

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

MEETING DATE: March 11, 2020

ITEM:  
3

SUBJECT:  
**MINUTES OF THE FEBRUARY 12, 2020 BOARD MEETING**

**February 12, 2020 Board Meeting**  
**ADOPTED MARCH 11, 2020**

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 (510) 313-0610.

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 9:03 a.m. at Elihu H. Harris Building, First Floor Auditorium.

<b>Board Members Present</b>	<b>Board Members Absent</b>	<b>Status</b>
Chair James McGrath		QUORUM
Vice-Chair Jayne Battey		
William Kissinger		
Newsha Ajami		
Alexis Strauss Hacker		
Andrew Gunther		

Supervisor Derek Beauduy introduced Joseph Martinez who joined the Watershed Protection Division as an environmental scientist. Supervisor Keith Roberson introduced Nathan Veale as a new engineering geologist in the Groundwater Protection Division. Mr. Roberson also introduced Kenny Gen-Kuong as a new scientific aide in the division. Division Chief Terry Seward introduced Nathan King as a new supervisor in the Groundwater Protection Division. Mr. King then introduced Dennis Quach as a new scientific aide in the division. Enforcement Section Supervisor Brian Thompson introduced Demir Worthington who joined the section as an engineering geologist.

Chair McGrath introduced Alexis Hacker and Andrew Gunther as new board members.

**Item 2 – Election of Chair and Vice-Chair**

Board Member Kissinger nominated the current chair and vice-chair to serve the next term. Chair McGrath called for a vote.

Ayes: McGrath, Battey, Kissinger, Ajami, Hacker, Gunther

Nos: none

ITEM APPROVED

### **Item 3 – Public Forum**

Kelly Abreau with Mission Peak Conservancy commented that water providers won't test for the presence of PFAS in their drinking water until forced to by the State. He said he commented in September 2019 about illegal dams. The Chair of the Board asked at that time if staff could include information about them in an Executive Officer's report, but that has not happened. The commentator also said stormwater inspectors are not enforcing illegal development and encroachment on streams. He provided photos, [reports and documents that were filed with the State Water Board](#) and [Regional Water Board](#) with examples of violations from Sunol in unincorporated Alameda County.

Vice-chair McGrath reminded Board members that they should not ask for action on public forum items but can ask for follow up information to be provided to Board members in Executive Officer's Report or as a future agenda item. He said he already asked the Executive Officer to plan an agenda item on the Caltrans trash control workplan because he new that Save the Bay was going to ask for a future agenda item.

Dave Lewis of Save the Bay welcomed the new Board members. He said he is here today representing the City of Berkeley who is having difficulty getting Caltrans to cleanup trash. He said the city has budgeted to do it themselves. He said that Save the Bay finds the Caltrans trash plan unacceptable and urged Board members to hold Caltrans accountable for their responsibility to control and cleanup trash.

Alison Chan of Save the Bay commented they have reviewed the Caltrans trash control workplan. She said Caltrans did not provide an adequate plan or adequate funding and asked the Board to agendize this issue. She also asked for staff to bring recommendations for actions in response.

T. Nevaretto [spelling unknown, was difficult to catch his name or read from card] commented that it is disturbing that there are pharmaceuticals in water and wants appropriate level of pH. The commenter mentioned several other issues unrelated to Board business.

Lisa Jacobs, on behalf of Oakland City Council member Dan Kalb, read a letter on his behalf. The letter requested the Board to hold Caltrans accountable for trash control requirements and expressed disappointment that Caltrans is not taking responsibility for meeting requirements and controlling trash.

#### **Item 4 – Minutes of the December 11, 2019, Board Meeting**

Vice-chair Battey made a motion to approve the minutes. Board Member Kissinger seconded the motion.

Ayes: McGrath, Battey, Kissinger, Ajami, Hacker

Nos: none

Abstain: Gunther

ITEM APPROVED

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

Board Member Andy Gunther said he started studying San Francisco Bay in 1986 and he wants to use science to improve the beneficial uses of the Bay. He said he is also interested in how climate change is going to evolve and to see how our permittees deal with it.

Board Member Hacker said she just wrapped up her career with USEPA and has always been an advocate of public service so is looking forward to serving in this new role. She said she is particularly interested in stormwater quality control, infrastructure renewal, and use of multi-benefit projects. She also said she wants to support the Board in implementing the Governor’s Water Resiliency Plan, for example in insuring small, rural communities have safe drinking water.

Board Member Battey gave a presentation to the Surplus Property Roundtable about how to do land planning and management with rising seas. She said she provided the perspective of both a landowner and as a regulator. She said she coached participants to be prepared to move quickly in a changing world and be a good neighbor.

Chair McGrath said he and Assistant Executive Officer Thomas Mumley met with Berkeley Public Works Director and Caltrans District 4 Deputy Director to improve coordination and effort by Caltrans on trash control. He also said that he participated on a call with all the Water Board Chairs and they are all concerned with homelessness and water quality and they want the state to address it as a priority. He wants to understand whether we know enough to plan actions and, if we do not, to gather the information. He also said that PFAS is a major concern and asked that all the Board members are up to date on investigations, notification and health levels. He said that resilience is a third important issue and the legislature is working on funding. He asked if the Executive Officer can provide an update on the violation complaint case raised by the public commenter in a future report. Executive Officer Michael Montgomery said he will. Board Member Ajami asked if we should be looking more broadly at incidences of dry cleaner releases and follow up rather than tackling one at a time [related to Item 8-

Correspondence]. Board Member Ajami wants staff to have a systematic approach to tracking dry cleaner sites. Mr. Montgomery said we handle these sites based on priorities and staffing (which is limited for the number of cleanup cases) and we can always look at improving tracking and communication.

Mr. Montgomery provided information that State Water Board Member Tam Doduc wanted to share with the Board. He mentioned the new regulation on Dredge and Fill Procedures, including the definition of a wetland, that it will go into effect in May and the State Board is working on companion guidance. He said this will be implemented in context of federal roll back of waters to be protected. He also said the State Water Board just released a new response level for PFOA and PFOS and has requested the Office of Environmental Health Hazard Assessment to develop notification levels for seven additional PFAS chemicals. He said our staff has been working hard tracking the sites that have monitored for PFAS and identifying sources. Regarding the Executive Officer's Report, he gave an update on 411 High Street and said we have required a new cleanup plan. He also mentioned that staff was helpful in addressing several tanker truck spills even though our staff are not first responders. He noted we provided an update on Lehigh and Aquatic Park in Berkeley. He said we participated in many climate-related forums and put out a press release on the Water Board technical report and project. He said he attended a workshop on sea level rise attended by the Bay Area legislative caucus. He said we will bring an information item to the Board to discuss the Caltrans workplan.

Board Member Ajami commented that she appreciates the information on PFAS as it is a hot topic and she gets lots of questions.

Chair McGrath said he met with Dr. Terry Young who is working on plastic waste streams as a board member of Save the Bay.

Chair McGrath administered the Oath.

#### **Item 6 – Consideration of Uncontested Items**

- A. City of San Jose, City of Santa Clara, and San Jose/Santa Clara Water Pollution Control Plant, a Joint Powers Authority, for the San Jose/Santa Clara Water Pollution Control Plant, Cities of San Jose and Santa Clara Wastewater Collection Systems, San Jose and Santa Clara, Santa Clara County –**
  
- B. City of Sunnyvale, Sunnyvale Water Pollution Control Plant and Wastewater Collection System, Sunnyvale, Santa Clara County –**

- C. East Bay Municipal Utility District; Point Isabel, San Antonio, and Oakport Wet Weather Facilities; Richmond and Oakland, Contra Costa and Alameda Counties –**
- D. City of Piedmont, Wastewater Collection System, Piedmont, Alameda County –**
- E. City of Alameda, Wastewater Collection System, Alameda, Alameda County –**
- F. City of Albany, Wastewater Collection System, Albany, Alameda County –**
- G. City of Berkeley, Wastewater Collection System, Berkeley, Alameda County –**
- H. City of Emeryville, Wastewater Collection System, Emeryville, Alameda County –**
- I. City of Oakland, Wastewater Collection System, Oakland, Alameda County –**
- J. Stege Sanitary District; Wastewater Collection System; El Cerrito, Kensington, and Richmond; Contra Costa County –**

Chair McGrath asked for a recommendation for adoption of Items 6A and 6B. Board Member Ajami made a motion to adopt Items 6A and 6B. Vice-chair Battey seconded the motion.

Ayes: McGrath, Battey, Kissinger, Ajami, Hacker, Gunther

Nos:

ITEMS 6A and 6B Adopted

Board Member Kissinger recused himself. Chair McGrath asked for a recommendation to adopt Items 6C through 6J. Board Member Gunther made a motion to adopt the items. Board Member Ajami seconded the motion.

Ayes: McGrath, Battey, Kissinger, Ajami, Hacker, Gunther

Nos:

## ITEMS 6C-6J ADOPTED

### **Waste Discharge Requirements**

#### **Item 7 – U.S. Army Corps of Engineers, San Francisco District, San Francisco Bay Federal Channel Maintenance Dredging Program 2020 through 2024 –**

Chair McGrath recused himself.

Planning Division Supervisor Kevin Lunde made the presentation.

Board Member Hacker asked which maintenance projects are likely to occur this year. Mr. Lunde responded that the Corps will likely dredge annual or biennial projects such as Richmond Inner and Outer Harbors, Oakland Inner and Outer Harbors, Pinole Shoal, and Suisun Bay. She further asked if we have any sediment going to alternative locations. Mr. Lunde said the Water Board will receive the report from the Corps soon that will tell us which dredging projects will occur and where they will dispose the dredged material. Planning Division Chief Xavier Fernandez said that the Eden Landing Project will be ready to accept material next year and a couple other projects will be ready in three years. He also said the Corps is looking at a long term plan to reuse more dredged material at specific projects and he is trying to promote placement of dredged material in strategic locations where tides will deposit it into wetlands instead of the Corps clearing hurdles to dispose directly for wetlands projects. Board members said they understand the financial hurdles to moving the dredge spoils and hope that incentives for costs and financing are developed.

Board Member Gunther asked if we know about feasibility of delivering dredged material relative to challenges and how that relates to the goal of reusing 40% of material. Mr. Hernandez explained the time-constraints associated with pumping rates and limited equipment. He also said that the need for sediment to supply all the wetland and restoration projects planned is much greater than the amount of material dredged in the Bay. Board Member Gunther said that the project cost comparisons do not account for future benefits of a project that beneficially reuses dredged material so the current cost comparisons are artificially constraining.

Tessa Beach, Environmental Sections Chief for the Corps, said the District strongly supports adoption of the order to sustain navigation and jobs, and to protect water quality. She mentioned that former Water Board engineer Beth Christian was honored with a Commander's Coin. She clarified that the workplan will not include Pinole but will include Richmond Outer, Richmond Inner, Oakland Inner and Outer Harbor, Suisun Bay, and Petaluma River Channel. She also said that the Corps is requiring the contractor to take material from Suisun to a beneficial reuse site. She said that in some years the Corps is meeting the goal of 40% beneficial reuse and are hopeful they will be able to continue to do beneficial reuse. Board Member Gunther asked where the

material deposited at in-bay dispersal sites ends up. Mr. Fernandez said it travels and deposits in the Bay but may go out to the ocean.

Ashley LaBass, Bay Planning Coalition, said the Corps Dredging is critical for businesses in the Bay.

Nicole Sasaki, San Francisco Baykeeper, said they support adoption of the Order. She said the Clean Water Act Section 401 Water Quality Certifications do not go far enough. She said that data still shows declining fish populations of endangered species, Delta Smelt and Longfin Smelt, but requirements to protect fish in the Order are the same as the past Order.

Board Member Battey asked if the Order is adaptive so that as more restoration sites are established more beneficial reuse can be expected. Mr. Lunde said that the feasibility of beneficial use will improve with more sites. Board Member Hacker asked how much discretion the Corps and Executive Officer have if emergency dredging is needed. Mr. Fernandez said it will depend on alternatives and whether the emergency can be addressed with best practices or will have to allow hopper dredging. The Corps said that they only had one government-owned hopper dredger to support dredging across the west coast, so use of the hopper dredger had to be planned three years in advance.

Board Member Hacker asked to receive an update on the dredge IIA (Integrated Alternatives Analysis).

Mr. Montgomery recommended adoption of the Order. Board Member Ajami made a motion to adopt the Order. Board Member Kissinger seconded the motion.

Ayes: Battey, Kissinger, Ajami, Hacker, Gunther

Nos:

ITEM ADOPTED

### **Item 8 – Correspondence**

York Cleaners letter to Assembly Member Levine

### **Item 9 – Closed Session – Personnel**

The Board did not meet in closed session for Personnel in this meeting

### **Item 10 – Closed Session – Litigation**

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

The Board met in closed session to discuss this litigation. The Board returned to open session following this discussion.

United Artists Theater Circuit v. Cal. State Water Resources Control Bd. et al. (Court of Appeal, First Appellate District, Division Five, Case No. A152988)

**Item 11 – Closed Session – Deliberation**

The Board did not deliberate in this meeting.

**Item 12 – Adjournment**

The meeting was adjourned at 11:46 p.m.