



## January 11, 2020 Monthly Meeting Minutes

1. BAFPAA Vice Chair Natalie Muradian chaired the meeting. A roster of attendees follows at the end of the minutes.
2. Antonella Gentile of Santa Cruz provided the Agency Spotlight (see Powerpoint)
3. Gina Petnik and Jonathan Sanglerat of Petaluma provided the Watershed Moment on the dredging of the Petaluma River (see Powerpoint)
4. New Business
  - a. CHARG: Paul Detjens of Contra Costa is taking a CHARG scope to develop realistic objectives in 2021 to the CHARG Steering Committee. Once Paul gets concurrence, they Contra Costa will issue a contract.
  - b. DWR permit initiative: Mark Strudley of Santa Cruz will keep BAFPAA apprised of this initiative, which currently seems vague
  - c. Bond Funding: Carol Mahoney of Zone 7 noted that the Bay Area Council is getting together ideas for a future water bond. Under consideration currently is an Urban and Coastal Flood Protection focus to ensure that all funds are not pushed to the Central Valley. Carol will keep BAFPAA up to date
5. Committee Updates
  - a. Homelessness and Water Quality: Carol hopes to regroup shortly.
  - b. Environment Permitting Committee: Avé Brown of Contra Costa reported that the first Dredge and Fill Workshop was held on 1/7. Roughly 50 people attended. The next workshop is on 1/21. Also an informational time on a court ruling on the Dredge and Fill Procedures follows on the next page.
6. Other Groups
  - a. AQPI: Mark Boucher reported that the deployment of the Rocky Ridge X-Band radar has been deferred. The technical committee is meeting next week.
7. Treasurer's Report - nothing new to report
8. Next Meeting: February 8, 1:30

## DECEMBER 21, 2020 Court Rules Against California's Wetlands Regulatory Program

By [R. Clark Morrison](#) and [Scott Birkey](#)

Last week, the Sacramento Superior Court delivered a serious blow to California's regulatory program for the protection of wetlands and other waters of the State.

The State's wetland protection program (commonly known as the "Procedures"), which became effective in May, was intended to create a regulatory structure to fill the gap left by recent Trump administration regulations that dramatically narrowed Federal wetland protections. Ironically, the court's order prohibits the State of California from applying the Procedures to any waters *other* than those already protected by Federal law, thus leaving in place the very regulatory gap that the Procedures were intended to fill.

Under California's Porter-Cologne Water Quality Control Act, water policy for the State is established by the State Water Resources Control Board (the "State Water Board"). Policies established by the State Water Board are supposed to be implemented by the nine regional water quality control boards (the "Regional Boards"), each of which adopts and enforces a water quality control plan (or "WQCP") for waters within its region.

When it adopted the Procedures, the State Water Board purported to amend certain WQCPs within the State. In its ruling, however, the Court held that WQCP's (except in limited instances) may only be adopted or amended by the Regional Boards, and that the State Water Board therefore overstepped its bounds. The Court further reasoned that, because of the high level of detail found in the Procedures, they could not be justified as a mere act of "policy-making" by the State Water Board. Accordingly, the State has been enjoined from applying the Procedures to any waters other than those regulated by the Clean Water Act under the Trump administration's narrow policies.

Importantly, the Court rejected the plaintiff's claim that the discharge of dredged or fill material could not be regulated as "waste" under Porter-Cologne. The plaintiffs had asserted that dredged material and fill material are not always "waste" within the meaning of Porter-Cologne. Although the Court acknowledged that this may be true, it rejected the claim as not ripe, reasoning that the question should be worked out (or litigated) on a case by case basis.

The Court's ruling does not mean that a water board permit is no longer needed for discharges to wetlands and other waters. A permit is still required for those activities. It's just that the specific application, permitting and regulatory requirements and standards set forth in the Procedures may not be applied by the water boards in their permitting decisions. The Court is expected to issue an order in the near future that will articulate the precise scope of the injunction against application of the Procedures.

## Meeting Roster / Attendees

<b>Last</b>	<b>First</b>	<b>Agency</b>	<b>Attended 1-2021</b>
Ackerman	Hank	Alameda County Public Works Agency	
Brown	Jim	Alameda County Public Works Agency	
Scanlin	Jim	Alameda County Public Works Agency	
Tom	Jacquelin	Alameda County Public Works Agency	
Powell	Erika	Army Corps of Engineers	
Brosseau	Geoff	Bay Area Stormwater Management Agencies Association	
Goeden	Brenda	Bay Conservation and Development Commission	
Jimenez	Mary	California Department of Water Resources	
Lin	Hong	California Department of Water Resources	
Lorenzo-Lee	Maria	California Department of Water Resources	
Pesavento	David	California Department of Water Resources	
Sidely	Jason	California Department of Water Resources	
Cross	Ellen	CHARG	
Schaefer	Kathy	CHARG	
Lung	Pam	City of Livermore	
Verner-Crist	Megan	City of Livermore	x
Beatty	Jason	City of Petaluma	
Benedetti-Petnic	Gina	City of Petaluma	x
Sanglerat	Jonathan	City of Petaluma	x
Stutsman	Jeff	City of Petaluma	
Thompson	Chelsea	City of Petaluma	x
Ahmann	Erica	City of St. Helena	
Avalon	Mitch	Contra Costa County Flood Control and Water Conservation District	
Boucher	Mark	Contra Costa County Flood Control and Water Conservation District	x
Brown	Ave	Contra Costa County Flood Control and Water Conservation District	x
Cordis	Michelle	Contra Costa County Flood Control and Water Conservation District	
Cremin	Laura	Contra Costa County Flood Control and Water Conservation District	
Detjens	Paul	Contra Costa County Flood Control and Water Conservation District	x
Gemberling	Claudia	Contra Costa County Flood Control and Water Conservation District	x

Jensen	Tim	Contra Costa County Flood Control and Water Conservation District	
Knapp	Allison	Contra Costa County Flood Control and Water Conservation District	
Choo	Chris	Marin County	
da Silva	Bene	Marin County	x
Epke	Gerhard	Marin County	
Lee	Hannah	Marin County	
Leventhal	Roger	Marin County	x
Lewis	Liz	Marin County	
Lotz	Elizabeth	Marin County	
Bryant	Leif	Napa County	
Gordon	Michael	Napa County	
Sarrow	Jeremy	Napa County	
Thomasser	Rick	Napa County	
Johnson	Lynn	NOAA	
Norris	Greg	NRCS	
Fernandez	Xavier	San Francisco Bay RWQCB	
Horowitz-McCann	Lisa	San Francisco Bay RWQCB	
Lichten	Keith	San Francisco Bay RWQCB	
Montgomery	Mike	San Francisco Bay RWQCB	
Byler	Tess	San Francisquito JPA	x
Murray	Kevin	San Francisquito JPA	
Bruck	Leonid	San Mateo County	
Casagrande	Julie	San Mateo County	
Chow	Mark	San Mateo County	
Fabry	Matt	San Mateo County	
Lisaj	Krys	San mateo County	
Martorana	Colin	San Mateo County	
Porter	Jim	San Mateo County	
Stillman	Ann	San Mateo County	
Akin	Scott	Santa Clara Valley Water District	
Bankosh	Lisa	Santa Clara Valley Water District	
Bourgeois	John	Santa Clara Valley Water District	
Diggory	Zoey	Santa Clara Valley Water District	
Lueneburger	Kurt	Santa Clara Valley Water District	
Mendenhall	Brian	Santa Clara Valley Water District	x
Muller	Katie	Santa Clara Valley Water District	x
Nam	Judy	Santa Clara Valley Water District	
Porcello	Lisa	Santa Clara Valley Water District	
Richardson	Melanie	Santa Clara Valley Water District	

Rouhani	Afshin	Santa Clara Valley Water District	
Xu	Liang	Santa Clara Valley Water District	
Barker	Rusty	Santa Cruz County	
Gentile	Antonella	Santa Cruz County	x
Strudley	Mark	Santa Cruz County	x
Carlson	Mike	self	
Mulvey	Trish	self	
Behar	David	SFPUC/BayCAN	
Barich	Jeff	Solano County Water Agency	
Cruz	Gus	Solano County Water Agency	
Pate	Thomas	Solano County Water Agency	
Rabidoux	Alex	Solano County Water Agency	
Sanford	Roland	Solano County Water Agency	
Delaney	Chris	Sonoma County Water Agency	
Diaz	Carlos	Sonoma County Water Agency	x
Foster	Keenan	Sonoma County Water Agency	
Martini-Lamb	Jessica	Sonoma County Water Agency	
Niehaus	John	Sonoma County Water Agency	
Royall	David	Sonoma County Water Agency	
Takajo	Chase	Sonoma County Water Agency	
Thompson	Michael	Sonoma County Water Agency	
Conner	Craig	US Army Corps of Engineers	
Dadey	Kate	US Army Corps of Engineers	
Orellana	Rachael	US Army Corps of Engineers	
Muradian	Natalie	Vallejo Sanitation and Flood Control District	x
Tomko	Mark	Vallejo Sanitation and Flood Control District	
Chamberlain	Andy	Zone 7 Water Agency	
Church	Tami	Zone 7 Water Agency	
Flores	Amparo	Zone 7 Water Agency	
Mahoney	Carol	Zone 7 Water Agency	x
Rank	Elke	Zone 7 Water Agency	
Seto	Joe	Zone 7 Water Agency	