



California Regional Water Quality Control Board Central Coast Region



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Arnold Schwarzenegger
Governor

MINUTES REGULAR MEETING Friday, July 8, 2010 Central Coast Regional Water Board

Chairman Jeffrey Young called the meeting of the Central Coast Water Board to order at 8:35 a.m. on Friday, July 8, 2010, at the Watsonville City Council Chambers, 275 Main Street, Watsonville, California.

1. Roll Call Administrative Assistant Carol Hewitt

Board Members Present:
Chairman Jeffrey Young
Vice Chair, Russell Jeffries
Monica Hunter
David Hodgkin
Gary Shallcross
John Hayashi

2. Introductions Executive Officer Roger Briggs

Executive Officer Briggs introduced staff and asked parties who wished to speak to complete testimony cards and turn them in. Mr. Briggs also welcomed and introduced State Board staff liaison Frances Spivy-Weber. Supplemental sheets that were prepared after the agenda was sent out are as follows: Item Nos. 11 and 15.

3. Approval of May 12-13, 2010 Meeting Minutes Board Motion

MOTION: Russell Jeffries moved to approve the May 12-13, 2010 meeting minutes.
SECOND: David Hodgkin
CARRIED: Unanimously (6-0)

4. Report by State Water Resources Control Board Liaison Status Report

State Board liaison Frances Spivy-Weber provided an update to the Board on the following issues: once-through cooling, the new Executive Director announcement, selection of Craig Wilson as the new Water Master, the Delta flow report, 303d list recommendations, the construction storm water permit, and integrated regional watershed management planning efforts.



5. Uncontested Items Calendar Board Motion

Executive Officer Briggs noted that Items 6, 7, 8, and 9 are on the consent calendar. Chair Young said there is one testimony card for Item #8.

Speaker: Mr. Bill Cook, representative for Pacific/Pescadero Mushroom Farm requested that Item #8 be removed from the consent calendar and addressed at a later time. The Board and staff agreed to the request.

MOTION: Russell Jeffries moved to approve the consent calendar for Items 6, 7, and 9.

SECOND: Monica Hunter

CARRIED: Unanimously (6-0)

10. Enforcement Report Status Report

There was no presentation by staff. Chair Young asked about the large number of notices of violation listed in the report, many of them appearing to be related to agricultural operations. Mr. Briggs and Enforcement Coordinator Harvey Packard both stated that they did not know the details of the NOV's but would find out. Mr. Packard reported later in the meeting that 18 NOV's listed in the enforcement report were for ag operations that had failed to pay cooperative monitoring fees. Board member Shallcross noted that "Seaside County SD" was listed as the responsible party for some violations instead of the City of Seaside.

(Board member Hayashi recused from Item Nos. 11 and 12 and left the Board meeting)

11. Limited Term Renewal of the Conditional Waiver of Waste Discharge

Requirements for Discharges from Irrigated Lands Board Approval

Executive Officer Roger Briggs introduced the item. Water Board attorney Frances McChesney stated that Board member Hayashi was recused from this item.

Assistant Executive Officer Michael Thomas presented background on the current order and explained that it has expired. Mr. Thomas recommended that the Board extend the order for 18 months. He reviewed the effort to date to develop the revised order and explained that the 18 month extension is to provide extra time in the event that we do not complete the order and present it to the Board on the planned schedule, and will prevent requesting another extension while staff and the Board continue to develop a revised order. The planned schedule is to bring a revised order to the Board in February 2011. Mr. Thomas also mentioned that we received comments both in support and opposed to the extension.

Steve Shimek, Executive Director of Monterey Coastkeeper, made a presentation opposing the extension. Mr. Shimek stated that more time will not make a difference based on the following: the Board is no farther along after extensive collaborations and discussions (e.g., the Ag Panel) and the Board has a current alternative to staff's preliminary draft recommendations submitted by agricultural groups that has fewer requirements; existing water quality is bad and getting worse so existing order is not working; existing order is not being enforced. Mr. Shimek proposes the Board either adopt the current staff recommendation or let the current waiver expire and adopt individual or general waste discharge requirements.

Several members of the public commented that growers are making improvements under the current order so support the 18-month extension.

Kirk Schmidt, Preservation Inc., commented that repeated extensions complicate improving the enrollment database which currently makes it difficult for staff to accurately track status of enrollment, evaluate compliance, and for Board staff to bill for monitoring. Mr. Schmidt recommends improving the database to accommodate the revised order to avoid current problems.

Chairman Young asked staff about the status of enforcing for failure to pay monitoring fees and to find unenrolled growers. Water Board staff Harvey Packard and Lisa McCann provided some clarification about how staff addresses enforcement for these cases and acknowledged some challenges to tracking down information on unknown operations. Staff explained that enrolling remaining operations is not high priority since most of irrigated agricultural acres in the region are enrolled, but when staff becomes aware of an unenrolled grower through information submitted or from inspections in high priority areas, staff sends a notice of violation for failure to enroll. Chairman Young said actively enrolling remaining growers should have some higher priority.

Board member Hunter expressed concern about compliance with paying monitoring fees and that it may put Preservation, Inc. in jeopardy. Mr. Schmidt stated that it does not jeopardize them in the short-term but numbers of growers failing to pay is increasing and may be related to lack of enforcement or to lag time to update acreage in database. Dr. Hunter said she wants to be sure extension does not prevent database and billing improvement and wants staff to work with Mr. Schmidt to resolve problems. Chairman Young expressed interest in having Preservation, Inc., provide an update to Board.

Board members discussed extension. Gary Shallcross expressed concern about such a long time extension that it may prevent staff from bringing the order to the Board by February. Board member Hodgins is also concerned about a long extension due to staff workload, resources, continuing to debate same things, and that it may prevent effective enforcement of what we have. Board member Jeffries stated that taking time to allow public input is important and whatever we do, we must do correctly; if it takes eighteen months, then that is fine as long as discussions are productive. Dr. Hunter does not want the expectation to bring the order to Board in February to minimize stakeholder discussions. Gary Shallcross commented that he wants to know in February what the status is, so he is inclined to only extend until February and then hear rationalization to extend further.

MOTION: Russell Jeffries moved to approve the staff recommendation to extend the conditional waiver for another 18 months.

SECOND: None

MOTION FAILED: (1 yes – 4 no)

Executive Officer Briggs recommended the Board consider extending the order until March based on the following rationale. Staff will bring a draft order for Board consideration in February 2011. However, it is very possible the Board will hear all the testimony and may direct staff to provide some additional information or analysis to bring back to the next meeting. By extending the existing order to March 2011, this scenario can be accommodated without having to re-agendize another extension resolution.

2ND MOTION: Gary Shallcross moved to approve the staff recommendation but to extend the conditional waiver until March 31, 2011 (8 months).

SECOND: David Hodgins

CARRIED: Unanimously (5-0)

(Chair Young announced a break at 10:13 a.m. The meeting reconvened at 10:28 a.m.)

12. Board Workshop to Continue Opportunity for Public Comment on the Preliminary Draft Staff Recommendations for an Updated Agricultural Order.....Information/Discussion

Executive Officer Roger Briggs introduced the item and explained that it was a continuation of the workshop held in May for the Board to hear comments on the preliminary draft agricultural order (draft order).

Water Board staff Lisa McCann outlined water quality conditions and impacts of agricultural discharges, the objectives of and requirements in the draft order, proposed revisions to the draft order, comments on the alternatives to the draft order, and next steps to propose a revised order to the Board. Proposed revisions discussed included tiering requirements (including monitoring and reporting) to address the comment that “one size does not fit all” and growers need flexibility; revised timeframes; multiple orders, such as individual Waste Discharge Requirements for largest, highest risk operations; and compliance reports in lieu of farm plans.

Chairman Young asked if staff thought they would recommend monitoring even where we do not have evidence of groundwater impacts. Staff responded that we do not have enough groundwater data to assume that no evidence of groundwater impact means groundwater is unimpaired or protected. Staff also said we do not have enough information about nitrate loading from individual farms to assume certain operations are low risk to groundwater quality. Staff said there is substantial evidence of significant impairment in groundwater in irrigated ag areas that do have a lot of groundwater data. Therefore, the draft order proposes sampling and submittal of groundwater quality data that can be used to prioritize where drinking water is impacted and used.

Staff reminded the Board that stakeholders submitted three alternatives to the draft order. Staff has and will continue to evaluate the alternatives for consistency with State law, the Basin Plan, the Nonpoint Policy and whether they resolve known water quality problems. Staff reported that two of the three alternatives do not meet the four criteria staff set for evaluating alternatives: resolve water quality problems and aquatic habitat impacts, include time schedules and milestones, include monitoring and reporting, and meet statutory requirements. Staff stated that they hoped to get more clarity on alternatives from presentations at this workshop and upcoming meetings with agricultural groups and environmental groups who submitted the alternatives.

Staff mentioned that we received several additional comment letters with comments similar to those presented for the May Workshop. Staff responded to the comment requesting another workshop in Santa Barbara area by recommending against a workshop since several agricultural and environmental groups and individuals have been involved in workshops and meetings already. Additionally, these individuals may be included in upcoming meetings with staff.

Board member Jeffries expressed concern about the conflict between food safety and riparian buffers. Chairmen Young asked staff to also meet with agencies and organizations. Staff responded that the draft order requirements are based on the known water quality benefits of riparian vegetation and buffers and that food safety concerns about buffers are technically unfounded; buffers are effective in removing bacteria from runoff. Staff has continued to coordinate with other agencies and organizations about food safety issues as well as on other issues. Staff has and will continue to meet with Department of Pesticide Regulation, Department of Fish and Game, and Natural Resource Conservation Service.

Several commenters and presenters then addressed the Board.

Jo Ann Baumgartner, Wild Farm Alliance, stated that she supports staff recommendations and encourages riparian buffers to protect water quality. She also discussed the effectiveness of buffers and stated that water quality problems do not arise from wildlife using the buffers.

Environmental Justice Coalition for Water and several speakers stated that they support staff recommendations, support regulation of agricultural discharges, are concerned about contaminated water and health and cost impacts to disadvantaged farm workers. Chairman Young questioned speakers about reporting exposures and health problems from pesticide drift and contaminated drinking water and encouraged community organizers to help people report these incidences to the proper agencies (public health departments, agricultural commissioners, etc).

Several members of the public spoke in support of staff efforts, expressed concerns about health problems from nitrate in drinking water from agriculture, requested individual monitoring that is publicly available, said that we need accountability and achievable, measurable goals to address environmental problems.

Others spoke critically of the draft order as not flexible or simple enough. Nancy Isakson of Salinas Valley Water Coalition stated that agriculture has worked to solve water quality problems such as support for the Salinas Valley Water Project to solve seawater intrusion. She also stated that staff has not responded to their offers to provide input on the order by way of a meeting with staff. Board members indicated they want staff to contact Nancy Isakson.

California Farm Bureau Federation (and other Farm Bureau representatives, Preservation, Inc. and individual farmers) made a presentation. Traci Roberts, Monterey County Farm Bureau, recapped outcomes of the May workshop. Kirk Schmidt and Sarah Greene of Preservation, Inc. described "SMART" sampling as similar to the current confidential on-farm monitoring that the Cooperative Monitoring Program (CMP) conducts and discussed technical hurdles to monitoring and implementing effective water quality improvement. Several ranchers presented examples of adapting their practices and operations in response to SMART sampling to improve water quality.

Tim Hartz of UC Cooperative Extension described some of the technical hurdles to address water quality problems. He advocated for looking at overall loading (total amount escaping from individual farms), instead of discharge and in-stream concentrations, to measure improvements farmers are making. He said farmers cannot reduce nitrate concentrations in their discharges to meet water quality objective because of high levels of nitrates in the irrigation source water from groundwater wells. Some farms must apply water to leach salts out of soil because crops are salt-sensitive so cannot avoid leaching nitrate to groundwater or sending it to surface waters, through tile drains in many cases. He said current options for nitrate treatment are limited and will take time to achieve, for example, complete elimination of discharges.

Kevin Merrill of Santa Barbara Farm Bureau stated that they are committed to water quality improvement, are conducting SMART sampling and want additional opportunities to work with staff and the Board. Kari Fisher of California Farm Bureau Federation concluded the presentation by stating that the Board gave staff direction at the May meeting and there has been no action on that direction. Chairman Young clarified that Board members did not direct staff to complete actions by this July meeting and said they expect the issues raised at the May meeting to be addressed in the staff report with the draft order.

Board member Jeffries asked about confidential monitoring and Kirk Schmidt explained that Preservation, Inc., works with growers on field sampling before and after practices and that the

information goes back to the grower so they know the results. Board member Jeffries also asked if counties in this region require blackflow prevention on wells. Staff said that a few counties do but not all.

Curtis Weeks, Monterey County Water Resources Agency, suggested that we identify information and practices needed for a long-term strategy and that this will take ongoing dialogue to get us there. Agency has water quality and groundwater data and collaborates on projects with demonstrated success. Mr. Weeks showed slides that indicated improvements in seawater intrusion and nitrogen fertilizer usage based on agency projects and programs. Mr. Weeks offered to help Water Board staff with agricultural issues because they have a lot of data and experience. Michael Thomas, Water Board Assistant Executive Officer, mentioned that staff estimates of nitrate loading to groundwater, as reported at May workshop, are much higher than the amounts indicated in the agency slides presented and said staff will compare data.

Steve Shimek, Monterey Coastkeeper gave a presentation. Mr. Shimek reviewed water quality conditions in the region, showing photos and data and graphics from the Water Board website. He compared staff's recommendation and other alternatives submitted and said that other alternatives fall short of standards, and do not include timelines. Mr. Shimek questioned whether confidential, voluntary, on-farm sampling works. He discussed interest in individual monitoring and presented some options for unimpaired areas, for example, maybe require less monitoring and allow two years of confidential monitoring for growers to understand problems and address them, and then submit data in the third year. Mr. Shimek also spoke in support of riparian and vegetated buffers.

Several additional members of the public spoke about proactive and past efforts of growers for water quality improvement, the need for more extensive outreach, consideration of individual commodities (like strawberries), need for flexibility, need to evaluate technical feasibility of water quality improvements, recommendations to use local experts, benefits of collaboration, need for long timeframes, recommendations to include education requirements, recommendations to set reasonable and scientifically determined targets, benefits and challenges (costs and effectiveness) of riparian and vegetative buffers.

Lisa Lurie, Monterey Bay Marine Sanctuary, Agricultural Water Quality Alliance program manager, stated that the Alliance's partners are technical experts assisting growers to make water quality improvements and recommended that the Board work with them. She also offered to present water quality progress to the Board and as a standing item on the Water Board's Agenda. Kay Mercer, Executive Director of the Agricultural Water Quality Coalition recommended use of a nitrate hazard index as a guide to prioritize potential for nitrate leaching out of crops root zone to groundwater. Gustavo Gonzales, Analyst for Santa Cruz County Supervisor Tony Campos, stated that duplication of regulation should be avoided and local regulations already exist for agriculture, and related to riparian buffers and water quality. Executive Officer Roger Briggs said staff will look at local riparian protection regulations and compare them to staff preliminary draft recommendations. Mr. Briggs also asked if there have been any claims related to regulatory taking and Mr. Gonzales said he does not think so. Board member Shallcross requested that staff contact Santa Cruz County counsel to learn more about their regulations and possibility of takings.

Lisa McCann concluded by saying staff is trying to optimize our regulatory tools. Dischargers are not currently meeting water quality standards under the current order. The revised Order must meet criteria to demonstrate how to resolve pollution and impacts to aquatic habitat protection with time schedules, monitoring, and reporting to meet statutory requirements. The proposal for confidential, SMART sampling, does not achieve the same goal we have as the regulatory agency to show how dischargers are improving and getting closer to meeting water quality objectives. The agricultural alternative does not propose milestones or schedules to mark progress and track compliance. Staff

recommends continuing to try and meet with stakeholders and have a draft order available for public comment in November and before the Board at the 2011 February Board meeting.

Board members made the following observations. Board member Hunter said the impacts to human health are the highest priority and need a short-term response, collaboration is an effective way to find solutions and staff is trying to build on existing relationships. Board member Shallcross said staff should build on the original draft, and use good ideas heard today and previously; supports the tiered approach and prioritizing where main problems are and based on commodities that are biggest risks seems worth pursuing; consider recommendation by Steve Shimek to allow two years of private monitoring, and then require submittal of data and make it public. Board member Jeffries commented that he also supports the tiered approach. Board member Hodgkin said he wants to make sure staff heard the comments that communication has been inadequate and will proceed proactively to improve communication. He also suggested focusing on what staff can do in the next five years given reduced resources. Chair Young said he likes the tiered approach and said to consider refining tiers beyond just impaired and unimpaired areas; also consider threats to water quality; find ways to tier requirements for groundwater impacts; hopes to see trends develop that show improvements and meeting goals; does not feel need for another workshop but encourages anyone who wants to offer information to the Board to submit it or contact staff.

(Chair Young announced a lunch break at 12:09 p.m. The meeting reconvened at 1:05 p.m.)

13. Public Forum Board Direction

There were no speakers for this item.

14. Reports by Central Coast Water Board Members Status Report

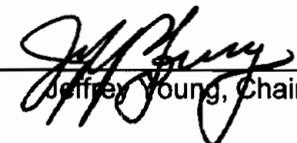
No reports at this time.

15. Executive Officer's Report Information/Discussion

A written report was provided for this item.

Chairman Young adjourned the meeting at 5:06 p.m. The next Board meeting will be held on Thursday, September 2, 2010 in San Luis Obispo.

The meeting was audio recorded and the minutes were reviewed by management and approved by the Board at its September 2, 2010 meeting in San Luis Obispo, California.



Jeffrey Young, Chairman