

**STATE WATER RESOURCES CONTROL BOARD**  
**BOARD MEETING MINUTES**  
**MAY 4, 2010**

Copies of the resolutions and water quality orders can be obtained by calling (916) 341-5600 or downloading from our website at [http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/index.shtml](http://www.waterboards.ca.gov/board_decisions/adopted_orders/index.shtml).

**CALL TO ORDER**

Chairman Charlie Hoppin called the meeting to order on May 4, 2010 at 9:25 a.m. in the Coastal Hearing Room at the California Environmental Protection Agency Headquarters, 1001 I Street, 2<sup>nd</sup> Floor, Sacramento, California.

**BOARD MEMBERS PRESENT**

Chairman Charlie Hoppin; Vice Chair Frances Spivy-Weber; Member Arthur G. Baggett, Jr.; Member Tam M. Doduc; Member Walter G. Pettit

**STAFF PRESENT**

Dorothy Rice, Executive Director  
Michael Lauffer, Chief Counsel  
Andy Sawyer, Office of Chief Counsel  
Nathan Jacobsen, Office of Chief Counsel  
Marleigh Woods, Office of Chief Counsel  
Karen Nijja, Division of Water Rights  
Steve Herrera, Division of Water Rights  
Jim Maughan, Division of Financial Assistance  
Scott Couch, Division of Financial Assistance  
Larry Lindsay, Division of Water Rights  
Paul Murphey, Division of Water Rights

Tom Howard, Chief Deputy Director  
Jonathan Bishop, Chief Deputy Director  
Jeanine Townsend, Clerk to the Board  
Darrin Polhemus, Division of Water Quality  
Bruce Fujimoto, Division of Water Quality  
Dominic Gregorio, Division of Water Quality  
Joanna Jensen, Division of Water Quality  
Rob Egel, Office of Legislative Affairs  
Bill Rukeyser, Office of Public Affairs  
Judie Panneton, Office of Public Affairs  
Dave Clegern, Office of Public Affairs

**ANNOUNCEMENT**

- *Evacuation information in case the fire alarm goes off during the meeting.*
- *The Board meeting is being webcasted and recorded.*

**BOARD MEETING**

***Public comments on agenda items will be limited to 3 minutes or otherwise at the discretion of the Board Chair***

**PUBLIC FORUM**

Any member of the public may address and ask questions of the Board relating to any matter within the State Water Board's jurisdiction provided the matter is not on the agenda, or pending before the State Water Resources Control Board or any California Regional Water Quality Control Board.

**BOARD BUSINESS**

1. The Board will consider adoption of the April 20, 2010 Board Meeting minutes.

**Motion:** Member Doduc moved to adopt the proposed minutes of the April 20, 2010 Board Meeting.

**Seconded by:**

**MOTION CARRIED:** ([April 20, 2010](#))

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

2. Board Member Report

**None**

### UNCONTESTED ITEM\* (Item 3)

- \*3. Consideration of a proposed Resolution to delegate authority to the Executive Director, the Chief Deputy Director, or the Deputy Director of the Division of Administrative Services to execute or amend certain interagency agreements with the California Department of Water Resources in support of [Proposition 84 and Proposition 1E Programs](#).

- [Change Sheet #1](#)

**Motion:** Vice Chair Spivy-Weber moved to adopt the proposed Resolution with changes by staff in Change Sheet #1.

**Seconded by:** Chair Hoppin

**MOTION CARRIED:** ([Resolution 2010-0018](#))

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

### DIVISION OF FINANCIAL ASSISTANCE

4. Consideration of a proposed Resolution to allocate \$794,324 from the Cleanup and Abatement Account to fund a Soil Vapor Extraction system for the [Barstow Street/El Monte triangle](#).

**Motion:** Vice Chair Spivy-Weber moved to adopt the proposed Resolution.

**Seconded by:** Member Baggett

**MOTION CARRIED:** ([Resolution 2010-0019](#))

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

### DIVISION OF WATER QUALITY

5. Consideration of a proposed Resolution to adopt a proposed "[Water Quality Control Policy on the use of Coastal and Estuarine Waters for Power Plant Cooling](#)" and associated Certified Regulatory Program Environmental Analysis. (Written comments were due on September 20, 2009, by 12 noon and later extended to December 8, 2009. Additional comments only on changes reflected in the final draft policy circulated March 22, 2010 were due on April 13, 2010 by 12 noon.) ([Staff Presentation](#))

#### Commenters

*Alfred Wanger, Coastal Commission*

*Andrew Elmer, California Independent System Operator Corp*

*Bob Lucas, California Council for Environmental and Economic Balance*

*Chris Ellison, Dynegy*

*David Nelson, Coastal Alliance on Plant Expansion – Morro Bay*

*David Sunding, Southern California Edison.*

*Dennis Peters, California Independent System Operator Corp.*

*Eric Lu, Southern California Edison*

*Eric Pendergraft, AES Southland*

*Ian Wren, San Francisco Baykeeper*

*Jacob Hale Russell, Stanford Environmental Law Clinic*

*Jill Witkowski, San Diego Coastkeeper*

*Jim Metropulos, Sierra Club California*

Joe Geever, Surfrider Foundation  
 John Kemmerer, U.S. EPA  
 Joe Dillon, National Marine Fisheries Service  
 John Steinbeck, Tenera Environmental  
 Katherine Rubin, Los Angeles Department of Water and Power  
 Linda Sheehan, California Coastkeeper Alliance ([Presentation](#))  
 Mark Gold, Heal the Bay  
 Mark Krausse, Pacific Gas & Electric ([Presentation](#))  
 Marlon Cueller, Assemblymember Mary Salas Office  
 Michael Hertel, Southern California Edison  
 Mike Jaske, California Energy Commission  
 Noah Lorj, Natural Resource Defense Council  
 Paul Singarella, Southern California Edison  
 Robb Kapla, Stanford Environmental Law Clinic  
 Robert Donlan, RRI Energy  
 Robert Strauss, California Public Utilities Commission  
 Sarah Sikich, Heal the Bay  
 Shelley Luce, Santa Monica Bay Restoration Commission  
 Steve Fleischli, Santa Monica Baykeeper  
 Steve Peach, General Public

Chairman Hoppin closed the public testimony. Board Members deliberated and requested staff to prepare language on a variety of issues that the Board then considered following a one-hour break.

**Motion #1 (NPDES Permit Issuance by the State Water Board).** Member Baggett moved to amend the staff proposal to require the State Water Board to issue the NPDES permits, following a hearing in the affected region, for facilities subject to the proposed policy. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**Seconded by:** Chairman Hoppin

**MOTION #1 CARRIED (3-2):**

**Aye** Chairman Hoppin  
 Member Baggett  
 Member Pettit  
**Nay:** Vice Chair Spivy-Weber  
 Member Doduc  
**Abstain:** None  
**Absent:** None

**Motion #2 (Track 2 - Unit-by-Unit Application).** Member Doduc moved to amend the staff proposal to have the Track 2 facility impingement and entrainment reductions calculated on a unit-by-unit basis. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**Seconded by:** Vice Chair Spivy-Weber

**MOTION #2 CARRIED (5-0):**

**Aye** Chairman Hoppin  
 Vice Chair Spivy-Weber  
 Member Baggett  
 Member Doduc  
 Member Pettit  
**Nay:** None  
**Abstain:** None  
**Absent:** None

**Motion #3 (Remove 90% Comparable Reduction for Track 2).** Member Doduc moved to amend the staff proposal to remove language from Track 2 that allows a 90% reduction as being comparable to Track 1. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**Seconded by:** Vice Chair Spivy-Weber

**MOTION #3 FAILED (2-3):**

**Aye** Vice Chair Spivy-Weber  
Member Doduc  
**Nay:** Chairman Hoppin  
Member Baggett  
Member Pettit  
**Abstain:** None  
**Absent:** None

**Motion #4 (Restore “Not Feasible” Requirement for Track 2).** Member Baggett moved to restore the requirement that an owner or operator demonstrate compliance with Track 1 is not feasible. Chief Counsel Lauffer described the changes and read the language from the November 23, 2009 Draft Policy into the record, along with the definition of not feasible.

**Seconded by:** Chairman Hoppin

**MOTION #4 CARRIED (5-0):**

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit  
**Nay:** None  
**Abstain:** None  
**Absent:** None

**Motion #5 (Track 2 Average Actual Flow for Entrainment Flow Reductions).** Member Doduc moved to amend the staff proposal to change the Track 2 entrainment flow reductions comparison so that reductions must be compared to average actual flow for the corresponding months between 2000 and 2005. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**MOTION #5 CARRIED (3-2):**

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Doduc  
**Nay:** Member Baggett  
Member Pettit  
**Abstain:** None  
**Absent:** None

**Motion #6 (Existing Combined-Cycle Facilities).** Member Baggett moved to amend the staff proposal to incorporate changes for existing combined cycle facilities that limited the facilities' ability to count prior flow reductions, limited the ability to count prior reductions across the entire facility, and allowed reductions to count toward both impingement and entrainment reductions. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**MOTION #6 CARRIED (5-0):**

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit  
**Nay:** None  
**Abstain:** None  
**Absent:** None

**Motion #7 (Consecutive 90-Day Suspensions).** Member Doduc moved to amend the staff proposal to clarify the proposed policy such that consecutive suspensions of less than 90 days require a hearing before the State Water Board. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**MOTION #7 CARRIED (5-0):**

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

**Motion #8 (Significant Weight to CAISO Determinations).** Vice Chair Spivy-Weber moved to amend the staff proposal so that in State Water Board hearings on suspension of compliance dates, the State Water Board will afford significant weight to the recommendations of CAISO. Chief Deputy Bishop and Chief Counsel Lauffer described the changes and displayed the language on the overhead screen for Board Members and the audience.

**MOTION #8 CARRIED (4-1):**

**Aye** Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** Chairman Hoppin

**Abstain:** None

**Absent:** None

**Motion #9 (State Water Board Determinations of Habitat Foregone Alternatives).** Member Pettit moved to amend the staff proposal to specify that the State Water Board, as opposed to its Division of Water Quality, will approve alternatives to the habitat foregone methodology for determining habitat and area for a mitigation project. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**Seconded by:** Member Baggett

**MOTION #9 CARRIED (5-0):**

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

**Motion #10 (Marine Life Increases and Geographic Proximity for Mitigation Projects).** Member Baggett moved to amend the staff proposal to require that mitigation projects be directed towards increases in marine life and that mitigation projects be in the geographic region of the facility. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**Seconded by:** Vice Chair Spivy-Weber

**MOTION #10 CARRIED (5-0):**

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

**Motion #11 (Nuclear Regulatory Commission Safety Requirements).** Member Doduc moved to amend the staff proposal to restore the limitation on the State Water Board developing site-specific requirements for nuclear-fueled power plants if there is a conflict with a safety requirement, as opposed to any requirement, established by the Nuclear Regulatory Commission. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**MOTION #11 CARRIED (5-0):**

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

**Motion #12 (Significant Weight to SACCWIS Energy Agency Recommendations).** Member Doduc moved to amend the staff proposal so that in State Water Board consideration of schedule modifications, the State Water Board will afford significant weight to the unanimous recommendations of the SACCWIS energy agencies. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**MOTION #12 CARRIED (4-1):**

**Aye** Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** Chairman Hoppin

**Abstain:** None

**Absent:** None

**Motion #13 (Removal of Two-Year Suspension of Compliance Dates Based on Inability to Obtain Permits).** Member Baggett moved to amend the staff proposal to remove the provision allowing a two-year suspension of compliance dates based on a showing that the facility owner or operator was unable to obtain permits required for a facility upgrade. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**MOTION #13 CARRIED (5-0):**

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

**Motion #14 (Third Party with Nuclear Engineering Experience).** Vice Chair Spivy-Weber moved to amend the staff proposal to add a requirement that the third party overseeing special studies for the nuclear-fueled facilities have engineering experience with nuclear power plants. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**MOTION #14 CARRIED (5-0):**

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

**Motion #15 (Standard for Alternative Requirements for Nuclear-Fueled Facilities)**. Member Baggett moved to amend the staff proposal to clarify and to limit the standard by which the State Water Board will determine whether nuclear-fueled facilities may be subject to alternative requirements and to clarify the reference for cost estimates for facility upgrades. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**MOTION #15 CARRIED (5-0):**

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

**Motion #16 (Schedule Revision – Humboldt Bay)**. Member Doduc moved to amend the staff proposal to specify the compliance date for the Humboldt Bay Power Plant. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**MOTION #16 CARRIED (5-0):**

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

**Motion #17 (Schedule Revision – Potrero)**. Member Doduc moved to amend the staff proposal to specify the compliance date for the Potrero Power Plant. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**MOTION #17 FAILED (1-4):**

**Aye** Member Doduc

**Nay:** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Pettit

**Abstain:** None

**Absent:** None

**Motion #18 (Schedule Revision – South Bay)**. Member Doduc moved to amend the staff proposal to advance the compliance date for the South Bay Power Plant by one year. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**MOTION #18 CARRIED (5-0):**

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

**Motion #19 (36-Month Study Period for Track 2 Monitoring).** Member Doduc moved to amend the staff proposal to require a study period for Track 2 monitoring to be at least 36 months. Chief Deputy Bishop described the changes and displayed the language on the overhead screen for Board Members and the audience.

**MOTION #19 CARRIED (5-0):**

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

**Motion:** Member Doduc moved to adopt the proposed Resolution.

**Seconded by:** Vice-Chair Spivy Weber

**MOTION CARRIED:** ([Resolution 2010-0020](#))

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

**DIVISION OF WATER RIGHTS**

**Item #6 was taken out of order and heard before Item #5.**

6. Consideration of a proposed Order to deny petition for reconsideration of Water Right Order WR 2010-0010 removing the [Kern River](#) in Kern County from the Declaration of Fully Appropriated Streams.

**Motion:** Member Baggett moved to adopt the proposed Order.

**Seconded by:** Vice Chair Spivy-Weber

**MOTION CARRIED:** ([Water Rights Order 2010-0016](#))

**Aye** Chairman Hoppin  
Vice Chair Spivy-Weber  
Member Baggett  
Member Doduc  
Member Pettit

**Nay:** None

**Abstain:** None

**Absent:** None

**Commenters**

*Colin Pearce, City of Bakersfield*

*Nick Jacobs, Kern County Water Agency*

**ADJOURNED**

The Board Meeting adjourned at 7:00 p.m.

**CLOSED SESSION**

Closed Session are not open to the Public

**DIVISION OF WATER RIGHTS**

The Board will meet in closed session to deliberate on a draft order responding to a petition for reconsideration, jointly filed on behalf of North Kern Water Storage District, City of Shafter, Buena Vista Water Storage District, Kern Water Bank Authority and Kern County Water Agency. Their petition requests reconsideration of the Board's order removing the fully appropriated stream status of the Kern River, in Kern and Tulare Counties. (This closed session is authorized under Government Code section 11126, subdivision (c)(3).)

**The Board Members did not meet on the Item**