

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

MEETING DATE: May 8, 2019

ITEM:       **3**

SUBJECT:   **MINUTES OF THE APRIL 10, 2019 BOARD MEETING**



## San Francisco Bay Regional Water Quality Control Board

### April 10, 2019 Board Meeting ADOPTED May 8, 2019

Note: Copies of orders, resolutions, and minutes are posted on the Regional Water Board's website ([www.waterboards.ca.gov/sanfranciscobay](http://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 9:05 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		

Enforcement Unit Supervisor Brian Thompson introduced Narendra Khilnani who joins the Unit as a Water Resource Control Engineer.

Toxics Cleanup Central Bay Unit Supervisor Cheryl Prowell introduced Diana Yitbarek who joins the Unit as a Water Resource Control Engineer.

#### Item 2 – Public Forum –

Liz Vial, representing Woodacre/San Geronimo Flats Wastewater Group, commented on the problem of failing septic systems impairing Tomales Bay and failure to implement the cleanup actions in the Tomales Bay Pathogen Total Maximum Daily Load plan. She said the group supports a recycled wastewater system, Alternative 5C, identified in a feasibility study. She further said the project is held up due to landownership issues. She said that she is personally replacing her septic system at high cost and sacrifice of land and that individual solutions are complicated and expensive.

Liza Cross, Woodacre/San Geronimo Flats Wastewater Group, commented that actions have failed, and the Board must use their authority. She said that they modelled their proposal after the Marshall project which is a great example of the Board coordinating with local agencies and the community. She said they urge the Board to push the County to address the problem in the following ways: raise this issue in communications with the County, use technical expertise in commenting on environmental documents and permits, and help them find funding.

Rich Lohman, Woodacre/San Geronimo Flats Wastewater Group, commented that the County of Marin does not have an approved Local Agency Management Plan (LAMP). He said the County submitted their LAMP three years ago and the Board has not responded or approved it. He said they need the LAMP to put pressure on the County and on the local community to move forward. He said their failing septic systems are in urgent need of repair as they are threatening public health and impairing water quality. He said the high water condition, this particular winter, has made the problem clearer and it is a public health problem.

Vice-Chair McGrath asked for a brief response to comments today and for Executive Officer to include a broader response in the next Executive Officer's Report. We know that climate change will result in rising groundwater and this issue will get worse if not addressed.

Division Chief Keith Lichten said that staff agrees that onsite wastewater systems are a threat to water quality and take this situation seriously. He said staff has been engaged with development of the wastewater system which will only address a portion of the problem and has some technical challenges in terms of technology and funding. He said that the Marshall project is a different treatment technology that doesn't fit for San Geronimo. He said staff has been and are engaged with the County on the LAMP; the county is making progress in terms of creating an inventory of septic systems, prioritizing them, and developing a mechanism to allow upgrades and other treatment options.

Chair Young asked for an Executive Officer's report with comments on the speed with which we can approve the LAMP or otherwise solve the problem.

Board Member Battey thanked the commenters for raising these issues so the Board can hear about them.

Susan Schwartz, representing Friends of Five Creeks, said she has been working on protecting creeks for many years and expressed concern about the fish kill in Cordonices Creek. Her group worked to protect the fish population in the creek for decades and they have been neglected by UC Berkeley and the City of Berkeley. She said she hopes that the community can work collaboratively to consider alternatives to fire fighting foam that caused the fish kill. She said her group can help.

Ben Eichenberg, Counsel for SF Baykeeper, commented that Baykeeper is grateful that the City's response protected residents from the fire but is concerned that so many fish were

killed by the fire fighting. He said we can do better, and the Board should review the procedures the City used. For example, he said they could have blocked storm drains and sent out a vacuum truck to remove foam from the creek. He said the Municipal Regional Permit allows discharges for fire fighting but only if hazardous discharges are prevented. He said these requirements should be reviewed and firefighting foam should be eliminated. He said trash vehicles should be redesigned for lower risk of fire related to lithium batteries in trash. He said simple procedures could have prevented this tragic fish kill. He urged the Board to investigate what happened, make sure it does not happen again, and compel cleanup.

Mr. Montgomery said staff responded and is investigating procedures used and the impact. Mr. Mumley added that staff will also review permit requirements to see if they can be improved.

Board Member Ajami asked if we know that the foam caused the fish kill or if it was or could have been something in the garbage truck. She suggested that we should consider how extensive fires are and how often foam is used.

Mr. Mumley said we do not know for sure if the foam killed the fish and that even potable water can kill fish from chlorine. He said we may not be able to determine that but will review permit requirements and procedures for water quality protection.

Mr. Eichenberg responded that it is common for batteries to be in trash and to cause fire risk.

Vice-Chair McGrath commented that urban fires are common. He suggested we look at Regional Monitoring Program data as a way to see if local fires are contributing to pollution.

Chair Young said the Board is interested in follow up and appreciates the comments and ideas for solutions to the problem.

David Lewis, executive director from Save the Bay, commented on what has transpired since the Board adopted trash requirements for Caltrans. He said, they told the Board that the action would result in funding to Caltrans to implement improved trash controls. He said he has been in touch with the legislature, Secretary of CalEPA and Caltrans to urge support and assistance as soon as possible so we don't lose more time. He said that while Caltrans petitioned the order and put it in abeyance, it was disheartening to read the petition as it indicates a lack of responsibility. He said Caltrans is late in responding to the legislature about how they will comply with requirements throughout the State. He urged the Board to get the cities to identify projects that Caltrans can fund so that Caltrans will budget for these actions.

Chair Young asked for follow up on **trash controls** and Mr. Montgomery said we will schedule a workshop or agenda item on the status of implementation by cities and Caltrans. Chair Young said the order for Caltrans was intended to better align with schedules for compliance by the cities. Vice-Chair McGrath said he knows about projects in Berkeley at Ashby and Gilman and that those discussions started before the action against Caltrans so those projects should be addressed. Mr. Mumley said we are engaged with Caltrans to emphasize that they should account for everything they have already done and everything that is possible. He said staff is putting effort into getting an accounting of city projects in the works and possible projects that Caltrans can take on. Board Member Battey requested a quarterly update on

activities on trash control and progress on coordination. She said she is interested in fixes that are behavioral versus mechanical and what are we doing to promote the behavioral fixes due to overall cost of implementation. Chair Young said that she wants the updates on trash and also wants staff to plan an update on the reissuance of the municipal regional permit.

Kelly Abrea, Mission Peak Conservancy (in Southern Alameda County), commented on lack of enforcement. He said that silt and sediment are needed in the Bay for its health and to facilitate adapting to sea level rise, but silt is being collected in rural areas throughout the county without regulation or permits, such as dams for recreational facilities. He said the county is also trying to regulate soil importing which is deposition of dirt and construction debris in agricultural areas creating unregulated landfills. He said Alameda County has a proposed ordinance for soil importing without an environmental impact report. He said hundreds of thousands to millions of cubic yards per year are being deposited without considering permeability of soil where deposited or proximity to water courses; all water at these facilities flow into creeks and the bay. He said that we should be asking what the county is doing, who is going to stop them and make them follow the laws.

Mr. Lichten said the Board is pursuing enforcement for areas where silt and sediment has been placed without authorization in creeks and wetlands in Alameda County and that staff will continue to follow up on such cases. Staff agrees with the commenters concerns about the proposed ordinance and sent a comment letter to the County about the ordinance expressing concerns that it will create a water quality risk by allowing material to be disposed at agricultural facilities with limited checks. He said the comment letter also said our staff can work with the County to determine soil screening methods to provide protections.

Board Member Lefkovits asked if staff knows where dams are as referred to by the commenter and how staff would learn of them. Mr. Lichten said we are not investigating where they all are but learn about them as brought to our attention. He also said we will coordinate with the commenter to find out where these facilities are that he commented on.

### **Item 3 – Minutes of the March 13, 2019 Board Meeting**

Mr. Montgomery recommended adoption of the minutes from the March 13, 2019 Board Meeting with one noted correction; Ms. Ogbu was incorrectly identified as the Chair.

Chair Young 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 attended the City of Berkeley hearing about recreational vehicles parking on city streets. He said the Bar Association of San Francisco is looking at how cities are dealing with or preventing homeless people from parking vehicles. The human health and water quality issues should be addressed by the Board. He also said he toured the Bolsa Chica Wetlands restoration and appreciated the need to protect wetlands.

Board Member Lefkovits asked if other Board members saw the East Bay Express article about Baykeeper and its significance for helping Water Boards enforce. He said it raises key issues about limited resources, capacity for **enforcement** and how much we rely on nonprofits. He said he suggested to Mr. Montgomery that we consider having a senior level project manager track all enforcement cases and bring them to the Board as they progress rather than as a standing report that the Board sees after the fact. He also said he was whale watching and ran into Director of the Marine Science Institute and thought the Board could have a field trip to learn of the research and regulation (or what is not being regulated) along the shoreline to broaden Board Members' perspectives.

Chair Young supports the suggestions and asked if Mr. Montgomery can think about these suggestions and see if and how we might do them. Mr. Montgomery mentioned that there is a statewide effort to evaluate enforcement needs and this will be discussed at an upcoming Board Chairs' meeting.

Board Member Ajami commented that State Board has an effort on data and using data for decision-making. She suggested that our staff work more with that effort to inform on what data we need and will need in the future besides just discharger self-reporting. She also attended a meeting in San Luis Obispo with the Chamber of Commerce, Senator Weiner, and Silicon Valley Leadership Group about SB 50, which is about high-density housing around urban transportation corridors. She said the conversation is mostly about transportation and should be integrating water use and water quality protection, and what the Water Board does. Chair Young said this may come up during Item 6. Mr. Montgomery said we can discuss more during Item 6, that climate change is only part of this conversation; we are considering our communication strategies more broadly and who we communicate with, what is our network and who is our audience.

Board Member Battey said she went on a trip in search of California super bloom and urged people to go to Carrizo Plains or Antelope Valley to see the beauty and appreciate what the water can do. She also noted that she sees evidence of the winter rains in how late the farmers are planting this year in Half Moon Bay.

State Board Member Tam Doduc, Liaison, said that last week the State Board adopted the Dredge and Fill Procedures including a wetlands definition. She thanked former Assistant Executive Officer Dyan Whyte and other staff for their dedicated work on this. She said implementation will be challenging but her staff will work with Regional Board staff to do that and to develop metrics of effectiveness. She added that on Friday, April 19, 2019, State Board will hold a workshop on sanitation for homeless people and what should be the Water Boards' role.

Mr. Montgomery said that he does not have any specific items to discuss from the Executive Officer's Report. He asked for input from Board members about what they would like featured in the Executive Officer's Report.

Chair Young thanked Mr. Montgomery for the item on Radiological Issues at Treasure Island to inform and make Board activities transparent to the public.

Chair Young administered the oath.

#### **Consideration of Uncontested Items**

#### **Item 5 – City of Palo Alto, Palo Alto Regional Water Quality Control Plant and Wastewater Collection System, Palo Alto, Santa Clara County – Reissuance of NPDES Permit**

Mr. Montgomery recommend approval of the item.

Board Member Ajami made a motion and Board Member Ogbu seconded the motion. Chair Young asked for a vote.

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

Nos: None

**ITEM ADOPTED**

Mr. Mumley acknowledged leadership and partnership of Palo Alto and Karin North.

#### **Other Business**

#### **Item 6 – Meeting the Challenge of Climate Change: Water Board Plans and Projects – Status Report**

Mr. Montgomery introduced the item. Assistant Executive Officer Lisa Horowitz McCann gave an overview of the item and Christina Toms made the presentation. Julie Beagle of the San Francisco Estuary Institute contributed to the presentation.

Board member Lefkovits asked if there are enough opportunities bay-wide to address the most likely scenario of **sea level rise**. Ms. Beagle answered that the analysis was built to address the most extreme scenario (called H++) and based on that, we need to move faster at implementing adaptation projects. She said she did not know the answer to the question. Board Member Lefkovits said we should look at the whole region and not break it down to smaller units; we are likely to see a decrease in quality of life if airports and highways are not operable. He asked what happens to the south bay if the South Bay Salt Ponds are not available for restoration. Ms. Beagle said that research by Mark Stacy of UC Berkeley shows that if shoreline hardened or restoration projects cannot be completed in the south bay, it will affect the north bay. Ms. Beagle said we should implement marsh restoration everywhere we can, recognizing it is not feasible or the best solution everywhere.

Board Member Ajami asked if the Adaptation Atlas shows where projects have already been implemented and if they show progress. Ms. Beagle said it does and they are reviewing how

existing projects buffered the storms that have occurred recently. Board Member Ajami said that it is important to be able to communicate the physical and financial success of projects that exist to promote more of them in the future, and collective action.

Vice-Chair McGrath asked how much sediment is needed to fill the subsided areas. Ms. Beagle did not know the answer to this question but said a study is underway to determine that. Vice-Chair McGrath went on to say he knows it is millions of cubic yards for each project so there is an enormous amount of sediment needed. He asked about marsh restoration on San Mateo county shoreline and Ms. Beagle indicated that **opportunities for marsh restoration** are limited there due to past impacts and development; other resiliency approaches are more suited for this area.

Shannon Fiala, Planning Program Manager for Bay Conversation Development Commission (BCDC), said thank you for this item and for funding the Adaptation Atlas. She said BCDC is amending the San Francisco Bay Plan related to allowing bay fill for restoration projects and making their permit process more efficient. She said that the goals of their project are similar to the Board's policy update project and she invited Christina Toms to present the Board's project and policy issues to the Commission in May.

Chair Young read notes from Ben Eichenberg of Baykeeper. He urged us to work hard to coordinate bay protection and said we all should protect and restore wetlands, stop developing the shoreline, and stop approving dredging and sand mining. He also said we should identify toxic sites using "ShoreView." He said there are 1100 toxic sites.

Mr. Montgomery asked for Board input on proposed next steps. He asked the Board for input on an **approach to creating an external advisory committee**. Ms. Toms said we want to avoid participation fatigue and is considering the model of the Wetlands Regional Monitoring Program which has a project advisory team and a science advisory team. She said we want to leverage existing collaborative forums. Mr. Montgomery said we may want to separate science advisors from other stakeholders.

Board Member Ajami said she is very worried about the Board not being at the table for SB50 discussing future development for housing.

Chair Young said it sounds like staff is going to use existing collaborations for advice on issues for the policy revisions but will seek new collaborations to fill in on aspects for which we don't have advisors yet, e.g., financing and governance. She said she supports that approach and also wants staff to consider convening a group of outside the box thinkers (maybe legislators) to provide input and perspective on what the Board's role should be besides permitting and enforcement. Mr. Montgomery said we are already working in areas for which we have the authority and expertise so if we go into other areas we will be in an influencing role, such as encouraging local ordinances.

Vice-Chair McGrath recommends setting priorities rather than continuing to work with those already convinced and coordinating with us. He suggested looking at areas of greatest vulnerability based on work by Mark Stacy such as Highway 37 and Highway 101 in Marin. These are opportunities for collaborative planning since projects are not yet proposed. He recommended getting the region to identify the highest priorities based on immediacy of impact and economic impact. Board Member Ajami recommended mapping the vulnerable areas. Board Member Lefkovits suggested specifically showing the inundated areas and the cost associated with impact if not protected; the urgency needs to be digestible by a legislator. He said this is a visualization and marketing exercise; he said we should show and message the cost of not addressing sea level rise. Board Member Ajami also recommends showing the success stories- what worked and how they were financed.

Chair Young said we are talking about two different things. One is integrating climate change into everything we do and working on an updated regulatory framework that will compel people to do more to address climate change through projects we regulate (and use the Adaptation Atlas to show where we want to go). The other is lighting a fire for more effort to plan and finance projects and make changes in communities along the Bay. Board Member Battey likes the idea of a workshop to get outside stakeholders to create a vision beyond what the Board is doing now. Board Member Ajami said we should be participating in media events related to sea level rise, such as Climate One at the Commonwealth Club. Vice-Chair McGrath said that this is challenging because the problems are not symmetrically distributed; how does regulation address that and consider environmental justice. Board Member Ogbu said the presentations were great and good to see how far we have come. She said she has been thinking about collaboration and information gathering and asked about opportunities to coordinate with other Regional Water Boards. Mr. Montgomery said those conversations are starting amongst executive officers and that we are out ahead. He said financing issues are challenging given our authorities and limits. He said he has been in touch with our Division of Financial Assistance. Ms. McCann mentioned that coordination is naturally limited because the Bay Area is unique and most at risk from sea level rise on a much grander scale than for other regions due to extensive shoreline infrastructure, population and environmental values of wetlands and the San Francisco Bay. Board Member Battey commented that several entities for partnerships are missing including Army Corps, Caltrans, Coastal Conservancy, Public Utilities Commission. She also asked how involved staff is in climate change issues on the coast-side of our region. Mr. Montgomery said we are engaged with regulatory agencies through the BRRIT and on various projects. He also said the Corps is a financing agency so we might need to connect with them differently about that. Ms. Toms explained our on-going engagement with regulatory agencies in reviewing projects. She also explained how we coordinate with the Coastal Conservancy. She explained several projects and some areas considering sea level rise vulnerability on the coast-side. Board Member Battey urged staff to get involved with managed retreat.

Chair Young encouraged participation on the Bay Area Regional Collaborative (BARC). Vice-Chair McGrath added that BARC is not building the message of urgency. Mr. Montgomery said

that BARC is a good place to start and they have been focused on carbon mitigation and he wants to help bring them other issues such as water quality and sea level rise response.

Warner Chabot, Executive Director of San Francisco Estuary Institute, said the Board is the only agency that has brought together the science and a proposal for responding to sea level rise in the Adaptation Atlas. He said this is a central body of information for collaboration on climate change adaptation at local and regional government levels and no one else has created that information or foundation. He emphatically said that the Board belongs at the BARC table. He also said the state legislature should fund officers at local agencies who will coordinate with the other local entities to develop climate change responses. He recommended that the region develop a vision document that can be shopped around that shows what we want the shoreline to look like in 20 years and estimate the funding needed over the next several years to make this happen. Chair Young asked staff to coordinate with SFEI and consider what entity would be best to create the vision document. Board member Battey reminded the Board to also consider energy and PGE's response to climate change.

Mr. Montgomery said we have gotten some **great ideas to consider for new partnerships** and that we will proceed working on the policy project as proposed. We also want to think about best approaches to building capacity and tie it to outcomes.

**Item 7 – Correspondence** – There were no correspondence items.

**Item 8 – Closed Session – Personnel**

The Board did not meet in closed session to discuss personnel matters.

**Item 9– Closed Session – Litigation**

The Board did not meet in closed session to discuss litigation.

**Item 10 – Closed Session – Deliberation**

The Board did not meet in closed session to deliberate.

**Item 11 - Adjournment**

Meeting adjourned at 2:20 p.m. until the next Board Meeting – May 8, 2019