

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY  
BOARD MEETING MINUTES

November 18, 2009

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Item 1 - Roll Call and Introductions

The meeting was called to order on November 18, 2009 at 9:05 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Terry Young, Vice-Chair; Shalom Eliahu; James McGrath; Steven Moore; Rameshwar Singh.

Board members absent: William Peacock.

Tam M. Doduc, Member, State Water Resources Control Board and liaison to Region 2, discussed recent legislation and recent State Board actions. She said Walter G. Pettit had been appointed to serve as a member of the State Board.

Item 2 - Public Forum

Mike Connor, General Manager, East Bay Dischargers Authority, discussed the importance of the Water Board addressing strategic issues.

Item 3 – Minutes of the June 10, 2009 Board Meeting

Motion: It was moved by Dr. Singh, seconded by Mr. Moore, and it was unanimously voted to adopt the Minutes of the June 10, 2009 Board Meeting.

Item 4 – Chairman's, Board Members' and Executive Officer's Reports

Mr. Muller recommended the Board hold a retreat in January or February 2010.

Dr. Singh said he attended a Water Quality Coordinating Committee meeting held in Sacramento.

Mr. McGrath said he recently discussed concerns about sediment issues with several stakeholders.

Dr. Young concurred with Mr. Connor about the importance of looking at strategic issues.

Bruce H. Wolfe addressed the Board.

#### Item 5 – Consideration of Uncontested Item

Mr. Wolfe said staff used a limited dilution credit in the calculation of selenium effluent limits that were included in the Revised Tentative Order for Item 5A. He said staff used preliminary information obtained in the development of the North San Francisco Bay selenium TMDL as a basis to allow a dilution credit.

Dr. Young said in the past, the Board has prohibited dilution credit for bioaccumulative pollutants, such as selenium. She asked whether the Board would establish a precedent on the issue if it adopted the Revised Tentative Order.

Thomas Mumley said the Board would not establish a precedent. He said the Board's adoption of selenium effluent limits calculated with dilution credit would be an interim action. He said in future permits, the selenium TMDL would be used as the basis to determine whether dilution credit should be allowed. He reiterated a selenium TMDL is being developed.

Dr. Young thanked staff for clarifying that Board action that allowed for the use of a limited dilution credit in the calculation of selenium effluent limits should not be taken as precedential. She said it would have been helpful if staff had clarified the issue in documents associated with the Revised Tentative Order.

Mr. Moore said he believed the Board retained flexibility to take into account developing scientific information when the issue is considered in the future. He said he was not concerned that proposed Board action today would establish a precedent.

Mr. McGrath said he did not think the Board would establish a precedent if it adopted the Revised Tentative Order.

Dr. Young said her purpose in requesting staff address the issue was to have a discussion on the record to help people understand whether Board action that allowed a limited dilution credit in the calculation of selenium effluent limits should be considered precedential.

Dr. Singh and Mr. Eliahu concurred with staff's recommendation to allow dilution credit.

Mr. Wolfe said there was a Supplemental to Item 5A. He recommended adoption of the Revised Tentative Order as supplemented.

Mr. McGrath made a motion to adopt the Revised Tentative Order as supplemented and as recommended by Executive Officer. Mr. Eliahu seconded the motion.

Mr. Moore said he thought the preceding discussion was valuable because the issue of allowing dilution credit in the calculation of selenium effluent limits had policy implications.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Moore; Dr. Singh; Dr. Young; Mr. Muller

No: None

Motion passed 6 – 0.

Item 6 – City of Albany, Sanitary Sewer Collection System, Alameda County  
– Reissuance of NPDES Permit

Item 7 – City of Alameda, Sanitary Sewer Collection System, Alameda County  
– Reissuance of NPDES Permit

Item 8 – City of Berkeley, Sanitary Sewer Collection System, Alameda County  
– Reissuance of NPDES Permit

Item 9 – City of Emeryville, Sanitary Sewer Collection System, Alameda County –  
Reissuance of NPDES Permit

Item 10 – City of Piedmont, Sanitary Sewer Collection System, Alameda County  
– Reissuance of NPDES Permit,

Item 11 – City of Oakland, Sanitary Sewer Collection System, Alameda County  
– Reissuance of NPDES Permit

Item 12 – Stege Sanitary District, Sanitary Sewer Collection System,  
El Cerrito, Contra Costa County – Reissuance of NPDES Permit

Item 13 – City of Oakland, Sanitary Sewer Collection System, Alameda County  
– Amendment of Cease & Desist Order

Mr. Wolfe made introductory comments.

Robert Schlipf gave one staff presentation that covered the above Items.

Mr. Schlipf replied to a question from Mr. Moore.

Mr. Moore said he recused himself from consideration of Items 6 and 12 and concurred with a comment from staff that his previous question was directed at Items other than Items 6 and 12.

Staff replied to questions and comments from Mr. McGrath, Dr. Singh, and Dr. Young.

The following people testified about one or more of the above Items:  
Alexis Strauss, Director, Water Division, United States Environmental Protection Agency, Region IX; Dwight Merrill, President, Board of Directors, Stege Sanitary District; Barbara Hawkins, City Engineer, City of Alameda; Christopher Sproul, Legal Counsel for San Francisco Baykeeper and Our Children's Earth Foundation; Vitaly B. Troyan, Interim Director of Public Works Agency, City of Oakland.

Following testimony by Ms. Strauss as noted above, she replied to questions and comments from Dr. Singh, Mr. McGrath, and Dr. Young. After which, Mr. Wolfe and Ms. Strauss commented.

Following testimony by Ms. Hawkins as noted above, she replied to comments from Dr. Young.

Following testimony by Mr. Sproul as noted above, there was discussion by Dr. Young, staff, Mr. Sproul, and Mr. McGrath.

Upon conclusion of testimony by Mr. Troyan, Mr. Muller said no further persons requested to testify.

At that point, staff replied to questions from Dr. Singh, Mr. Moore, and Mr. McGrath.

Mr. McGrath commented.

Mr. Muller asked for staff's recommendations on the above Items.

Mr. Wolfe recommended adoption of the Revised Tentative Order for Item 6, Reissuance of NPDES Permit for the City of Albany.

Motion: It was moved by Mr. McGrath, seconded by Dr. Young, and it was voted to adopt the Revised Tentative Order for Item 6 as recommended by the Executive Officer.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Dr. Singh; Dr. Young; Mr. Muller

No: None

Recusal: Mr. Moore

Motion passed 5 – 0 with 1 recusal.

Mr. Wolfe recommended adoption of the Revised Tentative Order for Item 7, Reissuance of NPDES Permit for the City of Alameda.

Motion: It was moved by Mr. McGrath, seconded by Dr. Young, and it was voted to adopt the Revised Tentative Order for Item 7 as recommended by the Executive Officer.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Dr. Singh; Dr. Young; Mr. Muller

No: None

Abstain: Mr. Moore

Motion passed: 5 – 0 with 1 abstention.

Mr. Wolfe recommended adoption of the Revised Tentative Order for Item 8, Reissuance of NPDES Permit for the City of Berkeley.

Motion: It was moved by Mr. McGrath, seconded by Dr. Young, and it was voted to adopt the Revised Tentative Order for Item 8 as recommended by the Executive Officer.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Dr. Singh; Dr. Young; Mr. Muller

No: None

Abstain: Mr. Moore

Motion passed 5 – 0 with 1 abstention.

Mr. Wolfe recommended adoption of the Revised Tentative Order for Item 9, Reissuance of NPDES Permit for the City of Emeryville.

Motion: It was moved by Mr. McGrath, seconded by Mr. Eliahu, and it was voted to adopt the Revised Tentative Order for Item 9 as recommended by the Executive Officer.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Dr. Singh; Dr. Young; Mr. Muller

No: None

Abstain: Mr. Moore

Motion passed 5 – 0 with 1 abstention.

Mr. Wolfe recommended adoption of the Revised Tentative Order for Item 10, Reissuance of NPDES Permit for the City of Piedmont.

Motion: It was moved by Mr. McGrath, seconded by Dr. Singh, and it was voted to adopt the Revised Tentative Order for Item 10 as recommended by the Executive Officer.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Dr. Singh; Dr. Young; Mr. Muller

No: None

Abstain: Mr. Moore

Motion passed 5 – 0 with 1 abstention.

Mr. Wolfe recommended adoption of the Revised Tentative Order for Item 11, Reissuance of NPDES Permit for the City of Oakland.

Motion: It was moved by Dr. Singh, seconded by Dr. Young, and it was voted to adopt the Revised Tentative Order for Item 11 as recommended by the Executive Officer.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Dr. Singh; Dr. Young; Mr. Muller

No: None.

Abstain: Mr. Moore

Motion passed 5 – 0 with 1 abstention.

Mr. Wolfe recommended adoption of the Revised Tentative Order for Item 12, Reissuance of NPDES Permit for the Stege Sanitary District.

Motion: It was moved by Dr. Singh, seconded by Mr. McGrath, and it was voted to adopt the Revised Tentative Order for Item 12 as recommended by the Executive Officer.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Dr. Singh; Dr. Young; Mr. Muller

No: None

Recusal: Mr. Moore

Motion passed 5 – 0 with 1 recusal.

Mr. Wolfe recommended adoption of the Revised Tentative Cease and Desist Order for Item 13, Amendment of Cease & Desist Order for the City of Oakland.

Motion: It was moved by Mr. McGrath, seconded by Dr. Young, and it was voted to adopt the Revised Tentative Cease and Desist Order for Item 13 as recommended by the Executive Officer.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Dr. Singh; Dr. Young; Mr. Muller

No: None

Abstain: Mr. Moore

Motion passed 5 – 0 with 1 abstention.

The Board took a break at 11:40 a.m. and resumed the meeting at 11:55 a.m.

Item 14 – San Leandro Bay Contamination Cleanup and Abatement Project, Alameda County – Resolution Requesting Funding from the State Water Pollution Cleanup and Abatement Account

Dr. Mumley said contamination of sediment in San Leandro Bay presents a water quality problem. He said the proposed project includes preparatory investigations and assessments of remedial alternatives to address contamination. He said completion of the proposed project would set the stage for future cleanup and abatement actions. He said staff recommends the Board adopt the Tentative Resolution which requests three million dollars from the State Water Pollution Cleanup and Abatement Account to fund the proposed project.

Dr. Singh made a motion to adopt the Tentative Resolution.

Mr. McGrath expressed concern about the cost of the proposed project and the fact that the workplan lacked specificity. He expressed concern about contaminants entering San Leandro Bay on an ongoing basis. He recommended caution be exercised in the remediation of contaminated sediments and specifically in areas of endangered species habitat. He discussed issues associated with sampling. He requested the opportunity to participate in meetings about the project. He requested staff provide project updates to the Board.

Mr. Wolfe agreed to provide project updates to the Board.

Mr. Muller and staff discussed participation by a Board member in meetings about project development.

Mr. Moore spoke in favor of obtaining funding for the proposed project.

In reply to a question from Dr. Young, Dr. Mumley discussed reasons staff recommended San Leandro Bay as a location of the proposed project.

Mr. Wolfe recommended adoption of the Tentative Resolution.

Motion: It was moved by Dr. Singh, seconded by Mr. Moore, and it was voted to adopt the Tentative Resolution as recommended by the Executive Officer.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Moore; Dr. Singh; Dr. Young; Mr. Muller

No: None

Motion passed 6 – 0.

Item 15 – Implementation of Federal Economic Recovery Legislation by the State Water Board – Status Report by Barbara Evoy, Deputy Director

Barbara Evoy, Deputy Director, Division of Financial Assistance, State Water Resources Control Board, provided an update on the State Board's administration of funds received under Federal economic recovery legislation. She answered questions from Board members and staff.

Mr. Muller said the Board would not hold a meeting in December 2009. He said the next Board meeting would be held in January 2010.

At 12:58 p.m., the Board went into closed session and completed the closed session at approximately 1:45 p.m.

Item 21 - Adjournment

The meeting was adjourned at approximately 1:45 p.m.