
San Francisco Bay Regional Water Quality Control Board

**April 12, 2017 Board Meeting
Draft Minutes for Board Consideration**

ADOPTED MAY 10, 2017

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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>
Cecilia Ogbu	William Kissinger	QUORUM
Steve Lefkovits		
Newsha Ajami (left during Item 8 and returned at 4:14)		
Vice-Chair James McGrath		
Chair Terry Young		
Jayne Battey		

Senior Engineering Geologist Jim Ponton introduced new Scientific Aid Sara Melick and new Engineering Geologist Rene Leclerc. Senior Environmental Scientist Kevin Lunde introduced new Scientific Aid Kenneth Norberg. Senior Engineer Robert Schlipf introduced new Water Resource Control Engineer Patrick Karinja. Senior Engineer Dale Bowyer introduced new Scientific Aid Yuliya Scales and new Scientific Aid Janet Tuttle.

State Board Member Tam Doduc updated the Board about new State Board member appointments. She noted that the State Board will soon be considering adoption of a new drinking water standard. She discussed the new cannabis regulatory program.

Item 2 – Public Forum

No parties requested to speak.

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

Executive Officer Bruce Wolfe informed the Board that the minutes of the March 8, 2017, Board Meeting would be presented for adoption at the May 10, 2017, Board Meeting.

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

Board Member Battey discussed a recent sanitary sewer overflow in her neighborhood and her desire to discuss coastal erosion and climate change planning. Board Member Ajami discussed a recent U.S. EPA forum she attended on financing stormwater projects and green infrastructure. Chair Young reported that she had conversations with Craig Johns, State Board Member Moore, and Basin Planning Division Chief Naomi Feger on the State Board’s proposed statewide mercury water quality objectives and associated new beneficial uses for subsistence fishing.

Mr. Wolfe gave an overview of this month’s Executive Officer’s Report. He highlighted the items on the manufactured gas plants and the recent approval by U.S. EPA of the Bay Beaches TMDL.

Consideration of Uncontested Items

Item 5A – California Department of Fish and Wildlife and U.S. Army Corps of Engineers, Napa River Salt Marsh Restoration Project, Pond 7, Napa County – Reissuance of NPDES Permit

Item 5B – City of American Canyon, American Canyon Water Reclamation Facility American Canyon, Napa County – Reissuance of NPDES Permit

Item 5C – Central Contra Costa Sanitary District, Central Contra Costa Sanitary District Wastewater Treatment Plant, Martinez, Contra Costa County – Reissuance of NPDES Permit

Item 5D – The Wine Group, LLC, Concannon Winery, Livermore Valley, Alameda County – Issuance of Waste Discharge Requirements and Rescission of Order No. R2-2014-0029

Item 5E – Eco Services Operations Corp., Martinez Plant, Martinez, Contra Costa County – Updated Waste Discharge Requirements and Rescission of Order No. R2-2008-0075

Mr. Wolfe recommended adoption of items 5A, 5B, 5D, and 5E.

Vice Chair McGrath moved for adoption of items 5A, 5B, 5D, and 5E; Board Member Ajami seconded the motion.

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

Nos: None

ITEMS ADOPTED

Item 5C was considered separately because two speaker cards were submitted. Central Costa County Sanitary District Regulatory and Environmental Manager Lori Schectel thanked Mr. Schlipf for his work in developing the Order. Lorian Fono, representing BACWA, expressed support for the permit and the ongoing nutrient management strategy. Mr. Wolfe described the nutrient management strategy and highlighted some of its successes.

Mr. Wolfe recommended adoption of Item 5C

Board Member Ajami moved for adoption of Item 5C; Vice Chair McGrath seconded the motion.

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

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

Staff Engineer Richard Looker gave the presentation to the Board. He described the water quality assessment process, the Integrated Report's categories, sources of data, proposed new listings and delistings to the 303(d) list, comments received, and staff responses.

Vice Chair McGrath asked about the location of Kiteboard Beach. Chair Young asked about possible changes that would have resulted if more recent data was evaluated. Vice Chair McGrath asked for confirmation that staff has flexibility to set priorities in addressing the listings. Board Member Ajami asked how staff will address listings where the source of pollutants is from atmospheric deposition. In response to a question by Board Member Battey, Mr. Looker described issues with a possible listing of ocean acidification.

Kirsten Struve, representing Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP), commented on the age and reliability of the data used for the toxicity impairment listings. She requested that these toxicity listings be moved to report category 3. Dr. Tom Hall, with EOA and representing SCVURPPP, commented on the proposed new toxicity listings, noted that a toxicity TMDL does not make sense and commented that he supported continued work through the RMP to further investigate sediment toxicity. Grant Wilson, interim director for the Earth Law Center, asked that waterbodies be listed based on flow impairment. Kevin Buchan, representing the Western States Petroleum Association, discussed some of the confounding factors related to the sediment toxicity listings. Andria Ventura with Clean Water Action discussed the proposed statewide mercury objectives and associated new beneficial uses and the need to protect our most vulnerable populations. Dr. Michael Connor expressed concern with the sediment toxicity listing. Jim Ervin, representing the San Jose-Santa Clara Regional Wastewater Facility, showed slides suggesting attainment of beneficial uses in the South Bay and contested the toxicity listings. Chris Malan, executive director of the Institute for Conservation, Advocacy, Research, and Education, urged the Board to address flow issues in the Napa River watershed.

Chair Young asked about the possible implications of listing the Napa River as impaired by flow. Vice Chair McGrath noted that he agreed that there are concerns about flow in the watershed, but he did not think that the 303(d) process is the right tool to address the concern. He further discussed his experience with sediment toxicity testing. Board Member Ajami asked about whether listing for sediment toxicity would impact restoration projects in the Bay. Board Member Lefkovits asked whether the listing policy takes into consideration the implications of listing. Chair Young expressed concern about the lack of additional data on sediment toxicity. Division Chief Naomi Feger described the sediment quality objective sampling and analysis process and recent results. Vice Chair McGrath asked for clarification on the implications of

listing under report category 5. Board Member Battey asked for confirmation about the delisting process. Legal Counsel Ajello asked for clarification of the bases for not listing the Bay as impaired by sediment toxicity under report category 5.

Mr. Wolfe recommended adoption of Item 6 with changes to the listings for sediment toxicity. He proposed moving the eight toxicity sediment listings in report category 5 to category 3, with appropriate changes to the fact sheets. Vice Chair McGrath asked about spatial and temporal representation of the sediment toxicity data.

Vice Chair McGrath moved for adoption of Item 6 as recommended; Board Member Lefkovits seconded the motion.

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

Nos: None

ITEM ADOPTED

NPDES Permit

Item 7 – City of Pacifica, Calera Creek Water Recycling Plant, Pacifica, San Mateo County - Reissuance of NPDES Permit

Staff Engineer Jessica Watkins gave the presentation to the Board. She reviewed the basics of toxicity testing and its role in the NPDES program. She then provided an overview of the Pacifica plant's water toxicity data, comments received, and staff responses.

Dr. Conner presented data and discussed the reliability of toxicity tests. Robin Stuber with the U.S. EPA, noted support for the permit and stated that there is no need to wait until the State Board adopts a toxicity policy. She also discussed recent and pending litigation and permits issued by other regional boards. City of Pacifica Deputy Director of Public Works Louis Son asked the Board to reconsider including a numeric chronic toxicity limit. Jim Ervin, representing Bay Area Clean Water Agencies, discussed issues with toxicity testing.

Board Member Battey asked about the cleaning of the UV channel and requirements in other NPDES permits. Board Member Ogbu asked about implications if Pacifica had been able to find the source of toxicity. Vice Chair McGrath asked for more information about the UV channel. He also noted concern about the high cost of testing for something that is inherently variable. Chair Young asked about potential enforcement of toxicity violations.

Mr. Wolfe recommended adoption of Item 7.

Board Member Battey moved for adoption of Item 7; Board Member Ogbu seconded the motion.

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

Nos: None

ITEM ADOPTED

BREAK at 12:48 p.m.; RECONVENED at 1:20 p.m.

Waste Discharge Requirements (WDRs)

Item 8 - Santa Clara Valley Water District and U.S. Army Corps of Engineers, County Upper Berryessa Creek Flood Risk Management Project, Santa Clara (continued from January 11, 2017 meeting) – Adoption of Waste Discharge Requirements and Water Quality Certification

Board Chair Young reviewed procedures for this item and noted that she would allow the recent submittal by the Army Corps of Engineers into the record because it was submitted in response to the tracked changes version of the Revised Tentative Order that will be discussed today. Senior Environmental Scientist Xavier Fernandez gave the presentation to the Board. He summarized the project, presented the Board's framework for determining compensatory mitigation, described the project's impacts, and presented staff's proposed revisions to the mitigation requirements discussed at the January Board Meeting. He also reiterated that the project was under construction, was scheduled to be completed on time, and that there was no indication that adopting the Order would jeopardize project funding or its timely completion.

Vice Chair McGrath asked for clarification on the length of the channel bed in which there will be rip rap. He also asked about whether Lower Silver Creek has a rip rap bottom. Board Member Ajami asked about the definition of out-of-kind mitigation. Chair Young noted appreciation for incorporating a framework for decision making. Board Member Lefkovits asked about the timeline connection between implementing the project, mitigation, and completion of the BART station.

Richard Santos, vice chair of the Santa Clara Valley Water District, noted the District's strong opposition to the Order. Reverend Moore, president of Santa Clara/Silicon Valley NAACP, urged the Board not to adopt the Order and to come to the community to hear its concerns. Daniel Degu, representing the City of Milpitas, expressed concern that the WDRs would result in project delays. He urged the Board to not adopt the Order. He noted that the Milpitas City Council adopted a resolution of support for the project continuing as certified. Liz Ainsworth, Milpitas resident and Milpitas Chamber of Commerce member, expressed concern for the project if the Board adopted the Order. Will Ector, Berryessa Union School District Superintendent, urged the Board to not adopt the WDRs and noted that the project would provide critical flood protection. Chris York, representing San Jose Councilman Lan Diep, urged the Board to not adopt the Order. Linda Locke, president of the Berryessa Citizen's Advisory Council, noted that the project needs to move forward. Local home and business owner Frank Cancilla expressed concern about flooding and asked the Board to do the right thing.

Santa Clara Valley Water District Interim Chief Operating Officer of Watersheds Melanie Richardson stated that the District continues to believe that mitigation is not required for the project. However, the District remains open to discussing other possible resolutions such as a Memorandum of Understanding (MOU) between the District and the Board. Jack Xu, Water District hydrologist, described the reasons the District objected to technical findings in the Order. Water District Associate Water Resource Specialist Jim Manitakos discussed the specific

findings he disagreed with and showed photos of the project. Rita Chan, Water District Legal Counsel, commented that the District is still unclear about how the revised mitigation requirement was calculated and expressed concern with some of the deadlines in the Order. She noted support for a MOU and stated that the District would be in a better position to secure funding to implement a restoration project if it is not required mitigation. Mr. Manidakos spoke on behalf of the Army Corps of Engineers regarding the Jones Chemical site and the need for a soil management plan.

Vice Chair McGrath asked for clarification about mitigation requirements versus suggestions for mitigation projects. He reiterated the Board's willingness to recognize other projects to fulfill the Order's mitigation requirements. Chair Young briefly reviewed the testimony from the prior Board hearing and the two-step permitting process. Vice Chair McGrath and Board Member Battey noted that the revisions made since the previous hearing provide for adaptability moving forward.

Mr. Wolfe summarized the history of the project, the regulatory process, and his discussions with the District and the Corps over the past two years on how to most expeditiously permit the project. He recommended revising the dates for Finding 21, page 12, and Provision 19, page 25, to October 2, 2017. Mr. Wolfe recommended adoption of Item 8 as revised.

Board Member Battey moved for adoption of Item 8 as revised; Board Member Ogbu seconded the motion.

Ayes: Ogbu, Lefkovits, McGrath, Young, Battey

Nos: None

ITEM ADOPTED

Item 9 – Proposed General Waste Discharge Requirements for Vineyard Properties in the Napa River and Sonoma Creek Watersheds – Informational Workshop to Receive Testimony

Staff Engineering Geologist Mike Napolitano gave the presentation to the Board. He gave an overview of the findings in the Napa River and Sonoma Creek TMDLs, introduced the General Permit, and presented recommended changes to the draft permit circulated in July 2016.

Board Member Battey asked why vineyards and why in this area. Chair Young clarified what she had previously expressed as goals for this project: make a difference in water quality; minimize the paperwork and fees for good actors; provide alternative compliance mechanisms based on water quality threat; and allow for third party programs.

Napa County Supervisor Diane Dillon noted appreciation for the cooperation of Board staff and highlighted the successful Rutherford Reach and Oakville to Oak Knoll projects. She thanked the Board for listening to stakeholders and considering the County's comments. Debra Dommen, representing Treasury One Estates, noted support for the change removing requirements for contiguous parcels and requested that the timing in regard to grading activities be consistent

with county requirements. Michelle Novi, representing the Napa Valley Vintners, expressed concern that the Board is relying on old data and that permit implementation is too reliant on grant funding. Michelle Benvenuto, representing Wine Growers of Napa County, stated that the permit should focus strictly on vineyards and roads associated with vineyards, not the entire parcel. She requested economic analysis of the permit's compliance costs and noted that there is no evidence that vineyards or roads are substantial dischargers of nutrients or pesticides. Adam Kotin, representing the Wine Institute, requested that stakeholders be given an additional comment period to comment on the redline version of the permit.

Jessie Gamer, executive director of the Napa County Farm Bureau, noted that the Farm Bureau was willing to act as an administrative agent for the proposed group monitoring program and noted the need for a concerted outreach effort after permit adoption. Kimberly Burr discussed water quality problems with vineyards and asked for more specificity in the permit and stronger language regarding farm plan requirements. Joe Dillon, Water Quality Specialist for the National Marine Fisheries Service, stated support for the permit. He discussed why the permit is necessary and commented that the time schedules are aggressive but achievable. Ladd Cahoon, an attorney representing McKenzie-Muller, stated that the permit remains vague, arbitrary, and ambiguous. He requested that residential areas be carved out of the permit. Bill Hanna, Napa grape grower, expressed concern regarding nutrients and pesticides and how they might be regulated under the permit. He also raised concern about cover crop requirements. Board Member Battey noted that it is important that there be no unintended consequences associated with the permit. Bob Anderson, executive director of the United Wine Growers of Sonoma County, discussed work done and work that needed to be done. He also discussed differences between Napa and Sonoma County regulations and implementation costs.

Gary Margadant, president of the Mt. Veeder Stewardship Council, showed a video of an erosion control failure at a Kendall Jackson vineyard. He stated that the 5 acre minimum should not apply in steeper areas. Chris Malan, representing the Living River Council, requested that farm plans be made available to the public. Larry Hansen, representing California River Watch, suggested that third party programs be independent and encouraged the Board to protect waters from pesticides. Mike Hackett noted that in Napa 126 million gallons of wine are produced and only 20 million gallons are from family farms. He discussed the need for more water quality protection, especially related to class 3 streams and setbacks.

Vice Chair McGrath noted appreciation for the constructive input given today. He suggested further review of the timing of the grading season, recirculation of a redline version of the permit, and more discussion with stakeholders on nutrients and cover crop requirements. He noted the need to figure out a way to have some level of transparency on why a farm plan was approved and build public confidence in the process of certification. Board Member Battey questioned whether five acres is an appropriate cutoff or should it be ownership type, slope, or some other combination. Board Member Ajami also asked about size and slope cutoffs. She encouraged innovative approaches to regulating. Board Member Ogbu expressed concern about regulating smaller operations. She noted that she appreciates that the permit recognizes existing county regulations in order to avoid duplication. Board Member Lefkovits raised

questions about costs and the possible use of newer technologies. Chair Young encouraged staff to keep working with stakeholders and share the redline version of the permit. She noted support for the permit's tiers, especially the stewardship tier, but suggested staff more closely look at whether tier 2 could be modified or expanded to include dischargers who have done all identified work. She requested that the criteria for each tier be presented more clearly. She expressed support for the change to eliminate BMP effectiveness monitoring and concern about the State Board's fee setting process. Chair Young also asked staff to make sure expectations about farm plans are clear. Mr. Wolfe indicated that staff would consider all comments made during the workshop, circulate the redline version of the permit, and bring a revised order back to the Board for its consideration at a future Board meeting.

Item 10 – Correspondence

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

Item 14 - Adjournment

Meeting adjourned at 5:53 p.m. until the next Board Meeting – May 10, 2017