

SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

ENFORCEMENT COMMITTEE MEETING
PARTIAL TRANSCRIPT - ITEM 6

BAY AREA METRO CENTER
YERBA BUENA ROOM, FIRST FLOOR
375 BEALE STREET
SAN FRANCISCO, CALIFORNIA

THURSDAY, MAY 16, 2019

9:30 A.M.

Reported by: John Cota

A P P E A R A N C E SEnforcement Committee

Marie Gilmore, Acting Chair

Jill Techel

John Vasquez

Counsel to the Committee

Shari Posner, Deputy Attorney General
Office of the Attorney General

BCDC Staff

Karen Donovan, Staff Counsel

Brad McCrea, Regulatory Director

Matthew Trujillo, Enforcement Analyst

Marc Zeppetello, Chief Counsel

Respondent

Rick Moseley
Salt River Construction, Inc.

Public Speakers

Mark Schumacher

Melody Schumacher

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P R O C E E D I N G S

9:39 a.m.

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3 COMMITTEE CHAIR GILMORE: Item number 6, which is a
4 Public Hearing and a Vote on a Recommended Enforcement
5 Decision and Proposed Cease and Desist Civil Penalty Order
6 regarding Salt River Construction Corporation.

7 MS. DONOVAN: Okay. Now I am going to go through this
8 relatively quickly; you have already had this presentation.

9 I am here to talk about the matter involving Salt River
10 Construction Corporation.

11 (Notification tone heard.)

12 MS. DONOVAN: There are three separate violations that
13 are alleged here. And I apologize, that is my phone. Once
14 again, I apologize.

15 Okay. There are three separate violations at issue
16 here. The first relates to some unauthorized activities
17 involving a barge up in the Richardson's Bay area and then
18 two violations both connected to a dredging operation
19 conducted for Foster City and the improper storage of two
20 barges in Belmont Slough.

21 The first one was reported to us with accompanying
22 video that showed a barge being dragged by its excavator
23 bucket through the Bay.

24 The other two came in through a report noting that
25 there had been some barges that had been stored in Belmont

1 Slough for an extended period of time after the authorized
2 dredging activities had ended on February 2nd. I have maps
3 and photos that accompanied that report showing the location
4 of the barges.

5 What staff is proposing is a Cease and Desist and Civil
6 Penalty Order, it contains a number of elements:

7 Prohibits propelling the barges using the excavator
8 bucket anywhere in BCDC's jurisdiction except as stated.

9 A prohibition on mooring and storage of equipment in
10 unauthorized locations.

11 The requirement that a grizzly be used on all dredging
12 projects. This is an issue that we had identified with some
13 of the dredging operations.

14 And a total penalty of \$28,500. That is the maximum
15 penalty for the Richardson's Bay activity and it is a
16 penalty of \$250 a day, somewhere on the low end, for the
17 unauthorized storage of the barges. It is a total of
18 \$13,250 based on the number of days involved.

19 Now, I believe that the Respondent is here and he would
20 like to speak on this matter.

21 COMMITTEE CHAIR GILMORE: Thank you.

22 MR. MOSELEY: Hi. I'm Rick Moseley with Salt River
23 Construction. Yes, I'd like to address really the violation
24 for barge storage in Belmont Slough for the Foster City job.

25 You know, the job was never finished so these barges

1 were not just stored there after the job was completed until
2 we wanted to move them out of there. They were --

3 The job, you know -- in the contract documents the job,
4 you know, was to take three to four months, a month of setup
5 and three months to do the work. We had a plan that we went
6 over with Foster City. We were the only bidder, nobody else
7 bid, but we did and we had a plan and they liked it and they
8 were behind it.

9 Okay, we started in December because we had to get a
10 late start on the job because the materials being taken to
11 Cullinan Ranch and the off-loader was not -- off-loading was
12 not available until December so we spent December moving our
13 off-loader, building it and putting it together into
14 Cullinan Ranch. Then in January -- so December was kind of
15 the first month of the job, it was out-of-water work there.

16 Then in January we did all the, all the dredging and
17 the dredge cut, you know, that went from Belmont Slough to
18 their flood gates that led into the Foster City lagoon.

19 We did all the -- we did all the work, all the in-water
20 work, we were dredging in January and we got that done.

21 You know, our plan the entire time was to build this
22 custom barge that could go in this cut that was really only
23 10 feet wide at the bottom, go in on a high tide, get
24 material out, bring it out and put it into a storage barge
25 which was parked right adjacent to the dredge cut. The

1 storage barge was parked in Belmont Slough. And we filled
2 up the storage barge. You know, at some points when we had
3 opportunities we would take some of the material out of the
4 storage barge, bring it over the mud flat to the Bay and
5 load it into another barge and keep doing that process until
6 the barge in the Bay was loaded enough to take it up to --
7 all the way up to Vallejo to Cullinan to pump it out.

8 So in the month of January we got the dredging done and
9 we filled up these two storage barges and the in-water work
10 was done but the job was not -- you know, that's just the
11 first month of the job. There was two more months.

12 And we had discussed with Foster City it was going to
13 take three months to get small quantities over the mud
14 flats. You know, small barge loads. We could only take 200
15 yards at a time and we could only take them when the tide
16 was at 7.4 feet, you know, because to get over the mud flat
17 the mud flat was a foot -- at a zero tide the mud flat had a
18 +1, it was +1, it was out of the water. You know, the tides
19 down there in Foster City are high, they get up to 9.5 feet
20 in some weeks, you know. So we had to go in, we had to take
21 this material, you know.

22 So after January, after we were finished with the
23 dredging and we had these storage barges loaded with
24 material that had the rest of the mud in them, you know.
25 Some of that mud was moved across the mud flats in January

1 but two-thirds of it was not, you know, a third of it was
2 moved in January.

3 So in February we had to take the same barge that we
4 built, the shallow draft that could hold a couple of hundred
5 yards, and we had to take that material across the mud flat,
6 out into the Bay and load the barge that was going to go to
7 Cullinan. We could only do -- like I said, we can only do a
8 small amount at a time. But in February we did have some
9 good tides and we got that first barge -- out of the two
10 storage barges, you know, we got that first barge out of
11 there within two weeks or maybe three weeks.

12 Then we had some really bad tides. But we worked, you
13 know, we worked every day, Christmas, New Year's, weekends,
14 you know, to try to get this stuff up to Cullinan all the
15 way up until March.

16 And, you know, they're saying that the barges are
17 parked in, you know, in Belmont Slough, you know. It's a
18 very, you know, it's a big body of water, it's like a river.
19 I've got some maps of it right here, it's 400 feet wide. So
20 you can picture that the dredge area, you know, is 100 feet
21 wide and there's marsh on both sides of it. Well right
22 behind it, you know, is Belmont Slough where we had these
23 barges stored in front of Foster City, in front of, you
24 know, Huffman & Broadway, their environmental consultants.
25 The whole time we had them there to take stockpiled

1 material. They knew they were there, they could see them
2 there every day. We passed them every day when we went,
3 when we had to go there.

4 We would go on a high tide to these barges. If the
5 tide was high enough to get over the mud flat we would go to
6 the -- we would take our little dinghy out to the barges,
7 unload some of the material into the barge that had to go up
8 and over the mud flat, it was about a mile, a mile or two to
9 the Bay, and we would do that every high tide.

10 We never just let them sit there, you know. We were
11 trying to get -- like I said, we worked every day until
12 April, we were trying to get this job done. We never skipped
13 a week, we never skipped any time, we never skipped a day.

14 So, you know, these barges were in the middle of
15 Belmont Slough and Belmont Slough is 400 feet wide and these
16 barges are 35 feet wide. They're not impeding any kind of
17 fish or anything passing them. There's always 100 feet from
18 the barges to the levee, the marsh, you know. They're
19 parked, you know, as close to the dredge site as possible
20 but out in deep water so, you know, they're not near any
21 kind of habitat, not in a place where they could disrupt any
22 habit. They weren't just stored there, you know, we were
23 working on getting the material out of them and getting the
24 material up to Cullinan Ranch the entire time.

25 You know, we feel we didn't do anything wrong with

1 these barges in Foster City.

2 It took us four months just like from December,
3 starting in December, just like the contract said, you know.

4 We moved all the material, you know. Once we got the
5 first barge out of there in a couple of weeks. We had some
6 tides for the second barge, you know. The barges were
7 always 100 feet away from the levee. They weren't just
8 parked there, the job was still going on.

9 So, you know, the job was never over. Just the in-
10 water part where you're actually dredging was over in
11 January. But, you know, February and March, you know, we
12 were not doing any dredging in the water, we were just
13 transferring material from the stockpile barges into the
14 barge that had to go across the levee to the other barge
15 that was going to get taken on a 12 hour trip up to Cullinan
16 and then pumped out.

17 Anyway, we bid the job, you know, with these means and
18 methods. I think we tried to show -- we tried to explain
19 these means and methods to BCDC. We tried to get them out
20 there to look at, you know, how big Belmont Slough is and
21 that, you know, we're in a body of water, we're not in --
22 you know, a big body of water, a big slough.

23 We really had, you know. We'd go in there, work for
24 two hours to load the barge and get it out of there. We
25 never got a complaint, a noise complaint from a neighbor,

1 you know, maybe until two months after. We didn't destruct
2 anything. There's more noise made on, you know. We were
3 surrounded by houses, I mean, we never got a complaint.

4 We were never told that we did anything wrong, you
5 know. Foster City knew our exact plan, Huffman & Broadway
6 knew our exact plan. We discussed how we were going to
7 stockpile. We had to stock -- you know, we had to
8 stockpile. We had to use the same barge that we used in the
9 cut to clear out their cut up to the flood gates that we
10 used to go over the mud flat, you know.

11 Nobody ever told us or said we were doing anything
12 wrong. I don't think they thought that we were doing
13 anything wrong, you know. We worked right in front of the
14 head of -- the head of public works lives right there in a
15 house right there, we worked right in front of him day after
16 day. When we came in for that increment amount of time to
17 load the barges we worked right in front of the Foster City,
18 you know, public works staff. We worked right in front of
19 their environmental consultants, they didn't say anything
20 was wrong.

21 We turned in, you know, disposal site records to BCDC,
22 to the Corps, so everybody gets their disposal site records.
23 They had to know we were still working. We had to turn in
24 these disposal site records to Foster City to get paid, you
25 know.

1 Foster City, you know, we were in constant
2 communication with them. They wanted to get the job done,
3 we wanted to get the job done. Like I said, nobody said
4 that we did anything wrong.

5 There was nothing damaged, we didn't do any damage to
6 the Belmont Slough. We were in deep water, nothing needed
7 to be fixed. You know, we -- I mean, you know, it's like
8 the environmental consultants saw us out there all the time.
9 If they knew there was something wrong wouldn't they tell
10 us? I mean, wouldn't Foster City tell us? We're turning in
11 dump logs to BCDC, the Corps. Wouldn't they tell us? You
12 know, wouldn't they know what's going on? Did they -- did
13 the consultants know? Did Foster City know and not say
14 anything, you know? I don't know.

15 Just from the beginning, just from January through
16 March our operations out there of loading, you know, into
17 the barge that goes over the mud flats to get to -- it never
18 changed, you know.

19 The barge was never moored in any sensitive habitat.
20 We received no warnings or notification the barges were
21 parked illegally. We were never asked or told to move them
22 from the job site. We were never told we'd be subject to a
23 fine. We were never, you know. Never once did we think we
24 were doing anything wrong.

25 COMMITTEE CHAIR GILMORE: Okay. You've mentioned all

1 of that. Do you have anything else you'd like to add?

2 MR. MOSELEY: I'm just looking at my notes, you know.
3 I'm just in the middle of --

4 COMMITTEE CHAIR GILMORE: Well, can I just ask you a
5 couple of questions?

6 MR. MOSELEY: Sure.

7 COMMITTEE CHAIR GILMORE: So based on what you have
8 said so far it sounds like you contracted to do this job and
9 based on what I think you told us it sounds like it took
10 longer than you had anticipated to move the material out of
11 the slough.

12 MR. MOSELEY: No. No, we thought it was going to -- we
13 told it was going to take three months to do the -- we had
14 three months. The contract says you have three months to do
15 the job but you can do some, you know, work to set up
16 before. It took us January, February and March to do the
17 job.

18 COMMITTEE CHAIR GILMORE: I thought the barge wasn't
19 moved until April, am I wrong about that?

20 MR. MOSELEY: The contract isn't, you know.

21 MS. DONOVAN: The penalties that we are assessing for
22 the improper storage of the barges run from the completion
23 of the authorization, which was that they start on February
24 3rd and run through March 27th.

25 COMMITTEE CHAIR GILMORE: Okay.

1 MS. DONOVAN: I believe Mr. Moseley has indicated that
2 the barges may have been in place longer than that but that
3 is essentially the period for which we are assessing
4 penalties.

5 COMMITTEE CHAIR GILMORE: Okay, great.

6 And Mr. Moseley, it sounds like you're saying -- so
7 first of all, you are the contractor on this job and you
8 knew this was a permitted process. So wouldn't you -- so it
9 sounds like you're saying that the other entities who should
10 have informed you of violations didn't do that, is that
11 essentially what you're saying? Like whether it was Foster
12 City or the biological opinion people or whomever. That's
13 kind of what I thought I heard; I just want to clarify. I
14 don't want to put words in your mouth.

15 MR. MOSELEY: They didn't inform us that our process
16 and where we were parked was incorrect or wrong. Whether
17 they knew it was incorrect or wrong I don't know. I don't
18 know if, you know.

19 COMMITTEE CHAIR GILMORE: But as the contractor and the
20 person who is actually performing the dredging isn't it part
21 of your responsibility to know what the permit calls for?

22 MR. MOSELEY: Yeah, the permit, you know, we did the
23 in-water work in January and then we did the out-of-the-
24 water work, you know, and we kept working in February and
25 March. We think that the environmental consultants hired by

1 the city of Foster City would, you know, it would be their
2 responsibility to tell us if there is anything, you know,
3 improper. I mean, we don't think there is anything improper
4 because we're in open water, you know. We're not dipping
5 our -- we weren't doing any dredging in the water.

6 COMMITTEE CHAIR GILMORE: Okay. Do you have anything
7 else to add?

8 MR. MOSELEY: No. No, I don't. I'd like to answer
9 questions if somebody has some questions.

10 COMMITTEE MEMBER VASQUEZ: So what are you asking us to
11 do?

12 MR. MOSELEY: I'm saying, you know, that we didn't --
13 we believe that we didn't do anything wrong, you know. We
14 believe we didn't caused any damage to the habitat or do
15 anything wrong.

16 COMMITTEE MEMBER VASQUEZ: But did you use the backhoe
17 to move the dredge?

18 MR. MOSELEY: Well, we had made a -- we had the tugboat
19 in there going. The tugboat had to take the barge. So when
20 the tide, you know. Depending on the time of the day the
21 tide got up over 7.4 feet. You know, we had it, we loaded.
22 We loaded the barge that we used to go over the hump with a
23 backhoe. We took the backhoe, we grabbed the material from
24 the storage barge, you know, put it in the barge that had to
25 go over the hump, and then the tugboat took it over the hump

1 to the other side.

2 COMMITTEE MEMBER VASQUEZ: I'm just talking about --

3 MR. MOSELEY: Okay, so no.

4 COMMITTEE MEMBER VASQUEZ: I'm just talking about the
5 two photos we saw.

6 MR. MOSELEY: No, we used the tugboat.

7 COMMITTEE MEMBER VASQUEZ: But the photos make it
8 appear that you used the backhoe to propel the barge. So
9 you're saying you didn't?

10 MS. DONOVAN: If I could speak to that quickly. That's
11 the first violation which occurred in a separate location in
12 Richardson's Bay.

13 COMMITTEE MEMBER VASQUEZ: I know, but it's one that is
14 on, that is part of this.

15 MS. DONOVAN: Yes, yes.

16 COMMITTEE MEMBER VASQUEZ: I just want to know.

17 MS. DONOVAN: No, we weren't. You know, we were using
18 the tugboat to move the barge, the transfer barge, to the,
19 to the barges that stockpiled material.

20 COMMITTEE MEMBER VASQUEZ: So was the bucket just kind
21 of sitting in the water then, extended out?

22 MR. MOSELEY: No. So the backhoe is on a separate
23 barge, you know, which has its own anchoring spuds. And
24 when the backhoe is parked it's parked on the barge, when
25 it's used it reaches over to the side, grabs the material

1 from the stockpile barge and places it into the transfer
2 barge that is going to go over the hump. And then the same
3 thing happens on the other side.

4 COMMITTEE MEMBER VASQUEZ: And then it's about storing
5 the barges in an area that wasn't authorized. Is that what
6 you're saying, that you weren't told it wasn't authorized or
7 you didn't know it wasn't --

8 MR. MOSELEY: We were never told it wasn't authorized.
9 And we weren't just storing them there, we were -- every
10 time that tide hit 7.4 feet we would go out there and
11 transfer the material to a barge that we could get over the
12 hump. It was the only way to do it, it was the only way to
13 do the job. So sometimes that 7.4 tide happened later in
14 the afternoon, sometimes it happened early in the morning.

15 The work hours on the job were 8:00 to 5:00, you know,
16 when we were dredging. So, you know. If you only have
17 one -- you know, you only have one tide cycle between 8:00
18 to 5:00 and you've got to move -- we really moved like
19 7,000-something yards even though they only paid us for
20 12,800. This is just a separate issue, we got shorted
21 \$100,000 on this job.

22 COMMITTEE MEMBER VASQUEZ: I haven't heard anything
23 that you --

24 MR. MOSELEY: Okay, so, so we only had a period from
25 8:00 to 5:00, you know, to move. So in 8:00 to 5:00 there's

1 only one tide cycle that might go up over 7.4 and some days
2 it doesn't even go over 7.4. So if you sit down and
3 calculate how you're going to get this much yardage over the
4 hump in those work hours it's going to take you three months
5 and that's exactly what they had on the job, so.

6 COMMITTEE CHAIR GILMORE: Commissioner Techel, do you
7 have a question?

8 COMMITTEE MEMBER TECHEL: I'll wait until after the
9 public comment.

10 COMMITTEE CHAIR GILMORE: Okay. Just a point of
11 clarification, something that Commissioner Vasquez is -- so
12 if I'm understanding this correctly you have the dredge
13 site, you have a barge onto which you place the dredge
14 materials, and then when the tide is right you have another
15 barge come in and you offload the dredge material onto that
16 other barge and that other barge goes out. Is that
17 basically what is happening?

18 MR. MOSELEY: Yeah. Let me, let me just try to explain
19 it. You're very close but let me try to explain it. So we
20 built a V, a channel that was in the shape of a V, it was
21 only 10 feet wide on the bottom, it was narrow. And it came
22 from Belmont Slough, which was 400 feet wide, and so we had
23 to dig this channel that was only 10 feet wide on the bottom
24 and then it went up at a four-to-one slope so it was 100
25 feet wide at the top and the top was marsh. Actually dry

1 land. So actually it went down 5 feet and we went -- we
2 dredged 5 feet of ground and marsh and then below that we
3 dredged 5 feet of mud, so it was a 10 foot cut.

4 So in order to -- we had to build a special barge to do
5 that. It had to be narrow because of that. We couldn't --
6 we had to get in there in like three hours and dredge as
7 much as we could and get out of there. If we didn't get out
8 of there the barge would sit on the cut and destroy the cut.
9 So when the tide came up we took this barge that we built
10 that had an excavator on the front of it and spuds and we
11 loaded it and then we backed out of there and unloaded it
12 into the -- into the bigger barge, you know, the stockpile
13 barge. Then we went back in, we'd get another load, we'd go
14 and get -- sometimes we could do three and then the tide was
15 down, then we were done for the day.

16 So at some points when the tide was looking -- was
17 really bad and we figured we couldn't get in there to do, to
18 do a, to dredge. We actually took some material across the
19 mud, just one load across the mud flats. When the tide was
20 good we went in, loaded, backed out, put it in the stockpile
21 barge, went in and loaded, backed up, put it in the
22 stockpile barge. So we did that process in January. Okay.
23 So this is -- let me --

24 COMMITTEE CHAIR GILMORE: Excuse me. I don't want to
25 interrupt you but my question is really simple. Basically

1 what you are calling the stockpile barge was there at the
2 job site, job location, for the entire period of your
3 operations once you started the dredging.

4 MR. MOSELEY: Yes.

5 COMMITTEE CHAIR GILMORE: Thank you, that's all I
6 wanted to know.

7 MR. MOSELEY: I mean, I can explain it better. It goes
8 in, it goes to the stockpile barge. And then February,
9 March or sometimes in January we'd take the material out of
10 the stockpile barge and have to take it over the mud flat,
11 which was a foot high at zero. You could see the mud. So
12 we had to wait until the high tide. Take it over the mud
13 flat to get to the deep water in the Bay and then we'd put
14 the material on a barge there. Once that barge got filled
15 up we took it up to Cullinan and pumped the material off.
16 That's how the -- that's how we did it.

17 COMMITTEE CHAIR GILMORE: Okay. Thank you very much.

18 MR. MOSELEY: Thank you.

19 MS. DONOVAN: Now if I could just speak to this very
20 briefly, there's a couple of things I wanted to note. And
21 this is all reflected in the record in the staff report,
22 which is, the authorization that we provided for the
23 operation did end on February 2nd and that's because of
24 species windows and other things, that was for the dredging
25 operation which was permitted.

1 And we have looked and we don't -- It is not atypical,
2 I have staff here who can help with this, but that it might
3 take a little bit of time after the conclusion of a dredging
4 operation to offload all the material, we recognize that.

5 We have reviewed the disposal logs that Mr. Moseley
6 mentioned and one of the things that we note on those
7 disposal logs is with regard to the offloading at Cullinan
8 Ranch. There were three deliveries made - and I don't have
9 the log in front of me - but they were spaced significantly
10 apart. The first was three weeks after the end of February
11 and then there was approximately a two-week lag between the
12 next two. So based on that we assumed, and I do understand
13 what Mr. Moseley is saying though, but that this stored --
14 the barges were essentially stored in Belmont Slough with
15 material on them. We recognize it was the material from the
16 dredging operation but they remained much longer than we
17 would have expected with an operation of this nature.

18 And then the final thing I just wanted to note is that
19 there is no dispute with regard to the CDO element that we
20 have asked you to implement. If I understand correctly
21 Mr. Moseley is questioning whether the penalties are
22 appropriate in this case based on the information he just
23 gave you, but I do believe that he has acknowledged that,
24 absent authorization. And there was, to my knowledge, no
25 outreach to explain how this operation was going to work or

1 the need to keep these barges there longer.

2 COMMITTEE CHAIR GILMORE: Okay, thank you.

3 MR. MOSELEY: Could I say one thing?

4 COMMITTEE CHAIR GILMORE: Sure.

5 MR. MOSELEY: There can be periods where that tide
6 never gets to 7.4, you know, days and days and days. That's
7 why the unloading up at Cullinan was, was sporadic. Another
8 reason some of the unloading up at Cullinan was sporadic is
9 that we did have a big large -- that first barge that we got
10 out of there early we -- sometimes we use a little barge to
11 fill up that barge, six loads or whatever, and we take that
12 up to Cullinan and unload it. And sometimes we would just
13 take two little barges up to Cullinan and unload them, so
14 they weren't all the same barges unloaded so that's why
15 there's a difference in time, on the time schedule.

16 COMMITTEE CHAIR GILMORE: Okay, thank you very much.

17 Okay, Mark Schumacher.

18 MR. SCHUMACHER: Good morning. I'm here just as a
19 homeowner in the Tiburon, Marin County area just to express
20 my concern about the Bay and how it's managed. I am here
21 really just to support the efforts by BCDC to hold Salt
22 Water (sic) Construction Company accountable for those
23 activities that fall outside of the rules and especially
24 about the storage of barges in such areas. Thank you.

25 COMMITTEE CHAIR GILMORE: Thank you.

1 Melody Schumacher.

2 MS. SCHUMACHER: Good morning. We both have colds,
3 sorry.

4 Yes. I live with Mark Schumacher and I am fortunate to
5 live on the Bay. Unfortunate to be next to Salt Water (sic)
6 dredging, which is in Paradise Cay. We have had multiple
7 and numerous complaints about their comings and going and
8 parking in our backyard, both environmentally and with noise
9 and with site pollution and loss of view. So we are here to
10 support the BCDC in their action against Salt Water. Thank
11 you.

12 COMMITTEE CHAIR GILMORE: Thank you.

13 That was the last speaker slip I have on this item. Is
14 there anybody else here who would like to speak on this
15 item?

16 (No response.)

17 COMMITTEE CHAIR GILMORE: Okay, not seeing anybody I
18 will entertain a motion to close the public discussion, the
19 public hearing?

20 COMMITTEE MEMBER VASQUEZ: So moved.

21 COMMITTEE MEMBER TECHEL: Second.

22 COMMITTEE CHAIR GILMORE: All in favor?

23 COMMITTEE MEMBER VASQUEZ: Aye.

24 COMMITTEE MEMBER TECHEL: Aye.

25 COMMITTEE CHAIR GILMORE: Aye.

1 Okay, Committee discussion. Commissioner Techel.

2 COMMITTEE MEMBER TECHEL: So just to clarify. Who did
3 we, who did we authorize the permit to?

4 MS. DONOVAN: The permit for this operation was granted
5 to Foster City.

6 COMMITTEE MEMBER TECHEL: And have we heard from Foster
7 City on this issue?

8 MS. DONOVAN: There were discussions with Foster City
9 at the outset of this because there was originally -- after
10 staff looked at the disposal logs and some of the other
11 information on this operation there were questions about the
12 dredging operation itself and the amount of material dredged
13 and there were discussions involving both Salt River and
14 Foster City regarding that issue.

15 BCDC did determine to drop that violation with regard
16 to Salt River. It is my understanding that Salt River's
17 position was that Foster City, the permittee, had directed
18 them to conduct the operation in the manner they did and
19 that led to the dismissal of that particular violation.

20 But with regard to this issue in particular, BCDC's
21 position is, once again, the authorization that was given to
22 Foster City, which was extended. We do recognize, as
23 Mr. Moseley noted, that there were some complications with
24 this job; he has pointed out various reasons this was a
25 difficult job. There was an extension requested on the

1 authorization which was granted but that did conclude on
2 February 2nd, in part because at that point it requires
3 multiple agencies, not just BCDC, in particular the Resource
4 agencies. And after February 2nd they would have been
5 running up against measures that are in place to protect
6 species, so there was no ability to authorize the dredging
7 operation beyond February 2nd and that's when the
8 authorizations did conclude.

9 COMMITTEE MEMBER TECHEL: So if we authorized the
10 dredging, the dredging part was done but the barges were
11 still there. What does having barges there do to species in
12 the Bay?

13 MS. DONOVAN: These barges were either adjacent to or
14 within a sensitive area and that is a factor that we used in
15 recommending the amount of penalty. In this case though, as
16 I explained previously, it would not be unexpected that
17 perhaps it might take a bit of time after the conclusion of
18 a dredging operation to offload material. This was an
19 extraordinary amount of time.

20 I do understand that Mr. Moseley is now trying to put
21 forth the reasons that this occurred but, quite frankly, the
22 dredging operation ended, our authorization for the dredging
23 operation ended on February 2nd. It was at the end of March
24 that we were notified that these barges remained. They fit
25 within the definition of fill, they are floating structures

1 moored for an extended period of time.

2 As I said, we went back and looked at the logs and
3 tried to review the information and could not really -- you
4 know, essentially we decided to bring this forward. In part
5 with regard to the CDO portion of this we have had
6 complaints in the past about unauthorized storage of vessels
7 regarding Salt River.

8 COMMITTEE MEMBER TECHEL: Okay, thank you.

9 COMMITTEE MEMBER VASQUEZ: Under the contract and the
10 permit there would have been areas where they were told they
11 could moor the barges?

12 MS. DONOVAN: Typically. I've reviewed the permits and
13 I do have staff who could get up and speak to that as well.
14 That is not addressed in a great amount of detail in the
15 permit. It would typically be expected that all of that
16 would occur within the dredge footprint, which is more
17 typical what is authorized in an operation of this nature.

18 Now Mr. Moseley had indicated that Foster City's
19 agreements with him might have addressed the storage of
20 barges but he hasn't produced those agreements or anything
21 to indicate that Foster City either directed him or had some
22 written agreement with him that would have covered the
23 storage of these barges in this location for this period of
24 time.

25 COMMITTEE MEMBER VASQUEZ: What we are really looking

1 at is the length of time after a reasonable time had passed
2 in order to have those barges moved to the disposal sites.

3 MS. DONOVAN: Yes, absolutely.

4 COMMITTEE MEMBER VASQUEZ: So it's \$250 a day?

5 MS. DONOVAN: Yes.

6 COMMITTEE MEMBER VASQUEZ: I divided that into it and
7 that's 53 days, so they were there 53 days longer than they
8 should have been?

9 MS. DONOVAN: Yes. That's from February 3rd through
10 March 27th.

11 COMMITTEE MEMBER VASQUEZ: And we didn't give any
12 extension then?

13 MS. DONOVAN: We were never approached about allowing
14 the barges to remain there for an extended period and we
15 were not aware that they were there for this extended period
16 until we received notice. I believe the first notice came
17 in from somebody who is with the Corps of Engineers, on
18 March 27th.

19 COMMITTEE MEMBER VASQUEZ: So whose responsibility
20 would that have been? The City to ask for it knowing that
21 their contractor is out there or?

22 MS. DONOVAN: The City is the permittee, yes. As to
23 whose responsibility it would have been to ask that the
24 barges remain, once again, the barges belong to Salt River.

25 COMMITTEE MEMBER VASQUEZ: The people in that industry

1 know that, that they've got these windows and they need to
2 be done? Is that pretty common?

3 MS. DONOVAN: The authorizations were very explicit as
4 to when the dredging operation needed to conclude and the
5 reasons why and it is my understanding that these species
6 restrictions are very well-known in the industry.

7 COMMITTEE MEMBER VASQUEZ: Good, thank you.

8 COMMITTEE CHAIR GILMORE: Okay. Any other questions?

9 COMMITTEE MEMBER TECHEL: We had the first hearing and
10 nobody from Salt River was here. I'd maybe like to hear a
11 little explanation on that and why we weren't notified that
12 we weren't going to have representation.

13 COMMITTEE CHAIR GILMORE: Can you please come back up
14 and answer that question if indeed you have an answer?

15 MR. MOSELEY: Yes. So I think you're asking, are you
16 asking why you weren't notified that we were still dredging
17 or are you asking why you weren't notified that there was
18 no -- or why there was no presentation at the prior meeting?

19 COMMITTEE MEMBER TECHEL: The second one.

20 MR. MOSELEY: The second one. Okay, yes. Well, so I
21 was, I was sick and I couldn't, I couldn't make it.

22 COMMITTEE MEMBER TECHEL: I don't think we received a
23 phone call that said that at the time?

24 MR. MOSELEY: So that was in -- was there no, nothing
25 received? I mean, I did kind of have to -- you know, in

1 2017 we got shorted by Foster City for \$100,000 and then
2 Greg Mailho with Coyote Point Marina shorted us \$300,000. I
3 had to pretty much lay everybody off so there's really
4 nobody in the office except for me and Kevin and I was sick.
5 It's like I couldn't notify anybody.

6 COMMITTEE MEMBER TECHEL: Okay.

7 COMMITTEE CHAIR GILMORE: Anything else?

8 COMMITTEE MEMBER TECHEL: No, that's it.

9 COMMITTEE CHAIR GILMORE: Thank you.

10 MR. MOSELEY: And I just wanted to say that I've always
11 been under the understanding that you can still work by
12 moving your barges or, you know, going to a disposal site,
13 you know, after the windows are closed. Never been, you
14 know. We had no -- we have never had to notify BCDC or
15 anybody before, you know, that we are doing out-of-the-water
16 work. Like I said, we were in a very wide slough surrounded
17 by water, not disrupting any habitat.

18 COMMITTEE CHAIR GILMORE: Okay. Thank you, sir.

19 Okay, are there any other questions for staff or are we
20 ready to entertain a motion?

21 COMMITTEE MEMBER VASQUEZ: I have no questions.

22 COMMITTEE MEMBER TECHEL: I have no questions.

23 COMMITTEE CHAIR GILMORE: Okay. Can we entertain a
24 motion?

25 COMMITTEE MEMBER VASQUEZ: I'll move staff's

1 recommendation. And then this goes -- it's a recommendation
2 that goes to the full Commission so the individual will have
3 another opportunity to speak to us just as he did at the
4 prior meeting; is that correct?

5 MS. DONOVAN: Yes, he will have an opportunity to
6 present at the Commission as well.

7 COMMITTEE MEMBER VASQUEZ: Okay.

8 COMMITTEE MEMBER TECHEL: I'll second that motion.

9 COMMITTEE CHAIR GILMORE: Okay, we have a motion and a
10 second. Do we need a roll call vote?

11 MS. DONOVAN: Yes, I think that would be good.

12 COMMITTEE CHAIR GILMORE: Okay, thank you.

13 MR. TRUJILLO: Commissioner Techel?

14 COMMITTEE MEMBER TECHEL: Aye.

15 MR. TRUJILLO: Commissioner Vasquez?

16 COMMITTEE MEMBER VASQUEZ: Yes.

17 MR. TRUJILLO: Commissioner Gilmore?

18 COMMITTEE CHAIR GILMORE: Yes.

19 Okay, so the motion carries. Thank you.

20 (Thereupon, the Enforcement Committee
21 meeting continued to Item 7.)

22 --oOo--

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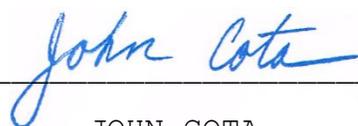
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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing San Francisco Bay Conservation and Development Commission Enforcement Committee meeting and the recording was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, or in any way interested in the outcome of said matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of June, 2019.



JOHN COTA

CERTIFICATE OF TRANSCRIBER

I, RAMONA COTA, a Certified Electronic Reporter and Transcriber, certify that the foregoing is a correct transcript, to the best of my ability, from the electronic recording of the proceedings in the above-entitled matter.



June 4, 2019 .

RAMONA COTA, CERT**478