the balance between setting goals and targets while also allowing flexibility (for example, setting thresholds to exclude small landowners from implementation requirements).

Mr. Wolfe recommended adoption of Item 6 as presented and with removal of reference to the Flood Control District as mentioned previously. He added that this TMDL, as with many TMDLs already adopted by the Board, represents the beginning of what needs to happen in this watershed, including involvement and support from stakeholders, and can be adjusted later if needed.

Board Member Ajami moved adoption, and Board Member Battey seconded the motion.

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

Nos: None

ITEM ADOPTED

Waste Discharge Requirements

Item 7 – Hanson Permanente Cement, Inc., and Lehigh Southwest Cement Company – Permanente Quarry and Cement Plant, Cupertino, Santa Clara County – Adoption of Waste Discharge Requirements

Mr. Wolfe introduced the item. Engineering Geologist Lindsay Whalin presented the item.

Chair Young suggested that the presentation on mercury and selenium were helpful for those concerned about drinking water but would have been helpful to know how the concentrations in groundwater relate to the concentrations in the creek, as human health contaminant levels are not always the limiting factor and there may be impacts to aquatic life. Ms. Whalin commented that aquatic life levels are lower than limits for human health, and current monitoring provides coordination between groundwater and the creek conditions. Board Member Ajami also asked if all the various regulatory oversight and issues with the site are contained in one place. Mr. Wolfe said that related regulatory information is included at the back of the Tentative Order and on the Board's website where there is a page summarizing all the regulatory oversight for this site. Vice-Chair McGrath asked for an **explanation of selenium pathways from rock into the environment and the form that threatens or impacts aquatic life**; he asked for assurance that groundwater monitoring results of dissolved selenium that exceeds maximum contaminant levels for human health does not mean aquatic life is impacted. Ms. Whalin explained that selenium levels are likely decreasing as water flows in the subsurface from beneath the site to the creek. Chair Young said that does not account for selenium bound in organic matter, which can become bio-available, so staff should also be accounting for that in the creek.

Erika Guerra, Director of Environmental Services for Lehigh-Hanson, thanked Water Board staff and mentioned that they have shared goals and wanted to assure the Board that they will continue to work to coordinate with the Water Board and neighbors on water quality issues. Lehigh has conducted significant reengineering of the site to address issues, and treatment has been effective to control water quality impacts and comply with the NPDES permit. The Lehigh team will apply similar ingenuity and solutions to address waste management and is committed to implementing the process and monitoring specified in the Tentative Order.

Cathy Helgerson, Citizens of Pollution, commented. She said she has been doing this for 13 years and the agencies are not doing their job. Lehigh wants to put in another quarry. Changes should have been in red. The waste is toxic and should be called that. Downstream areas are covered with gray dust and are causing health problems and death. Heidelberg is Lehigh's parent company and is very wealthy and should have been mentioned on the TO. No agencies have issued enforcement actions and should. Surface water and groundwater are commingling. She said she asked the County staff person how the TO works with the reclamation plan and does not think the County is doing its job either. She asked the Water Board to get involved with the Air Board. The Water Board is issuing permits that allow the facility to pollute. She stated that she dreams of closing down Lehigh and putting in a park or housing but cannot if the site is not cleaned up. The Water Board should do its own monitoring as she cannot trust Lehigh. The public should be able to see the faces of Board staff who sit facing the Board members. She pleaded to the Board to help shut Lehigh down.

Vice-Chair McGrath asked specifically about whether Lehigh planned another quarry or expansion, and if it has the financial where-with-all to comply. Board staff indicated that there are no existing plans for another, but that would be an issue for the local land use authority. The TO requires Lehigh to demonstrate that it has the financial means to comply.

Board Member Battey asked **how long it will be until quarry closure**; Ms. Whalin mentioned that she expects 10-15 years; closure depends on the market; and the reclamation plan approved by the County defers to the Board for water quality protection as the County does not have the expertise. The TO covers current operations and assumptions in the reclamation plan but creates a new requirement to submit updated plans every two years. Ms. Whalin responded to other issues raised by commenters. This included the following:

- Regarding dust on site, the Board's TMDL staff is evaluating downstream impacts of any pollutant transport and loading in the creek; control of dust and pollution discharge is covered in Lehigh's NPDES permit; and the Air Board has distinct authorities for dust control separate from Water Board authority.
- Several enforcement actions have been taken; we have issued notices of violation for groundwater reporting.
- Staff is coordinating with other agencies at least annually.
- Regarding commingling of groundwater and surface water, staff acknowledges that they cannot look at them separately.
- Self-monitoring is standard; it would be great if we had resources to pay to do all monitoring ourselves. Groundwater monitoring is expensive. We have several fail-safe practices such as requiring registered professionals to do the monitoring and requiring acceptability to the Executive Officer.

Board Member Battey asked about the format, attendance, and tone of the public meetings. She also asked if there has been a community health assessment. Julie Macedo, State Water Board Office of Enforcement, responded and said she was not aware of any health assessment but that the Santa Clara County Environmental Health Department participates in these

community meetings. She said the tone is positive. Ms. Guerra said Lehigh is in the process of updating health assessments related to revised health indicators.

Chair Young directed staff to **make sure any comments submitted on the Tentative Order that deal with other regulatory activities (such as NPDES) will be considered in implementing those activities.**

Mr. Wolfe acknowledged that **this site is complex and staff needs to maintain coordination internally on various regulatory activities, with agencies, and with the community.** He recommended adoption of Item 7 as proposed.

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

Vice-Chair McGrath said he understands the challenge for neighbors and Lehigh, but everyone must remember two things: the Board has limited land use authority and this is a vested land use. The Board does not have control over the reclamation plan, only the water quality issues associated with it. The Board can do more community engagement; he suggested we **hold hearings for the NPDES permit reissuance in Cupertino.** He has confidence in staff and the Order's ability to protect groundwater quality.

Board Member Battey acknowledged the value of the facility to the Bay Area and the challenge to operate the site. She also **encouraged more community engagement.** She said she has confidence that the Board is doing the best we can.

Chair Young echoed that the Board can only act within its authorities and trusts that all parties are doing the best they can.

Ayes: Young, McGrath, Ogbu, Ajami, Battey, Lefkovits
Nos: None

ITEM ADOPTED

Chair Young administered the Oath again.

Board members Lefkovits and Ajami departed after the closed session.

Enforcement

Item 8A - City of Hercules, Municipal Regional NPDES Stormwater Permit, Order No. R2-2015-0049, NPDES Permit No. CAS612008, Permittee, Hercules, Contra Costa County – Adoption of Cease and Desist Order

Mr. Wolfe introduced the item and explained that staff will provide an introduction applicable to all the proposed cease and desist orders, followed by individual presentations applicable to each order. Senior Engineer Dale Bowyer presented the introduction to all the items, including describing unmet permit requirements, level of compliance, which municipalities have not complied, and proposed cease and desist order requirements. Mr. Wolfe clarified that each of the six orders must be considered individually.

Water Resource Control Engineer Zach Rokeach presented Item 8A. He mentioned supplemental information presented that proposed some minor edits. Chair Young asked about the timeline for implementation following the adoption of City ordinances, and Mr. Rokeach clarified. Board Member Battey asked for confirmation that staff does not consider 60% load reduction within margin of error. Mr. Bowyer responded that it is close but was interpreted to be out of compliance. He pointed out that staff prepared this tentative order because the City was only achieving 15% reduction at the time 70% reduction was required. Board Member Battey also asked for clarification that no monetary penalties are associated with this tentative order. Chair Young indicated she **expects more urgency to comply and wants the City to attend to implementation of its ordinance.**

Mr. Wolfe recommended adoption of Item 8A with changes noted in the supplemental.

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

Ayes: Young, McGrath, Ogbu, Battey

Nos: None

ITEM ADOPTED

Item 8B - City of Pinole, Municipal Regional Stormwater Permit Permittee, Pinole, Contra Costa County – Adoption of Cease and Desist Order

Mr. Rokeach presented Item 8B. He mentioned supplemental information for this item.

Mr. Wolfe recommended adoption of Item 8B with the changes in the supplemental.

Vice-Chair McGrath asked about the implementation timeline associated with the City's ordinance, and Mr. Rokeach responded that three months were allowed to comply. Chair Young observed that the actions in the order ensure they achieve 85% of required trash reduction but it remains unclear whether they will achieve the additional 15%.

Vice-Chair McGrath moved adoption; Board Member Battey seconded the motion.

Ayes: Young, McGrath, Ogbu, Battey

Nos: None

ITEM ADOPTED

Item 8C - County of Alameda, Unincorporated Area, Municipal Regional Stormwater Permit Permittee, Alameda County – Adoption of Cease and Desist Order

Mr. Rokeach presented Item 8C.

Mr. Wolfe recommended adoption of Item 8C.

Vice-Chair McGrath stated he cannot support the extension of the compliance date without any improvement.

Hank Ackerman, Principal Engineer with the County of Alameda, said the County has made progress in terms of switching from visual assessment to full capture, but that requires installing huge and costly structures. He requested consideration from the Board if the County

cannot meet installation dates for compliance, specifically an extension of the compliance deadline for a worst-case scenario. The County will continue to implement street sweeping and other methods of trash reduction until full capture devices are installed. Board members **encouraged reporting that makes it clear what methods the County is implementing and how the County is assessing load reduction until compliance is achieved.** Board members asked about the increase in load reduction from 19% to 60%, and Board Member Battey specifically asked if visual inspections showed this improvement. Sharon Gosselin of Alameda County explained that the County originally used a load-based approach and then were required to perform visual assessments.

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

Ayes: Young, McGrath, Ogbu, Battey

Nos: None

ITEM ADOPTED

Item 8D - City of Livermore, Municipal Regional Stormwater Permit Permittee, Livermore, Alameda County – Adoption of Cease and Desist Order

Water Resource Control Engineer Elyse Heilschorn presented the item.

Chair Young said she wondered if the order required enough reporting between now and the deadline, and staff responded there are two reports. Chair Young commented that that should be enough time, but, different than tracking one big project, this one requires tracking multiple actions.

Mr. Wolfe recommended adoption of Item 8D.

Board Member Battey moved adoption; Board Member Ogbu seconded the motion.

Chair Young noted a minor typographical error. Mr. Wolfe revised his recommendation to approve tentative order with the edit made.

Ayes: Young, McGrath, Ogbu, Battey

Nos: None

ITEM ADOPTED

Item 8E - City of Vallejo and Vallejo Flood and Wastewater District, Municipal Regional Stormwater Permit Permittees, Vallejo, Solano County – Adoption of Cease and Desist Order

Ms. Heilschorn presented the item.

Vice-Chair McGrath asked for clarification about the uncertainty between three or four devices. Chair Young observed that the tentative order does not specify a frequency for the on-land visual assessment and indicated she thinks frequency should be added.

Terence Davis, Public Works Director of the City of Vallejo, provided context for the City being an old city, 150 years old, and still recovering from bankruptcy as a disadvantaged community. The City is committed to cleanup and achieving full capture but needs time.

Melissa Morton, District Manager, Vallejo Flood and Wastewater District, described their unique environment: adjacent to the Bay in a low-lying area. She clarified that they had not hired a consultant when they proposed full capture devices as part of plan to achieve compliance. They have since completed plans and committed to three devices. They hired EOA as their consultant to assist them with more accurate assessments. They are coordinating with Caltrans as they have a lot of land area in Caltrans' right-of-way. They are working with the community on more trash pick-up and addressing homelessness.

Board Member Battey asked if the District knows what is the source of trash. Ms. Morton said there are lots of fast food restaurants in Vallejo. Vice-Chair McGrath asked that they **take care to consider sea level rise in low lying areas** and asked if they have the money. Ms. Morton said yes. Board Member Battey asked if this tentative order and the one for East Palo Alto should be aligned with any order for Caltrans and delayed until September since both these areas are surrounded by Caltrans lands and freeways. Mr. Wolfe responded that the Board is not likely to have additional information on which projects Caltrans will fund by September. Vallejo must move forward soon in terms of funding and planning, and its efforts now should not preclude securing funding assistance from Caltrans down the road. Chair Young commented that an order on the books for Vallejo may facilitate Vallejo's ability to get support from Caltrans. She also stated that **the Board is willing to be a partner to hold Caltrans accountable to address its share of the trash-generating surfaces**. The Board can reopen these orders later if compliance is not forthcoming.

Mr. Wolfe recommended adoption of Item 8E, with changes to reference the frequency of assessments as stated in the permit (read into the record).

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

Ayes: Young, McGrath, Ogbu, Battey

Nos: None

ITEM ADOPTED

Item 8F - City of East Palo Alto, Municipal Regional Stormwater Permit Permittee, East Palo Alto, San Mateo County – Adoption of Cease and Desist Order

Mr. Rokeach presented the item.

Sean Charpentier, Assistant City Manager of East Palo Alto, presented the City's plan to return to compliance including installing a full trash capture device. He requested a date correction to the order. He explained the risks and opportunities and the City's commitment to get the device installed in spite of constraints. He specifically mentioned that the City is seeking agreement that the project can be built under an existing permit.

Chair Young asked that the Board evaluate whether this order should be delayed to align with a potential Caltrans order in September. Assistant Executive Officer Thomas Mumley said that would be fine with Board staff, given that will provide additional certainty about whether the project had resolved its need for environmental permitting. Mr. Charpentier stated that he is committed to the proposed schedule and would prefer not to receive an enforcement order.

He said environmental permitting could delay project completion but construction is in one location and will not take long once approved. Board members asked questions and considered delaying the Order but indicated they were leaning towards adopting it at the meeting. Chair Young indicated that adopting the order would insure work continues and provides a stronger foundation for the Board to support the City in getting resource agencies to approve construction and installation of trash capture device. Vice-Chair McGrath and Board Member Ogbu indicated preference to adopt the Order but recognize that they can reopen the permit and acknowledge the project's challenges if and when they occur.

Mr. Wolfe recommended adoption of Item 8F with the date change in Finding 9, from November 9, 2018 to January 2019.

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

Ayes: Young, McGrath, Ogbu, Battey

Nos: None

ITEM ADOPTED

Item 9 – Correspondence – discussed during Item 4

Item 10 – Closed Session – Personnel

The Board did not hold a closed session to discuss personnel matters.

[Authority: Government Code section 11126(a)]

Item 11 – Closed Session – Litigation

The Board met in closed session to discuss litigation.

[Authority: Government Code sections 11126(e)(1) and 11126(e)(2)(A)-(C)]

Item 12 – Closed Session – Deliberation

The Board did not hold a closed session to consider evidence received in an adjudicatory hearing and deliberate on a decision to be reached based on that evidence.

[Authority: Government Code section 11126(c)(3)]

Item 13 - Adjournment

Meeting adjourned at 3:37 p.m. until the next Board Meeting – July 11, 2018