

STATE OF CALIFORNIA

**REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

MEETING DATE: April 10, 2019

ITEM: **3**

SUBJECT: **MINUTES OF THE MARCH 13, 2019 BOARD MEETING**

San Francisco Bay Regional Water Quality Control Board

March 13, 2019 Board Meeting
ADOPTED April 10, 2019

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 9:07 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	Jayne Battey	QUORUM
Vice-Chair James McGrath	Steve Lefkovits	
Cecilia Ogbu		
William Kissinger		
Newsha Ajami (arrived at 9:15)		

Groundwater Protection Division Supervisor Alec Naugle introduced Erika Kalve who joins the Division as an Engineering Geologist.

Executive Officer Mike Montgomery acknowledged Water Resource Control Engineer David Barr's retirement.

Chair Young acknowledged that Mr. Montgomery is participating in his first meeting today in his new role as Executive Officer.

Item 2 – Public Forum –

Bill McNicholas, resident of Marinwood and representing Clean up Marinwood Plaza Now!, commented on the cleanup work at the Prosperity Cleaners site. He submitted a letter from Supervisor Connelly. He said he was pleased with progress and that the discharger proposed additional onsite cleanup work. He said the community supports the proposed work.

Steven Nestle, also representing Clean up Marinwood Plaza Now!, thanked the Board and staff for making progress on cleanup. He said they believe there is contamination beyond the eastern hotspot towards the east onto Caltrans property. He would like to see additional cleanup in this location to prevent continued migration of the groundwater plume onto the Silveira property.

Ann Moran, Homeowners of Casa Marinwood, said residents are worried about the possibility of groundwater contamination and appreciates that additional monitoring is planned.

Neil Bardack, attorney for Catholic Charities (an offsite landowner), asserted that the groundwater plume is growing and more work is needed to clean it up.

David Trotter, attorney for the Silveira family (another offsite landowner), commented that the property is in the path of the groundwater plume and uses groundwater for drinking water. He said that the permeable barriers should be extended to address all the area impacted above five parts per billion concentration in groundwater across the property. He also said that he would like to see additional work around the eastern hotspot and on Caltrans property so that it is cleaned up before it travels across the freeway and hits the Silveira property.

Toxics Cleanup Division Chief Stephen Hill responded by noting that Board staff have required a workplan for additional onsite cleanup and will require workplan implementation following the public comment period. Additional investigative work on Caltrans property indicates soil is not contaminated and groundwater in this area will be remediated. Regarding offsite groundwater cleanup, he noted that the Cleanup Order sets a ten-year cleanup timeframe to achieve drinking water standards and said Board staff believe this will be more effective than micro-managing the cleanup project.

Vice-Chair McGrath noted that the **source removal combined with the treatment barriers to prevent the plume migration should succeed**. Board member Kissinger asked if there is evidence that the barriers are working. Engineering Geologist Ralph Lambert said that pilot test results indicate the barriers will be effective, but the full system has not yet been implemented. He also said that the discharger will perform additional source removal, including building demolition and soil excavation. He also said the discharger will install additional monitoring wells to indicate if cleanup is effective.

Richard McMurtry, Santa Clara County Creeks Coalition, commented that he submitted letters requesting a Board meeting with creek groups to establish priorities to address beneficial use protection. He said regulatory agencies have failed to act to protect the beneficial uses and that establishing project mitigations is not the approach to address beneficial use protection. He said staff spent lots of time on Berryessa Creek and it is not on any priority list. He said Coyote Creek has been identified as an anchor watershed and fish are almost extirpated. He urged the Board to do more.

Item 3 – Minutes of the February 13, 2019 Board Meeting

Chair Young recommended adoption of the minutes from the February 13, 2019, Board Meeting.

She asked if all were in favor of adoption of the minutes – all Ayes. Chair Young then asked if anyone was opposed - none opposed.

ITEM ADOPTED

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

Vice-Chair McGrath said he met with Richard McMurtry in December 2018 about the issues Mr. McMurtry raised during public forum and shared information he received with staff.

Mr. Montgomery explained some regulatory history at the E-D Coat facility that was not reported in the Executive Officer’s Report.

Assistant Executive Officer Thomas Mumley mentioned that staff will bring a Board item on climate change activities to the April Board meeting, as follow-up to the February Executive Officer’s report.

Chair Young administered the oath.

Consideration of Uncontested Items

Item 5A – City of Millbrae and North Bayside System Unit, Water Pollution Control Plant and Wastewater Collection System, Millbrae, San Mateo County – Reissuance of NPDES Permit

Item 5B – Napa Vallejo Waste Management Authority, American Canyon Class III Solid Waste Disposal Facility, American Canyon, Napa County – Discharge Requirements and Rescission of Order No. 97-072

Chair Young introduced the item. Vice-Chair McGrath moved approval and Board Member Ajami seconded the motion.

Vice-Chair McGrath noted that the requirement on resiliency is more robust for American Canyon Landfill and that this is appropriate for a facility on the Napa River subject to tidal influence.

Chair Young said she wants the Board to propose guidance for how facilities will have to deal with the latest weather and sea level rise projections for planning purposes.

Vice-Chair McGrath recommended the Board have Gary Griggs from the Ocean Protection Council present on sea level rise projections.

Chair Young commented that she appreciates the goal of 2024 to address sanitary sewer overflows in the City of Milbrae.

Ayes: Young, McGrath, Ogbu, Ajami, Kissinger

Nos: None

ITEM ADOPTED

Planning

Item 6 – Proposed Revisions to Clean Water Act Section 303(d) List of Impaired Waters – Adoption of Resolution Approving Recommendations for Revisions

Board Member Ajami recused herself from acting on this item because she advises Santa Clara Valley Water District. She also said that she spoke to District Board members and tried to speak to Richard McMurtry (but could not schedule).

Attorney Marnie Ajello noted that two late comment letters were submitted, one by Santa Clara County Board Supervisor Susan Ellenberg, and one by Richard McMurtry, Santa Clara County Creeks Coalition, and recommended they not be admitted into the record. Chair Young determined not to admit them as both letters restate comments already made.

Vice-Chair McGrath asked Ms. Ajello to clarify that the item is a planning decision and has no direct regulatory affect and, therefore, it is allowable to discuss priorities. Ms. Ajello confirmed this.

Mr. Mumley introduced the item and Water Resource Control Engineer Richard Looker made the presentation.

Board Member Kissinger asked about division of the creek into upper and lower reaches and how that relates to consequences of this listing. He asked if that results in limiting responses to temperature problems in the lower reach by not listing the upper reach. Mr. Looker said that he does not think this compromises ability to address the temperature problems. He also explained that responses to the listings include development of a Total Maximum Daily Load (TMDL), a single Board action such as a permit for one entity, or other actions to resolve the impairment. He said he did not look into contributing factors and what remedies should be implemented.

Vice-Chair McGrath commented that enterococcus is a better indicator and wanted assurance that the data set is robust enough to provide safety for recreation use. Mr. Looker said it is. Board Member Ogbu asked how we track data and conditions going forward as one beach showed enterococcus levels close to the level indicating impairment. Mr. Looker said we review California Beach Watch data.

Gary Kremen, Santa Clara Valley Water District (District) Board Member, commented that he specifically represents the people in the Los Gatos Creek watershed. He said the Creek is a significant water supply for people who live and do business in the area. He said the District embraces fish protection and has spent millions of dollars in the watershed. He said he wants the listing in a different category and stated the listing is based on faulty data. He expressed concern about a reduction in the amount of water they can recharge and the unintended cost of getting other water supplies that will be more expensive and affect disadvantaged communities. He said he wants to work collaboratively on this and asked the Board to admit the letter from Supervisor Ellenberg.

Vice-Chair McGrath pointed out that the listing decision is based on information from Wadell Creek, which is local.

Bassam Kassab, Water Utility Division's Water Supply Operations Manager for the District, commented that groundwater is the main water supply. He said recharge on Los Gatos Creek provides 30% of recharge in the Santa Clara Sub-basin, which insures water supply and prevents subsidence. He said the basin is high priority under the Sustainable Groundwater Management Act (SGMA). He said he is concerned about changes in recharge operations that would threaten sustainable management of groundwater.

Chair Young asked if operations change between winter and summer. Mr. Kassab responded that they store water in Lexington Reservoir and release it to recharge ponds downstream and more is released during the dry season.

Kirsten Struve, Senior Water Resources Specialist for the District, commented on the need for focused temperature studies and more applicable criteria than those used in the listing evaluation. She said the District is currently conducting a steelhead migration study in the Guadalupe Watershed which will contribute to local knowledge and take five years.

Rachel Gibson, Deputy Director of Governmental Relations for the District, summarized Susan Ellenberg's comments in the letter submitted. She said the District is worried about impacts on water supplies. She said they also try to protect natural resources with provision of water supply. She recommended the Board list the creek as Category 3, use applicable science to determine impairment, and pursue the 2018 Triennial Review Project to protect salmonids in Bay Area streams. She said the District is ready to collaborate.

Chair Young asked about the settlement agreement between the Department of California Fish and Wildlife and the District and asked for an explanation of how actions per that agreement will address the problems.

Vince Gin, Watershed Stewardship and Planning Division Manager for the District, said the agreement is to establish reservoir operating rule curves to protect fish habitat and is a collaboration of ten signatories including fish agencies.

Vice-Chair McGrath said that creek groups have expressed frustration that little has been done and asked for more specific actions that have occurred.

Mr. Gin said they installed new gauges, completed massive data collection, identified creek barriers and remediated some of them, including some owned by local agencies and not the District. He said they are conducting the fish study in Guadalupe River. He said that through the FAHCE process, the District is investing in science and determining reservoir releases to improve fish habitat.

Chair Young asked when the rule curves go into effect and if there will be substantial changes from how they are currently operating. Mr. Gin said the curves are not being implemented yet and they are studying how to indicate metrics for effectiveness of release changes on fish and habitat. He said they are working on a programmatic Environmental Impact Report (EIR) and need water rights changes for the fish benefits. Board Member Kissinger asked how they acquire water rights. Mr. Gin said they apply to the State Water Board and are in process. Board Member Kissinger asked how this Board action will result in loss of ability to recharge groundwater for water supply. Ms. Struve responded that a TMDL in the North Coast region resulted in a reduction in water supply. Board Member Kissinger asked when the fish study will be complete, and Ms. Struve answered they just started.

Vice-Chair McGrath asked for clarification on the response to comments that the programmatic EIR or FAHCE agreement will not provide information on temperature in Los Gatos Creek. Mr. Gin and Ms. Struve did not clarify. Vice-Chair McGrath asked if staff has seen the EIR. Supervisor Kevin Lunde said no. Ms. Struve clarified that they are asking for the listing to be in Category 3, and no longer asking to place the listing in Category 4b based on current FAHCE activities ability to resolve the impairment.

Mainini Cabute, City of Saratoga, commented that the city is in support of District comments.

Christopher Hoem, for Santa Clara County Board Supervisor Wasserman, County District 1, commented that he is in support of the District. He said he hopes that the Board's great staff can work collaboratively with staff at the District to place the listing in Category 3 and collect more data.

Christophe LaBelle, Environmental Policy Advisor for Silicon Valley Leadership Group, said they oppose the temperature listing as it may impact water supply which is the foundation of economic growth.

Richard McMurtry, Santa Clara County Creeks Coalition, commented he strongly supports the listing and the FAHCE agreement needs regulatory requirements to be implemented. He said temperature is much higher than all the criteria. He said a TMDL is the vehicle for studying and setting proper water quality goals. He said there is no effort to address temperature issues in

FAHCE in a timely way. He said the TMDL will not affect water supply they just need to redistribute or replumb their system. He said this is an opportunity to save the fish.

Chris Sommers, representing Santa Clara Valley Urban Runoff Pollution Prevention Program, commented that staff should investigate applicable temperature for Bay Area Streams because there is a lot of work to do and limited data or studies. He suggested that the Triennial Review project to establish temperature thresholds should be a higher priority. Board Member Kissinger asked how long such an effort would take. Mr. Sommers said that the Central Valley Water Board has been working on this and it has taken a couple of years. Board Member Kissinger asked if acting today would preclude this work and Mr. Sommers responded no but it seems like putting the cart before the horse.

Vice-Chair McGrath stated that listing today can give this issue priority. Mr. Sommers said that he agreed if the Board directs staff to do the studies and resources are available to do local analyses.

Curt Rayer, San Jose Water Company, said they provide water supply through Los Gatos Creek recharge projects and reduction in recharge will impact this water supply.

Mr. Montgomery noted commenters' claims that the consequences will reduce water supply and result in increased costs for water. He said that this action will not likely increase cost of water supply as many other factors play in to future water supply and costs such as conservation and recycling. He also said the human need for water should not be at odds with environmental needs for water and SGMA should not be at odds with the Clean Water Act. Mr. Looker clarified the categories for listing and the basis for using Category 3 in the past as typically for limited data points and not for lack of or dispute of evaluation criteria. Mr. Lunde said that listing will compel collaboration amongst parties to further study the scope of impairment and set appropriate targets. Mr. Mumley said that the guidance for addressing listings states that other options besides TMDLs are appropriate responses including reassessment, delisting and recognizing other programs to address the impairment. He also said that the United States Environmental Protection Agency will make the final call regarding adequacy of information to list a waterbody and the listing guidance and past decisions indicate that this is a robust data set and compels state response. Vice-Chair McGrath asked about reliance on the Wadell Creek study. Mr. Looker explained it was used for outmigration and not for temperature criteria. Board Member Kissinger asked why this listing was brought in on the off-cycle and Mr. Looker said due to the timing of the data submittal and because preliminary data review indicated a likely problem. Board Member Ogbu asked about the comment that there are large gaps in the data. Mr. Looker explained that he did not think there were any gaps and explained that we only evaluated data for sensitive periods for fish and that excludes some winter months. Chair Young asked if the FAHCE agreement was based on consideration of problems for steelhead and concerns of fish and wildlife agencies. Mr. Montgomery said that it did based on the recitations in the FAHCE agreement.

Vice-Chair McGrath moved approval of all staff recommendations and to adopt the resolution. Board Member Ogbu seconded the motion.

Board Member Kissinger said that he was in support of the motion and acknowledged the efforts the District is taking. He said he does not see the listing as threatening water supply or groundwater recharge and that staff sees this as the beginning of a process not the end. Board Member Ogbu concurred and said she is sensitive to protection of water supply and believes staff will be too. Vice-Chair McGrath also concurred and said he sees nothing in this action that will constrain groundwater management. He also said that we have an obligation to protect habitat as a public trust resource. He said that there is nothing in FAHCE that is going to do this. He also said the action does not require continued reliance on the evaluation criteria if future studies suggest more appropriate ones. Chair Young also said she supports the recommendation because staff conducted a robust analysis, because what happens next will also be thorough and include the technical considerations that commenters made, and because the fish need protection.

Chair Young called for a roll call vote.

Ayes: Young, McGrath, Ogbu, Kissinger

Nos: None

ITEM ADOPTED

Other Business

Item 7 – San Francisco Estuary Institute 2019-24 Strategic Plan – Overview by Warner Chabot, Executive Director of the Institute

Mr. Mumley introduced the item. He spoke about the relationship between the Water Board and the San Francisco Estuary Institute which was created to implement the Regional Monitoring Program.

Warner Chabot, Executive Director, made the presentation. He said the Institute's goal is to be a leader in adapting to climate change given the impacts before the Bay Area. They are looking at a regional planning scale and a planning horizon of 50-75 years to fit the scale of climate change adaptation.

The Strategic Plan will focus on the Institute's current areas of expertise - clean water, resilient landscapes, environmental informatics. They are creating an Adaptation Atlas to inform resiliency and adaptation planning. The Institute wants to be a leader in providing science for adaptation to climate change in the Bay Area.

Board members spoke about the value of the Institute's work to the Board. **Chair Young wanted to discuss how to move forward in face of climate change and acknowledged the Institute's decision-support tools as helpful to overcome challenges. Board Member Ajami**

also said these tools are bringing more players together to see challenges and opportunities on one platform, for example, getting transportation agencies involved. Vice-Chair McGrath indicated Highway 37 is a high priority and need to get flood control entities more involved. Mr. Chabot said that the number of flood control managers involved in climate change adaptation has increased recently. He also said that the business community is currently developing transportation measures in the Bay Area and the Board can coordinate early to encourage green and resilient projects. Mr. Montgomery said he will be meeting with representatives from regional transportation and business organizations. He also said that wetlands and shoreline resiliency work should be considered for carbon sequestration and not just as a response to sea level rise. **Chair Young encouraged consideration of funding streams for the Institute, what other decision-support tools are needed to advance climate adaptation, and whether communities have tools to know how their local projects will impact other areas of the Bay margin.** Mr. Chabot said that projects and products related to resilient landscapes and environmental informatics do not have stable funding; for example, they get a contract to produce a product but not to promote it and teach it to users. Chair Young wants consideration of funding for other agencies so they can apply the tools generated by the Institute in climate change adaptation. Board Member Ajami commented on challenges of public-private partnerships and the need to seek increased funding from current contributors and to find other contributors. Chair Young said we need to consider all strategies for stabilizing and increasing funding streams to the Institute. Mr. Chabot reiterated that the primary areas needing attention to address climate change in the Bay Area are financing and governance. Mr. Mumley commented that there will be opportunities to develop new tools to make land use decisions more efficient as we set up the Board's focus on climate change activities; for example, all municipalities will have to consider shoreline impacts throughout the Bay so may find it more efficient to join together to build bay-wide analysis or an approach to conducting the analysis.

Mr. Chabot thanked the Board for the opportunity. Mr. Mumley said this was informative and a good start for staff to bring an information item on climate change activities to get Board input.

Item 8 – Correspondence – There were no correspondence items.

Item 9 – Closed Session – Personnel

The Board did not meet in closed session to discuss personnel matters.
[Authority: Government Code section 11126(a)]

Item 10– Closed Session – Litigation

The Board did not meet in closed session to discuss litigation.
[Authority: Government Code sections 11126(e)(1) and 11126(e)(2)(A)-(C)]

Item 11 – Closed Session – Deliberation

The Board did not meet in closed session to deliberate.
[Authority: Government Code section 11126(c)(3)]

Item 12 – Adjournment

Meeting adjourned at 2:56 p.m. until the next Board Meeting – April 10, 2019