



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

March 8, 2017 Board Meeting
Draft Minutes for Board Consideration
ADOPTED MAY 10, 2017

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.

Item 1 – Roll Call and Introductions

Meeting called to order at 9:07 a.m. in the Elihu M. Harris Building, First Floor Auditorium.

Board Members Present

Cecilia Ogbu
Newsha Ajami
William Kissinger (left at 12:30)
Vice-Chair James McGrath
Chair Terry Young
Jayne Battey

Board Members Absent

Steve Lefkovits

Status

QUORUM

Senior Water Resource Control Engineer John Wolfenden introduced new Engineering Geologist Cecilia Hernandez. Senior Engineering Geologist Alec Naugle introduced new Engineering Geologist Tina Ures.

State Board Member Tam Doduc reported that the State Board adopted a climate change resolution and postponed consideration of changes to the Enforcement Policy. She also noted that there would be a workshop on implementation of the Sustainable Groundwater Management Act and a new drinking water standard.

Item 2 – Public Forum

Bill McNicholas, member of Cleanup Marinwood Plaza Now, recommended that the Board put penalties on the agenda for alleged violations at Marinwood Plaza. Robert Graham, Marinwood resident, urged the Board to take enforcement. Steve Nestel, member of Cleanup Marinwood Plaza Now, reminded the Board that the community is upset about site conditions and urged full cleanup and enforcement.

Redwood City Council Member Jeff Gee discussed flooding concerns at the Bayfront Canal and noted that a meeting with Board staff was scheduled for March 20 to discuss permit requirements.

Item 3 – Minutes of the February 8, 2017 Board Meeting

Executive Officer Bruce Wolfe recommended adoption of the minutes from the February Board Meeting.

Vice Chair McGrath moved for adoption of the minutes; Board member Board Member Ajami seconded the motion.

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

Noes: None

ITEM ADOPTED

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

Board Member Ajami discussed a meeting she attended at the Sierra Nevada Conservancy. Vice Chair McGrath reported that on February 23 he met with San Francisco Baykeeper staff to discuss the issue of abandoned and substandard boats. He also discussed habitat restoration projects, problems of erosion in Monterey Bay, and issues in Berkeley’s Aquatic Park. Board Member Battey noted the significant erosion on the San Mateo coast. Chair Young discussed the most recent Chairs’ call and a discussion on the unfunded mandates rulings pertaining to municipal stormwater permits. She noted that a fact sheet is forthcoming about how the Water Boards will address this topic in its permits.

Mr. Wolfe gave an overview of this month’s Executive Officer’s Report. He noted that Robert Schlipf investigated the issue of ballast water in refineries and reported on his findings. He highlighted the success of the Napa River and Guadalupe River flood control projects during this winter’s storms. He discussed the Little Hoover Commission hearing on permitting of infrastructure projects. He also discussed Measure AA implementation, his role on the SF Bay Restoration Authority’s Advisory Board, and that the next step in implementation is to update the proposed project list and grant guidelines.

Enforcement

Item 5 – John D. Sweeney and Point Buckler Club, LLC, Point Buckler Island, Suisun Marsh, Solano County – Adoption of Resolution Authorizing Referral to the Attorney General Regarding Cleanup and Abatement Order No. R2-2016-0038

Assistant Executive Officer Dyan Whyte introduced the item on behalf of the Prosecution Team. Environmental Scientist Agnes Farres gave a presentation to the Board. She discussed the regulatory history of the case and described why a referral to the Attorney General is needed to obtain compliance. Prosecution Team Legal Counsel Tamarin Austin requested a modification to the Resolution in regard to a Water Code citation. Ms. Whyte noted that staff has met with the Dischargers numerous times, and at every meeting they have emphasized the need for scientific rigor and analysis and that is what has not been put forward in the Dischargers’ submittals.

Board Member Kissinger asked for clarification on when staff met with the Dischargers and what was discussed.

Max Rollins, legal counsel representing the Dischargers, described why Mr. Sweeney disagrees with the Prosecution Team's assertion that he has not complied with the Cleanup and Abatement Order. He requested that if the Board is inclined to refer the matter to the Attorney General that they only do so with respect to injunctive relief and not penalties. He also objected to changes made by the Advisory Team in regard to the possibility of criminal penalties.

Board Member Kissinger asked whether Mr. Sweeney was prepared to provide any documentation regarding his finances and ability to get the work done. He asked why the Dischargers have not revised the Interim Corrective Action Plan in response to staff's memo. He also asked about the availability of funds and the statements in the Restoration Plan regarding the need to fund raise to perform the needed work. Board Member Ogbu asked why the Dischargers were waiting for staff's report as opposed to collecting their own data. Chair Young asked clarifying questions in regard to enforcement procedures. Board members asked a number of clarifying questions regarding the Dischargers' written submittal.

Maggie Weber, Bay Conservation and Development Commission enforcement analyst, stated that she and her colleagues have reviewed the Restoration, Mitigation, and Monitoring Plan and agree with Prosecution Team staff that the submittal is inadequate. Advisory Team Legal Counsel Marnie Ajello recommended that the Board convene a closed session.

CLOSED SESSION CONVENED at 11:06 a.m.; PUBLIC SESSION RECONVENED at 12:08 p.m.

Ms. Ajello read into the record proposed changes to language in the Tentative Resolution. These changes were in addition to the changes made by the Advisory Team that were identified in the supplemental distributed at the beginning of the hearing. Chair Young stated that, in adopting the resolution, the Board is not making specific findings that the Cleanup and Abatement Order has been violated, but, based on alleged violations, the referral is appropriate. Board Member Kissinger noted that the Board had earlier reduced the penalty based on the expectation that the Dischargers would turn their attention and resources towards getting the work required by the Cleanup and Abatement Order done. He noted that the Dischargers have not brought to the table the kind of seriousness and urgency the situation presents. Board Member Ogbu expressed disappointment with the substance and quality of the submitted reports. Board Member Battey expressed the need to find ways to expedite restoration.

Ms. Ajello recommended adoption of Item 5A as supplemented.

Board Member Kissinger moved for adoption of Item 5A; Board Member Battey seconded the motion.

Ayes: Ogbu, Ajami, Kissinger, Young, Battey

Recused: McGrath

Nos: None

ITEM ADOPTED

Waste Discharge Requirements

Item 6 – Santa Clara Valley Water District and U.S. Army Corps of Engineers, Upper Berryessa Creek Flood Risk Management Project, Santa Clara County (continued from January 11, 2017 meeting) – Adoption of Waste Discharge Requirements and Water Quality Certification

Chair Young noted that this item would be continued to next month to allow the Water District to deal with on-the-ground flood management problems due to recent storms.

BREAK at 12:18 p.m.; RECONVENED at 1:07 p.m.

Item 7 – Implementation of the Trash Load Reduction Requirements, Provision C.10, of the Regional Municipal Stormwater Permit – Information Item

Senior Engineer Dale Bowyer gave the presentation to the Board. He described the Regional Municipal Stormwater Permit (MRP) and its required trash reduction actions. He discussed MRP permittee performance and future compliance challenges.

Board Member Ajami asked a clarifying question about the role of flood control agencies. Board Member Battey asked about information available on the Board's website and discussed problems with trash along highway corridors. Board Member Ogbu asked about how permittees not in compliance plan to meet the requirements. Board Member Ajami asked whether anyone has compiled the various approaches permittees have used to raise the funds necessary to implement trash reduction actions. Chair Young discussed the history of the trash requirements.

Lesley Estes, City of Oakland watershed manager, described the City's trash reduction efforts. Chair Young asked about business improvement districts, whether they appear to be successful, and if the concept could be expanded. Vice Chair McGrath asked about the City's budget. Paul Ledesma with Save the Bay commented that the reports do not discuss enforcement options associated with non-compliance and encouraged the Board to pursue enforcement for permittees who do not meet requirements. Kelli Capka, City of Orinda stormwater program manager, described challenges in high trash areas where there is a lack of modern stormwater infrastructure. Joanne Le, City of Richmond stormwater program manager, described efforts underway to try and fund large trash capture devices with Caltrans' assistance. Mitch Avalon, consultant to Contra Costa County, discussed trash reduction efforts in the unincorporated areas of Contra Costa County and the differences between individual trash capture versus full trash capture devices. Vice Chair McGrath asked about multi-benefit solutions. Cece Sellgren, Contra Costa County stormwater program manager, discussed the three stages of litter control. She emphasized that the Water Board needs to work with Caltrans to see watershed-wide results.

Division Chief Keith Lichten summarized staff's findings. Vice Chair McGrath noted concern about the possibility of using inlet screen devices as a short term fix as opposed to investing in long term solutions. Chair Young noted that she was not agreeable to extending deadlines in the MRP that have already been extended and that the MRP's 2017 deadline is real. She noted support of the approach being taken that allows individual permittees to define their own

approach. She also noted that as part of any enforcement the Board will have to take into account all relevant factors. Board Member Ajami emphasized the need for permittees to have a good strategy in place, similar to an asset management strategy. Vice Chair McGrath discussed the need for prioritization and to reset priorities as needed. Board Member Ogbu noted support for keeping the MRP's existing deadlines and the need to evaluate each permittee's progress individually. Executive Officer Wolfe stated that staff will continue to work with permittees and recognized that there is no one size fits all solution to meeting the trash load reduction requirements.

This item was for informational/discussion purposes and no action was taken.

Item 8 – Correspondence

This item was for informational/discussion purposes and no action was taken.

Item 12 - Adjournment

Meeting adjourned at 3:20 p.m. until the next Board Meeting – April 12, 2017