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CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD  
PANEL HEARING  
SAN LUIS OBISPO, CALIFORNIA  
MAY 4, 2011

VOLUME II

CONTINUATION  
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SAN LUIS OBISPO, CALIFORNIA

WEDNESDAY, MAY 4, 2011, 10:00 A.M.

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MR. YOUNG: Good morning. I'm Jeff Young, Chair of the Central Coast Regional Water Quality Control Board.

Welcome to San Luis Obispo. This is May 4th. And this is today only a continuation of this item that we started in Watsonville in March.

MR. BRIGGS: March 17th.

MR. YOUNG: March 17th.

Why don't we take roll call.

MR. BRIGGS: Dave Hodgkin.

MR. HODGIN: Present.

MR. BRIGGS: Miss Hunter.

MISS HUNTER: Present.

MR. BRIGGS: Mr. Hayashi.

MR. HAYASHI: Present.

MR. BRIGGS: Dr. Wolff.

DR. WOLFF: Present.

MR. JEFFRIES: Did I get left out, or I'm not on the Board anymore?

MR. BRIGGS: Vice Chair and former Chair, Mr. Jeffries.

1 MR. YOUNG: Mr. Briggs, introductions.

2 MR. BRIGGS: Well, I haven't done very well so  
3 far.

4 To my left is Francis McChesney, our Counsel  
5 from the State Water Research Control Board, and to her  
6 left, also from the Office of Chief Counsel, is Counsel,  
7 who will be assisting us as Francis has been assigned to  
8 other duties. Although Francis will continue to assist  
9 us as well, but this is Jessica Newman.

10 Welcome, Jessica.

11 We do not have our State Board Member  
12 liaison. That's Fran Weber. She was not able to be here  
13 today due to other meeting conflicts.

14 And I'll point out that over here on the left  
15 we have Carol Coon, court reporter. And if any of you  
16 are interested in making arrangements with her, you can  
17 contact her.

18 And, let's see, the restrooms are over here.  
19 And we do have some people standing in the back of the  
20 room. There are still, I see, a few empty seats, so it's  
21 up to you if you want to search those out. We also have  
22 overflow seating you probably saw when you came in, out  
23 in the foray area.

24 Do we have seating in the file review? No.  
25 Okay. There's a speaker out there so you can at least

1 listen if that's necessary.

2 There's four seats right here. Some seats  
3 right down through here. One right there. And that's  
4 it, Mr. Chair.

5 MR. YOUNG: Yes. Thank you, Mr. Briggs.

6 MR. THOMAS: We had a possible glitch with the  
7 recorder during the roll call.

8 I'd just like for the record to say that the  
9 Board members Hayashi, Hunter, JEFFRIES, Wolff are  
10 present.

11 MR. YOUNG: Thank you. All right.

12 I take it, Mr. Hayashi, you have something to  
13 say.

14 MR. HAYASHI: Yes. For the next time, I guess.  
15 I'm recused again. So I will see you next time.

16 MR. YOUNG: That is because you're an irrigated  
17 farmer. You're a farmer that irrigates, that's why  
18 you're recused from this hearing?

19 MR. HAYASHI: Yes.

20 MR. YOUNG: Dr. Wolff.

21 MR. WOLFF: We'll keep company to my colleague  
22 here. I will recuse myself. Since a portion of my  
23 property is dedicated, although one half is dry farming.

24 MR. YOUNG: Thank you, Dr. Wolff. All right.

25 Mr. Briggs.

1           MR. BRIGGS:     Item 4 is, as the Chair just  
2 mentioned a minute ago, is actually a continuation of the  
3 March 17th item that we had in Watsonville, the northern  
4 part of the region. And so we're down here in the south  
5 central part of our region today for the continuation of  
6 that hearing. Concerning the Conditional Waiver of Waste  
7 Discharge Requirements Discharged from Irrigated Lands.

8           So just a little overview of what we're going  
9 to be doing today. This is a panel hearing, as you just  
10 heard, two of our members are forced to being recused on  
11 this item, and since we don't have a quorum of the Board  
12 sitting up here, we're handling it as a panel hearing,  
13 which is what we were doing last time as well, the  
14 continuation of that.

15           What that means is then the panel will then  
16 come to a conclusion of the panel that will go forward as  
17 a recommendation for action to the next quorum of the  
18 Board, which is, hopefully, sooner rather than later.

19           So, after I get done with my little overview  
20 here we will continue with the public comments.

21           So, we had folks who showed up for the  
22 hearing last time in Watsonville, and what our Chair did  
23 is -- actually, I'll wait on that explanation. Just an  
24 overview of what we're doing today.

25           So, after public comments we'll have a staff

1 conclusion and recommendation, and then will be time for  
2 the Board Panel to deliberate.

3 So that's the order of events today.

4 I just have two slides now that give a little  
5 bit of an overview, kind of get our brain engaged again  
6 on what we were talking about last time.

7 So, the staff will have pointed out at the  
8 last hearing about the severity of the water quality  
9 problems. We went over that in some detail with summary  
10 of the extensive information documented in our staff  
11 report and attachments. The Order addresses those water  
12 quality problems. It included three tiers, and I'll talk  
13 about that a little bit more in the next slide with the  
14 highest tier, Tier 3, having more control requirements.

15 We've had many changes to the Order as it has  
16 morphed through the last two-and-a-half years that we've  
17 been working on this. And those changes have been in  
18 response to many comments that we received. Comments in  
19 workshops, in meetings and in writing.

20 Next. So, to begin the tiers, this slide is  
21 very similar, not exactly the same as we saw last time.  
22 And so you might recall that we started looking at the  
23 center column in Tier 2. And the reason for doing that  
24 is because it kind of forms the foundation for the Tiers.  
25 So everything that's in white here, the white font, is



1 basically a holdover from the existing 2004 Order the  
2 Board adopted seven years ago.

3 So, that Order requires -- is currently in  
4 place and effective -- requires water quality standards  
5 to be met, signing up. It has the various practices,  
6 management measures that are required in the Farm Plan.

7 Surface water monitoring. Just to be clear,  
8 because there's a potential for confusion here, so the  
9 watering monitoring refers to the watershed scale  
10 monitoring, which is ongoing now. That's what's being  
11 conducted on behalf of the industry by the Cooperative  
12 Monitoring Program. So that's what we refer to there.

13 There was the education component time  
14 schedule that applies to all of these things.

15 And then Annual Compliance Report. So that's  
16 all part of the existing 2004 Order.

17 So now for our proposed new Tier 2, it takes  
18 all the existing and it adds very few items. It still  
19 has the compliance report, but it's basically simplified,  
20 streamlined to be an online entry. We talked about that  
21 fairly extensively at the last meeting.

22 The Order requires groundwater sampling and  
23 reporting. While the existing Order included what --  
24 meeting water quality standards, all standards including  
25 groundwater, the focus was really on surface water. And

1 we've talked about the water quality issues that are well  
2 documented now with groundwater problems. So this is a  
3 necessary component from the staff's point of view to add  
4 to this middle Tier.

5 And then backflow prevention is also a  
6 groundwater prevention or a groundwater protection  
7 measure and seems to be kind of a no-brainer. I think  
8 it's fair to say we haven't received any comments about  
9 that whatsoever. So, very similar to the existing Order.

10 The Tier 1 criteria then is the same as Tier  
11 2, minus this annual compliance form. So it's a little  
12 bit simpler.

13 And then Tier 3, we have the Tier 2  
14 requirements, plus individual run-off monitoring. So in  
15 addition to the surface water monitoring, the watershed  
16 monitoring, this would be individual run-off monitoring  
17 just for those who would end up in Tier 3.

18 The Water Quality Buffer Plan is also  
19 actually a subset for those that have riparian areas in  
20 their lands or adjacent to their lands.

21 And then Irrigation Nutrient Management  
22 Plan. And one of the things I added to the slide was,  
23 just parenthetically, it's a more detailed irrigation  
24 nutrient management plan. You see over here we have  
25 nutrient management and irrigation management. So just

1 to distinguish it it has some more detail, for example,  
2 the nitrogen balance that was reported.

3 So those are the -- those are three tiers  
4 just as a reminder to you that are proposed.

5 So next, public comments. We received after  
6 all the written supplementals that were due by the  
7 January 3rd, was our cutoff for written supplementals, we  
8 received oral comments at the hearing in Watsonville.  
9 Now, the Board could have closed the hearing, could have  
10 completed the hearing, could have deliberated, could have  
11 taken action at that meeting, it was noticed to do that.  
12 But, basically, we got kicked out of room by the City.  
13 So in light of that timeline our Chair asked those who  
14 could not make it to the next meeting, show of hands,  
15 basically, and those who wanted to go ahead and testify  
16 in Watsonville, we had them come up to the podium and  
17 then our Chair said, okay, so the rest of you who have  
18 turned in cards at that meeting will have an opportunity  
19 at today's meeting.

20 So we have a fixed number of cards, and we  
21 have them on a list here, and so that will just be a  
22 continuation of those comments from those who submitted  
23 cards at that time.

24 And I'll let you know, it might be helpful  
25 for -- in terms of anticipating when to come up for the

1 three-minute comments, that they're in alphabetical  
2 order, so -- by your last name.

3           So, we will continue with public comments.  
4 And one of the things that I wanted to point out to you  
5 is that -- I won't point because I'll probably blind  
6 you -- but we have the lights up here, the timer at the  
7 podium, and we would really appreciate it if you would  
8 use that. And the reason for that is to help you. So  
9 the yellow light comes on, I think it might be -- we can  
10 check on the first person, maybe 30 seconds. That's  
11 basically a warning that you should be getting to your  
12 conclusion.

13           And so, please, when the beeper goes off, and  
14 the red light comes on on your own volition finish the  
15 sentence and then that's it. It doesn't mean to be  
16 creative with the world's longest run-on sentence. If  
17 you do that rather than just ignoring it and going on  
18 until the Chair has to interrupt, just, if you could  
19 please cooperate and do that. That would be a big help.

20           Just one other logistics point; we do have 50  
21 some cards, so that's probably going to take about  
22 two-and-a-half-hours or so, see how we do vis-a-vis the  
23 lunch break. And also after we do finish all the cards,  
24 whenever that is, all the speakers today, then we are  
25 going to be asking for a break, so that we -- the staff

1 can get together and figure out what our final response  
2 and comments will be.

3 And I think that's it for preliminary  
4 remarks.

5 Did I miss anything.

6 Okay.

7 MS. McCHESNEY: Just to recognize the remaining  
8 opposing --

9 MR. BRIGGS: Oh, right, I meant to mention that.  
10 Thank you. That the Farm Bureau folks through  
11 prearranged, prior to the March 17th meeting asked that  
12 they have a total of 60 minutes -- well, maybe actually  
13 more than that, it was granted by the Chair, 60 minutes.  
14 And they specifically asked prior to that to reserve five  
15 minutes at the conclusion of all the public comments for  
16 them to have whatever they want to do, whether it's a  
17 summary or some responsive comments or a combination.  
18 So, the Farm Bureau folks will have an opportunity for  
19 that after all the cards.

20 Thank you for that reminder.

21 If there are any Spanish speaking folks need  
22 some assistance, Hector Hernandez is in the back room  
23 over here and can help with that. Monica is right here,  
24 Monica Barricarte, our staff.

25 Thank you both for assisting.

1           MR. YOUNG: I just wanted to go over kind of --  
2 where we're at today in terms of speakers and the  
3 decision I made in terms of splitting up the speaker  
4 cards and what they represent in my mind and why I did  
5 what I did.

6                   We had about 75 or so speaker cards. There  
7 was going to be no way for us to get through everybody  
8 and get out when we needed to get out unless I did  
9 something like give everyone a minute or 30 seconds. I  
10 didn't want to do that. I just felt it was more fair to  
11 give everyone the full three minutes and that's why I  
12 asked who could show up today and who really could not  
13 show up and who opted to give their comments in  
14 Watsonville.

15                   So, we had about 20 speakers in Watsonville,  
16 and that left the balance of about 55 or so speaker  
17 cards. Those people are going to get three minutes.  
18 That's still going take us the better part of  
19 two-and-a-half-hours to get through. I made that  
20 decision to try to manage all of the information, all the  
21 speakers.

22                   I wanted to allow the Board time to  
23 deliberate, but we can't deliberate on this in private,  
24 it has to be done publicly. So it's important that I  
25 allow enough time for that to happen.

1           I've had a couple of requests for people who  
2 speak today that they could not make it. They submitted  
3 cards, but they couldn't make it today and there was a  
4 request that we make some allocation or exception to  
5 that. What I have done is decided. I'm just going to  
6 use these speaker cards, if there's an individual speaker  
7 speaking on behalf of him or herself, and that person  
8 doesn't show up, then I'm not allowing anyone to cede  
9 time to someone else from an individual. That person  
10 could have submitted written comments to us that would be  
11 fine. I think some people have done that. And we do  
12 have comments on the back of some of these cards. So  
13 that information is getting into the record.  
14 We had a request for an organization, is it the  
15 Vineyard --

16           MR. BRIGGS: Well, there were two of them. Paso  
17 Robles Wine Alliance and Unitarian Church.

18           MR. YOUNG: So with those, because those were  
19 organizations what I've decided to do is to allow someone  
20 else to speak on behalf of that organization or entity.  
21 Just a call I made. And some people may feel that that's  
22 not fair, some people may feel that it is fair. I'm just  
23 trying to allow as many people to speak as possible and  
24 also manage and control the meeting so we can get through  
25 it today. I just wanted you to know that as we go

1 forward.

2 We've also had a request for someone to give  
3 their objection to the way we're going to handle the  
4 proceeding today, the hearing. And although I'll go  
5 ahead and allow anyone who wants to give us their  
6 objection on what we're going to do today, why don't we  
7 go through those right now.

8 MR. BRIGGS: One other clarification.

9 MR. YOUNG: Go ahead.

10 MR. BRIGGS: Chair Young mentioned that something  
11 about written comments, the written comment period was  
12 closed with the exception of that was that people at the  
13 hearing in March some of them knew they couldn't stay  
14 through the end of the meeting, it was an all day  
15 session, so they handed in their cards with their notes  
16 of what they intended to say. We typed those up and  
17 distributed those to the Board members. Then we've had a  
18 couple, maybe one other person who has done that in the  
19 meantime said I can't make it, and they submitted those.  
20 I've also distributed those to the Board members as well.

21 MR. YOUNG: If anyone wants to put their  
22 objections on the record, I'll give those individuals a  
23 minute-and-a-half to do so.

24 MS. PREASLEY: My name is Carol Presley. I'm a  
25 registered civil engineer. I reside in Oxnard.



1 I'm just commenting about the Conditional  
2 Waiver. It's about a public process issue.

3 Due to work commitments I was unable to  
4 attend the March 17 meeting and was therefore unable to  
5 fill out the card. However, my statement also responds  
6 to new material presented at that meeting and, therefore,  
7 is subject to the full implication of the Baglakeen Act.

8 The intent of Baglakeen Act is clear. The  
9 Board is expected to list the public comments before  
10 acting. The Act specifically points to the fact that  
11 when new information has been presented as it was by  
12 virtue of testimony brought forward and heard on March  
13 17th, that the public has the right to respond to the new  
14 information.

15 As a public agency employee myself I would  
16 think it prudent for this Board to limit risk to  
17 litigation particularly over the triviality of not  
18 allowing public input.

19 Thank you.

20 MR. YOUNG: Thank you for your comments.

21 Mr. Shimek.

22 MR. SHIMEK: My name is Steve Shimek from the  
23 Monterey Coastal --

24 (Interruption by the reporter.)

25 MR. SHIMEK: Sure. My name is Steve Shimek,

1 Shimek, S-H-I-M-E-K. The organization is Monterey  
2 Coastal.

3 It came to our attention that the groups were  
4 organizing people to read other people's statements. And  
5 so, we actually went out and we told some people that we  
6 would like to organize the same thing. So we have  
7 statements from people like -- that cannot make it from  
8 organizations on organizational letterhead such as  
9 Pesticide Watch that they would like read into the record  
10 when their name is called.

11 So, we would like to know as soon as possible  
12 if we will be able to read those letters into the record.

13 There are also in addition to the  
14 organizational letters, there are letters from  
15 individuals. So I'm just letting you know it's kind of  
16 two classes of letters.

17 Thank you.

18 MR. YOUNG: As to the Pesticide Watch did they  
19 submit written comments?

20 MR. SHIMEK: I am not aware, so I don't know.

21 MS. HUNTER: Yes, they did.

22 MR. SHIMEK: They did? This is from the Education  
23 Watch Education Fund. I don't know if that's  
24 significantly different, but that's what's on the  
25 letterhead. I would imagine that it is a program of

1 pesticides.

2 MS. McCHESNEY: Does anybody know if they  
3 submitted a card in March?

4 Yes, we did.

5 MR. YOUNG: Yes.

6 MS. McCHESNEY: So there's a person representing  
7 the organization that could speak on behalf of the  
8 organization?

9 MR. SHIMEK: That would be me.

10 Thank you.

11 MR. CALDWELL: Chairman Young, I'm Andy Caldwell,  
12 C-A-L-D-W-E-L-L, with COLAB in San Luis Obispo in Santa  
13 Barbara County.

14 Our concern with -- you know, the Regional  
15 Board is organized because you have such a big region you  
16 rotate your meetings throughout the community to  
17 facilitate public access which we very much appreciate.

18 But it's almost a moving target this time  
19 around where people from this region had to go up to  
20 Watsonville, but you ran out of time in Watsonville, so  
21 then some people that couldn't make it there couldn't  
22 make it here aren't speaking. Some of the people that  
23 were there that, you know, couldn't speak there because  
24 they ran out of time ended up not knowing exactly what  
25 date you would be having this hearing. And, like, I know

1 one particular person your Board originally intended to  
2 have it in April thought, well, I'm going to be here in  
3 April, I'll go, it turns out you pushed it to May now she  
4 can't be here. And so it's kind of like it's a moving  
5 target. And I know this is not your intention, it's just  
6 the way it worked out.

7 I'm very appreciative we're going to get  
8 three minutes versus one, but one of the very low cost  
9 ways to address this is to have video teleconferencing  
10 for public access. Santa Barbara County Board does it.  
11 It costs virtually nothing. And that way people aren't  
12 expected to give up their whole day and travel 100 miles  
13 for three minutes.

14 Thank you.

15 MR. YOUNG: Thank you for your comments.

16 MS. ISAKSON: I'm Nancy Isakson with the Salinas  
17 Valley Water Coalition. I-S-A-K-S-O-N.

18 MR. YOUNG: Hold on for a second.

19 So, folks, we have a reporter here, just like  
20 we did in Watsonville sitting over here to my left. So,  
21 everyone really needs to speak up, and she's asking  
22 everybody to spell their names when they come to the  
23 podium. So try to remember that.

24 Thank you.

25 MR. BRIGGS: One other thing for staff, instead of

1 spelling it, just say who you are. We do have name tags  
2 up here when the staff is speaking as well.

3 MS. ISAKSON: Thank you.

4 We did submit speaker cards at the March 17th  
5 meeting and weren't able to stay, and so we had asked to  
6 have our letters submitted. And, subsequently, I wanted  
7 to confirm that they have been distributed to the Board.  
8 And my understanding is that they were not because they  
9 were not -- seems like in the form of note cards and that  
10 they were letters, something that I was told there would  
11 be no way you could read them, the entirety into the  
12 record. If I could object to you not allowing people to  
13 submit written comments after your January cutoff date.

14 Staff changes have been made, and I think  
15 that it is really -- you're doing a disservice to this  
16 Board and a disservice to the public by not allowing us  
17 to comment on the changes and the subsequent discussions  
18 that have occurred at the Board level.

19 So, we were not allowed to give you our  
20 letters, and but we are making a presentation today, a  
21 slide presentation, but we -- I do want to voice my  
22 objection I think that's very unfair and against the open  
23 public law.

24 Thank you.

25 Public Meeting Law.

1 MR. YOUNG: Thank you for your comments.

2 You know, we have input from staff and  
3 members of the public continually through an agenda item,  
4 so new information is always coming up that we're  
5 considering and listening to. That doesn't just open up,  
6 you know, more time for public comment just because  
7 people are submitting information to us.

8 Staff may go ahead and respond to something  
9 an hour or two from now after hearing something from  
10 speakers that doesn't trip another round of everyone  
11 having more time to comment on what staff might come up  
12 with. It's not going to work that way. We'll never get  
13 through it, with the meeting, if it goes on that way.

14 Okay. Does anyone else wish to address us  
15 and give us their objection to the way we're going to  
16 handle this meeting?

17

18 (No response.)

19

20 MR. YOUNG: Okay. As to Mr. Shimek's request, Mr.  
21 Shimek, as long as you were representing an entity, an  
22 organization, you can speak on behalf of that entity.  
23 That's fine. Okay.

24 These have all been put down by Mr. Briggs in  
25 alphabetical order. So we'll do it that way because it

1 will make it easy for me. I've got a list in front of  
2 me.

3 The first speaker is Karen Araujo. Is she  
4 here?

5

6 (No response.)

7

8 MR. YOUNG: The second one is Harold Biaggini.

9

10 (No response.)

11

12 MR. YOUNG: The third one is a speaker on behalf  
13 of the Paso Robes Wine Company Alliance.

14 The next one is Tim Borel, Nunes Vegetables  
15 and than Mike Broadhurst, Cambria Farms.

16 MR. BROADHURST: Good morning. Mike Broadhurst,  
17 B-R-O-A-D-H-U-R-S-T. I own and farm about 20 acres near  
18 Cambria. Thank you for listening to me.

19 Staff portrays all farmers as dischargers,  
20 perpetrators, offenders, culprits; you chose the word,  
21 it's implicit that we are people who lack morals and have  
22 polluted your drinking water for our own benefit.

23 Many in the public have apparently bought  
24 into this notion and can't understand why farmers don't  
25 just come clean and pay for the damage they caused

1 because they'll just pass on the cost. Really.

2 Let me dispel some faulty thinking. First of  
3 all, all food companies don't care where your food comes  
4 from, nor do they consider quality; they only consider  
5 costs.

6 Food companies buy produce from the lowest  
7 cost producer based upon what they can charge you,  
8 American consumers, whose number one priority is price,  
9 not quality.

10 And second, farmers are, in fact, generally  
11 pretty good people, although crazy enough to do what we  
12 do because we love the land. So, who should share the  
13 responsibility here? Could it be the people who made the  
14 fertilizer? Those who ship it? The companies who sell  
15 to the farmers? You're probably thinking that's a  
16 stretch.

17 The truth is the Board staff has completely  
18 missed the guilty party. Just look next to you; your  
19 neighbor in the next seat who shops at supermarkets and  
20 demands rock bottom prices.

21 To illustrate my seemingly preposterous  
22 allegation imagine yourself standing in a produce aisle  
23 at your local supermarket looking at lettuce. Odds are  
24 those pristine heads of lettuce come from a grower in the  
25 Salinas Valley.



1           The fact is no matter where you are in the  
2 U.S. the majority of your lettuce and spinach, cold  
3 crops, et cetera, come from the Salinas Valley year  
4 round. The general climate allows them to do it on a  
5 massive scale and they do a great job. But agriculture  
6 over the decades has pushed the limit of the land to  
7 produce. It now requires hundreds of pounds of  
8 fertilizer and pesticides to be applied every year for  
9 each acre. Otherwise long ago exhausted soil would  
10 produce little. And a bit of that fertilizer and some of  
11 those pesticides end up in your water.

12           So who's really responsible for this mess we  
13 find ourselves in? I would argue that you, consumers,  
14 who don't care how long and how it happens as long as  
15 it's cheap.

16           So let me conclude by asking. What is the  
17 real cost of your cheap food and who should pay for water  
18 quality?

19           Thank you.

20           MR. YOUNG: Thank for your comments.

21           MR. BRIGGS: I noticed that -- clarification, when  
22 the yellow light comes on is when you have one minute to  
23 go.

24           MR. CARTER: Steve Carter. C-A-R-T-E-R.

25           The Paso Robles Wine Country Alliance and the wine

1 industries in general strive to work cooperatively with  
2 our governmental and community partners. But these  
3 efforts can be thwarted by excessive regulation that  
4 requires monitoring for reasons that have not been  
5 identified, are not stable overdriven, they can  
6 jeopardize proprietary information, create redundancy  
7 amongst jurisdictions or result in negative economic  
8 consequences.

9           Your Board quantifies the objectives for the  
10 next five years during the May, July workshops of 2010 to  
11 focus on surface water nitrates and organophosphates.  
12 Secondary sediment and riparian issues should be  
13 addressed later. Staff's proposal continues to take on  
14 too much without the necessary tools or ability to make a  
15 difference in improving water quality.

16           Only the constituents identified should be  
17 addressed in this order: Nitrates, Chlorpyrifos and  
18 Diazinon. The entire list of 303D impaired water body  
19 should not be the reference point. Some of the  
20 impairments are due to other pollutants where Ag is  
21 neither the identified nor sole contributor.

22           We object to measurements in monitoring a  
23 criteria that are not a subject of this Order. Monetary  
24 and reporting needs to remain proprietary and on farm.  
25 We continue to encourage voluntary-based incentive group

1 programs.

2 We appreciate staff, including the  
3 certification program as a Tier 1 criteria and ability of  
4 other programs to be recognized. We recommend that the  
5 California Sustainable Wine Alliance Code and sustainable  
6 practices be included as another qualifying program.

7 We acknowledge staff added language that  
8 allows reporting of depth to groundwater, the  
9 construction of the wells be equipped to provide such  
10 information, however, we continue to object to  
11 groundwater level monitoring as part of this Order.

12 Dischargers who do not cause tail water as in  
13 the case of vineyards should not be subject to receiving  
14 water monitoring.

15 We also ask that items 35 through 60 be  
16 struck from the Order which requires new measures for  
17 eroding control on storm water run-off that are  
18 infeasible were not previously disclosed or may -- and  
19 conflict or overlap with efforts of the local governments  
20 RCDs and NRCS Programs.

21 Staff changes create redundancy in regulation  
22 and overlap of local jurisdiction control authority.  
23 This redundancy and duplication in regulatory authority  
24 is counter to the efforts of Governor Brown to reduce  
25 government spending and waste in a time of financial-wide

1 crisis for the state.

2 Thank you.

3 MR. YOUNG: Thank you for your comments.

4 Next speaker.

5 MR. BOREL: Good morning. Tim Borel, B-O-R-E-L,  
6 Nunes Vegetables in Salinas. And I'd like to talk about  
7 nitrogen balance ratios.

8 When the topic came up in March at the  
9 Watsonville meeting, Chairman Young, I'd like to quote  
10 you. You said you don't have a problem with the target  
11 in the Order. And I'm here today to say for me the  
12 target is the problem.

13 As, you know, after three years into this  
14 Order it automatically kicks to a 1.0 balance ratio based  
15 on harvest removal rates. What this sets up is an  
16 unsustainable deficit situation. We grow our food on the  
17 plants that require more nitrogen than we harvest to eat.  
18 We have to be able to grow the whole plant to grow a  
19 crop.

20 So, I've looked into this. I work with Dr.  
21 Tim Hartz from UC Davis, the leading authority on  
22 nitrogen in cool season vegetables on the coast, and I  
23 asked him if he's aware of any research into harvest  
24 ratio for nitrogen usage. And he said it would be  
25 agronomically impractical to research. That's exactly

1 what he stated.

2 I've concluded there's not much sound science  
3 with respect to this part of the Order. And I think we'd  
4 be better off meeting in the middle and accepting what  
5 the crop uptake is and try to achieve a 1.0 ratio on  
6 crop uptake as a start and leave the Order there. And  
7 then we can wait for the science to back it up and arrive  
8 at solutions. I don't think we have the solutions from  
9 the science side yet to deal with this, and the Order  
10 needs to allow for workable solutions.

11 I'll pose it another way in a question. How  
12 in the Draft Order is a grower allowed to seek a  
13 conclusion where he demonstrates that he can achieve  
14 water quality goals for water leaving his operation and  
15 thus be able to fertilize at any rate other than the 1.0  
16 harvest removal rate?

17 What I urge you to do is set the nitrogen  
18 balance ratio on crop uptake at a 1.0 level. And also  
19 include a pathway which solutions to the problem can be  
20 found so that growers can seek solutions and demonstrate  
21 the ability to continue farming while showing that  
22 they're doing beneficial -- beneficial practices in their  
23 operation to water quality.

24 Just like you can take a flea and say it's an  
25 indicator of an ecosystem, why couldn't a grower take a

1 simple soil sample as an example of the system on his  
2 farm and how it relates to the nitrogen legally on his  
3 operation.

4 Some simple solutions that we can include in  
5 there to allow growers the chance to do the extra work in  
6 the first three years and let the science come along with  
7 us and then we can find a workable solution where water  
8 quality is protected and farmers can go on operating  
9 profitably.

10 Thank you.

11 MR. YOUNG: Thank you for your comments.

12 Would you make just a note what that speaker  
13 said at the end he can back to us with a comment.

14 All right. Next speaker. I need to call him or  
15 her.

16 Chris Bunn, Crown Packing Company.  
17 Andy Caldwell. Bob Campbell, Lompoc Growers. Bill  
18 Carrothers from Salinas.

19 MR. BUNN: Good morning, Chairman Young, Board  
20 Members and Staff.

21 My name is Chris Bunn, B-U-N-N. I'm from  
22 Salinas, California. Part of a fifth generation farming  
23 family located in the lower regions of the Salinas  
24 Valley. We have homes there with the Japanese families.  
25 The Japanese families partnership of over 80 years.

1 I want to speak to the Ag  
2 Alternative Proposal for the 2011 Waiver.

3 First; farmers have collaborated over the  
4 past five years on only mandatory farming plants, but  
5 have used BMPs and made some of the most extensive  
6 testing monitoring for water quality in history of any  
7 agricultural entity.

8 Your observation will show you what's  
9 occurred beyond mandates and laws. In the past 10-plus  
10 years the innovations of drip irrigation, measured  
11 levels, minimum tillage, all kinds of soil testing have  
12 contributed to major quality, water quality improvements.

13 Secondly, the Farm Bureaus, shippers  
14 associations and other Ag organizations here, which you  
15 have seen, know their members and have the best resource  
16 to mobilize and implement the best water quality plan for  
17 this nation.

18 I was fortunate enough to work with the first  
19 water quality groups before the Ag Waiver. I saw the  
20 kind of commitment and organizational skills these  
21 farmers and ranchers have. You've observed their passion  
22 in a lot of your meetings.

23 Lastly, government has a tendency, as you've  
24 heard many times, to solve problems with one solution  
25 fits all. As in previous testimony as you have heard and

1 seen how agriculture is such a very complex science and  
2 art. I'd like to quote a pastor who said, "Farmers do  
3 five percent of the work, God does the rest."

4 We have so little control of our environment  
5 and must learn more on how to work with it and take  
6 charge of it.

7 Government has the power to enforce as a  
8 servant, you all to us, the people, the Ag community, you  
9 have a responsibility. But I think if you allow us to  
10 take the responsibility as an Ag community to prove  
11 through reasonable science, as this young man just spoke  
12 about, and methodology that our precious water resources  
13 can be protected for future generations if you give us a  
14 chance to do that.

15 I think your Board has already heard much  
16 testimony to Ag's expertise and hands-on experience,  
17 that's really an important point, hands-on experience,  
18 people who have farmed for generations here.

19 Please enforce the Ag Alternative Proposal  
20 and let the people truly govern.

21 Thank you.

22 MR. YOUNG: Thank you for your comments.

23 Mr. Caldwell.

24 MR. CALDWELL: Caldwell, C-A-L-D-W-E-L-L.

25 I'm Andy Caldwell representing the Coalition



1 of Agriculture and Businesses, Santa Barbara, San Luis  
2 Obispo Counties.

3 We do believe on the rule before you will  
4 represent a Class 1 impact both to wildlife habitant  
5 because in essence you're going to be cutting off the  
6 only water supply it has throughout much of the area and  
7 agriculture by the loss of land, but secondly, the  
8 impacts of creating habitant by their produce, which  
9 means they won't be able to sell that produce.

10 But it's a Class 1 impact with a twist  
11 because by definition Class 1 impact is significant and  
12 unavoidable. But what we are trying to beg your  
13 attention today is that the impacts are avoidable because  
14 the agricultural community is willing to achieve and  
15 pursue the same goals before you and that is, obviously,  
16 clean water, viable habitants and a healthy environment.

17 The best way to get to those goals is through  
18 cooperation. You've got major organizations representing  
19 most all of the major growers on the Central Coast saying  
20 they're willing to cooperate to achieve the goals that  
21 outline the law and the Order, but these rules have to be  
22 based on reason, science and best available control  
23 technologies. And you do have to take into consideration  
24 the economy.

25 One of the most ignorant things I heard last

1 time is, Chairman Young, you asked this question about,  
2 well, is there going to be some places where they just  
3 won't be able to grow strawberries or vegetables and use  
4 nitrates? And staff said, "yes, they can grow something  
5 else."

6 Well, that speaks of an ignorance that land  
7 values determine what can be grown. Why is there very  
8 little agriculture left in Coastal California? Because  
9 of the cost of land. You can only do high valued crops  
10 in that region if the land gets converted to other uses  
11 which in and of itself is a Class 1 impact Ag.

12 We ask you to take a different approach.  
13 We're asking you to garner cooperation, which has been  
14 demonstrated over the last five years and to check what  
15 the background levels are. Do some pilot projects with  
16 cooperating landowners. Focus on the most -- the areas  
17 that have severe contamination, focus on that first --  
18 create a pilot project. Get landowners involved. Get  
19 grant money. Have demonstrations that you can clean this  
20 up.

21 You know, this problem didn't happen  
22 overnight. And it's not going to be solved overnight.  
23 We're asking you as folks that represent the public and  
24 represent the regulated community and represent  
25 municipalities and everything else to say we'll work with

1 you, you meet us, we're going to agree on what the goals  
2 are, we're going to have a reasonable time frame, we're  
3 going to see what the technology, the science, and the  
4 economy allow and we're going to go for it.

5 This doesn't have to be a command and control  
6 approach. And it certainly doesn't have to be task  
7 masters versus public servants helping the public all the  
8 way around and across the board.

9 And so we would just beg you to work with  
10 them versus against them.

11 Thank you.

12 MR. YOUNG: Thank you for your comments.

13 Bob Campbell.

14 MR. CAMPBELL: Good morning. My name is Bob  
15 Campbell, C-A-M-P-B-E-L-L. I am a third generation  
16 farmer, rancher, Santa Barbara County. I have a grandson  
17 who is currently enrolled in the Cal Poly Ag Crop Science  
18 Program and we are hoping that we will still be a  
19 profitable family business when he graduates so he can  
20 get involved.

21 I attended my first Regional Water Control  
22 Board Meeting in 2011 in Watsonville, California. While  
23 I appreciate the numerous questions that were asked by  
24 the Board members at that meeting, I was disappointed in  
25 your staff's presentation and their ability to answer

1 those questions.

2 It was very clear to me that in many cases  
3 you're staff presented less accurate information, and was  
4 either unable or unwilling to answer simple questions.

5 For one example, when a Board member asked  
6 your staff about their proposal with vegetative buffer  
7 zones being in conflict with food safety regulatory  
8 agencies, their answer was that the only conflict would  
9 be between the Water Quality Control Board and the  
10 industry's end users. We all know that's simply not  
11 true, and that there would be a conflict between  
12 government agencies because of food safety regulations.

13 While I don't know whether staff was  
14 ill-prepared or unwilling to answer that and many other  
15 questions correctly, in any event, it was inexcusable.

16 As I see it, you have two proposals before  
17 you. The first proposal presented by your staff does  
18 little more than set up the agricultural industry for  
19 failure as it is based on inaccurate information and  
20 unattainable goals within the time frame set.

21 On the other hand, you have a proposal from  
22 the Ag industry that allows the growers to involve their  
23 process that does address the water quality issues that  
24 we are all facing, but with obtaining goals and practical  
25 solutions in a reasonable time frame with oversight by

1 your Board.

2                   Several years ago with the outbreak of Ecoli  
3 the Ag industry had food safety concerns like never  
4 before. And as you probably know the Ag industry proved  
5 itself willing and able by taking the lead and making the  
6 necessary changes in food safety standards, and we can  
7 continue to do that today. And we can do it with this  
8 issue and these challenges if we're given the chance.

9                   As stated by one of the Board members at the  
10 last meeting regional water quality standards set by your  
11 Board will not be reached overnight, but will require  
12 some time and effort from all of us.

13                   Setting agriculture up for failure with  
14 unobtainable goals is not the answer. I urge you,  
15 please, consider seriously the proposal that the Ag  
16 industry presented to you so we can all work together to  
17 reach what we all want to do and that's have good quality  
18 water.

19                   Thank you.

20                   MR. YOUNG: Thank you for your comments.

21                   Is Bill Carrothers here? Mr. Carrothers. Okay.  
22 I don't see him.

23                   Mr. Fred Chamberlin, and Coates and then Jim  
24 Cochran.

25                   MR. CHAMBERLIN: Good morning. My name is Fred

1 Chamberlin, C-H-A-M-B-E-R-L-I-N. I live on a ranch in  
2 Los Olivos, California.

3 I think you have before you a decision to  
4 make as to whether you follow a science-based regime to  
5 solve the problem you set up to solve or follow an  
6 arbitrary rule-based regime put forward by staff. And  
7 that's really the choice that you Board members have to  
8 make.

9 If you will follow science and work with the  
10 farmers you will be able to solve the problem. If you  
11 don't, it won't be solved. If you follow your Board's  
12 recommendation, which is not based on science, your staff  
13 recommendation, this will end up through years of  
14 litigation and eventually if it's not based on science,  
15 it won't happen.

16 I would suggest then that you follow the  
17 science-based approach and that you work on the areas  
18 where the problems are.

19 Thank you.

20 MR. YOUNG: Thank you for your comments.

21 Anne Coates.

22

23 (No response.)

24

25 MR. YOUNG: Jim Cochran. Jim Cochran.

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(No response.)

MR. YOUNG: Kevin Collins. Kevin Collins.

(No response.)

MR. YOUNG: All right. David Costa. And then  
Gail Delihant.

Okay.

MR. COSTA: Thank you, Chairman Young. My name is  
David Costa, C-O-S-T-A.

There's so many areas of this draft that is  
problematic for me. In no particular order, the proposed  
future nitrogen reporting data comes out on October 1st  
of 2014, which is during the ongoing fertilizer season  
for crops we just finished planting, three or four weeks  
earlier, so it's not even a natural break in the cropping  
cycle.

I'm really confused on how you can require  
ponds to be lined to avoid percolation in one paragraph  
then promote percolation basins and recharge projects in  
another paragraph, while yet in another paragraph  
promoting the benefits of percolating surface water  
despite exceedences of water quality standards.

Last year I spent \$119,000 on a pre-nitrogen

1 application soil based testing program conducted by a  
2 certified crop adviser. But the Draft Order states that  
3 leaf samples must be analyzed before applying more  
4 nitrogen.

5 My CCA doesn't support this as an application  
6 trigger because it's not telling you what's in the soil  
7 available for plant uptake. So on the one hand you're  
8 mandating the use of CCAs, yet on the other you're  
9 mandating a practice contrary to the advice and direction  
10 that they've given me in which I've supported with  
11 substantial investment.

12 When Dr. Tim Hartz says commercial vegetable  
13 production would be severely disrupted by restricting  
14 nitrogen fertilization to the amount of nitrogen removed  
15 in the harvested product, someone better be listening.

16 With regards to tiers, for some reason size  
17 is still entering into the equation. And there's a  
18 scenario where two vegetable growers with similar crops  
19 and practices are not only not in the same tier they're  
20 not even in the adjacent tiers. With the only difference  
21 being the size of the operation, one grower ends up in  
22 Tier 3 and the other grower ends in Tier 1, yet the staff  
23 report says that "staff acknowledges that operations less  
24 than 1,000 acres may discharge similar or greater amounts  
25 of waste and thus cause similar or greater risk to water



1 quality."

2           The reason I raise that point is to say that  
3 there's an additional burden placed on Tier 3 growers is  
4 a huge understatement because the expectations and  
5 requirements of Tier 3 are exponential as compared to the  
6 other tiers, even Tier 2. The devil is in the details of  
7 Tier 3 and was not up on the slides to start this  
8 meeting. And believe me, having some of those burdens to  
9 require only a subset of Tier 3 growers as I read so  
10 often in the Draft is of no consolation.

11           The volume of documentation, reporting,  
12 monitoring, compliance, milestones, timelines,  
13 evaluations and analysis that are required of Tier 3, I  
14 mean, leads me to believe in my opinion Tier 3 growers  
15 are so being set up to fail and in doing so you fail.

16           Thank you.

17           MR. YOUNG: Thank you for your comments.

18           Gail Delihant, followed by Deirdre Des Jardins,  
19 and then Darlene Din.

20           MS. SALAS: Good morning. My name is Sonya Salas.  
21 And I am for Western Growers. I'm here standing in for  
22 Gail Delihant, who is unable to represent Western Growers  
23 because of conflicts in the legislation in Sacramento.

24           MR. YOUNG: Excuse me, could you spell your name?

25           MS. SALAS: Yes. S-A-L-A-S. First name is Sonya.

1 MR. YOUNG: That was your last name?

2 MS. SALAS: Salas.

3 MR. YOUNG: Okay. Thank you.

4 MS. SALAS: So I'm here simply to put questions on  
5 the record in support of the agricultural proposal and  
6 encourage the Board to also support a viable and prudent  
7 alternative to meet requirements for water improvement.

8 I'm also here to say that Western Growers are  
9 willing to work with the growers to ensure the proposal  
10 and to help the members achieve the requirements in these  
11 proposals.

12 With that I want to thank you for allowing me  
13 the opportunity to express the support of the agriculture  
14 proposal.

15 MR. YOUNG: Thank you for your comments.

16 Deirdre Des Jardins, and Darlene Din, and then  
17 Joe Dillon.

18 MS. DE JARDINS: My name is Darlene Des Jardins,  
19 D-E-S, J-A-R-D-I-N-S.

20 I'm speaking for the Santa Cruz Groups of the  
21 Sierra Club.

22 We applaud the Regional Board for maintaining  
23 requirements to preserve riparian habitats.

24 Pinto Lake in Santa Cruz County has the  
25 highest level of DTD of any lake in the state. Legacy

1 pesticides are carried by sediment run-off. As you heard  
2 in previous testimony, riparian corridors are critical  
3 for eruption control of filtration so these regulations  
4 are essential to restoring the health of this lake.

5           However, we feel that it is critical to have  
6 a prescribed width for riparian corridors as there was in  
7 the original draft regulations because these corridors  
8 are being in a critical and very sensitive and protected  
9 areas.

10           As an example, I brought these pictures of  
11 Bennet Slew, which is part of the designated critical  
12 habitant for salamanders. These before and after  
13 satellite photos show that the riparian vegetation around  
14 the Slew was clear cut sometime in late 2004, early 2005  
15 in spite of an 800-acre conservation easement, the  
16 federal endangered Species Act and the State Coastal Act.  
17 This just shows you the kind of damage that is being done  
18 and this is why we need these regulations in the Ag Order  
19 so it's applied uniformly.

20           Pinto Lake also has one of the highest levels  
21 of micro toxins ever measured in a lake. We believe that  
22 research will show that nutrient loads in the watershed  
23 are associated not only with the tier grading  
24 groundwater, but with massive toxic algae lutes in the  
25 lake, which are washing down into Monterey Bay and

1 getting into the shell fish and killing sea otters. This  
2 is a sentinel species, and we believe that we should  
3 adopt the -- the Central Coast Water Board should not  
4 wait until there's a massive dead zone in Monterey Bay  
5 and we have irreversibly contaminated the aquifers to  
6 take these actions.

7 I have here a box of 500 letters that was  
8 gathered by community members in support of the original  
9 regulations and in support of clean water. The Board --  
10 there would have been many more letters but for the  
11 January 3rd cutoff date.

12 Thank you.

13 MR. YOUNG: Thank you for your comments.

14 MS. DES JARDINS: I also wanted to submit these  
15 photos. I've got copies and copies of the designated  
16 critical habitat.

17 MS. McCHESNEY: Excuse me. Can you give those to  
18 me? Do you have -- are those letters you have are those  
19 letters that were submitted in January? That box?

20 MS. DE JARDINS: Yes. They were submitted by the  
21 Environmental Coalition for Water.

22 MS. McCHESNEY: They're not new letters?

23 MS. DES JARDINS: Yes.

24 MR. YOUNG: Wait. Are they new letters?

25 MS. DE JARDINS: No, they're not new letters.

1 There would have been a lot more but for the cutoff date.

2 MR. YOUNG: Okay.

3 MS. DIN: Darlene Din, D-I-N.

4 Thank you, Board, for the opportunity to  
5 speak before you.

6 In reading the Draft Orders for -- during the  
7 many processes there were too many points that I felt to  
8 even cover, that I chose to use my three minutes to talk  
9 about process and lag time and public involvement.

10 And why this is so important is that there's  
11 been a breakdown in the communication between the  
12 regulated community, the staff, other technical advisors,  
13 conservationists, labor, agricultural, advocates,  
14 environmental justice, the different groups have,  
15 unfortunately, become paralyzed within this process. And  
16 when I looked at that I think that the best way to solve  
17 a problem is to find the areas that we intersect or how  
18 we can find a way to work towards water quality  
19 solutions.

20 So, I have worked with other agriculturalists  
21 and members of the environmental community conservation  
22 community, NRCS, RCD, public official's staff, public  
23 water agencies, labor farm worker advocates to try to sit  
24 down and determine what would a solution to water quality  
25 be. Because from the point of view that we've looked at

1 it in working towards this end solution, the process that  
2 has come forward, unfortunately, is broken and does not  
3 work. There's a lag time within science and it's a  
4 complex issue.

5           So when you -- one of the most important  
6 things that I hope that you think about today is you can  
7 write whatever regulatory scheme that needs to be done  
8 for you to meet certain standards, but if the science  
9 isn't there, if the technical capacity isn't there, if  
10 the groups aren't working towards a solution to a  
11 regulated community, it will be chaotic.

12           And I have found at these meetings that we  
13 have started to move together, that everyone is looking  
14 to have a voice. They're trying to find out how do we  
15 make it work. The approach that appears at this time  
16 that would work the best for agriculture and the public  
17 is the Ag Alternative which is the coalition approach to  
18 be able to sit down and look at watershed, sub-watershed,  
19 to be able to work on, through commodities, through  
20 science, to actually start to look at water quality  
21 solutions is very hard to prescribe an end game. And as  
22 David Costa talked about Tier 3 growers, you're not going  
23 to solve it when one grower is heavily regulated just by  
24 the fact he's a successful grower of over 1,000 acres,  
25 when maybe a grower of a smaller acreage in the same

1 watershed is not able to work in conjunction with him and  
2 her to make it work.

3 I just ask you to really look at the  
4 coalition approach and find a way for us to work towards  
5 water quality solutions.

6 Thank you.

7 MR. YOUNG: Thank you for your comments.

8 Joe Dillon, followed by William Everett -- Elliott  
9 and then Jody Frediani.

10 MR. DILLON: Good morning. My name is Joe Dillon,  
11 D-I-L-L-O-N. I'm a Regional Water Quality Coordinator  
12 for the National Marine Fisheries Service.

13 We have jurisdiction over ESA listed green  
14 sturgeon and some other critters running around the  
15 ocean.

16 We submitted many comments, letters on this.  
17 I'm sure you got them. There is -- I appreciate staff's  
18 response to them. There were some very good responses to  
19 some of our comments.

20 One topic that was brought up in Watsonville  
21 that I would like to revisit just briefly.

22 Chairman Young, Mr. Jeffries, you've asked  
23 why only organic phosphate pesticides were being  
24 explicitly called out in this regulation when there was a  
25 long list of various pesticides that had been detected in

1 the water bodies. Well, just because the one pesticide  
2 has been detected doesn't mean that they're there often  
3 enough that they're problematic. But one class of  
4 pesticide, pyrethroids has been shown to be there often  
5 enough that it is problematic and it should be added into  
6 the regulation explicitly. In defining your tiers an  
7 application of pyrophosphate, diazoma were the subset of  
8 pyrethroids that were on the list should be added in in  
9 making your tiering decisions and that should trickle  
10 down to all the other subsequent places when the  
11 department looks at to add to the Diazinon and  
12 Chlorphyrifos.

13 The addition of the monitoring sediments  
14 using -- will help get some of the information. Will  
15 help get some detections when we go down that path, but I  
16 still advise you to explicitly call up pyrethroids.

17 We think that you've been more than  
18 reasonable in accommodating agricultural interests. Some  
19 of the slides struck me very prominently up in  
20 Watsonville when the last few speakers put up comparisons  
21 between the February 2010 requirements and the March 2011  
22 requirements. So, when we hear that things are still too  
23 much and that you're not -- people aren't being listened  
24 to, just take a look at the record and remember that the  
25 staff's recommended proposal had a lot more items in it,



1 would have been a lot more strict right outside of the  
2 gate, and that you have the interest, you have heard  
3 that, and you tried to define what is a reasonable  
4 starting point and a reasonable first bite at the apple.

5 We will be back here in five years. There  
6 will be more monitoring data available. And,  
7 unfortunately, this job has turned me into a pessimist  
8 and I think the long term data is going to show that  
9 there are problems and we'll be having some of these  
10 discussions all over again.

11 I empathize with your position. My agency  
12 has to make these tough decisions. You're in between a  
13 rock and a hard place, but sooner or later you're going  
14 to have to take that vote. And I encourage you to get on  
15 with it.

16 MR. YOUNG: Thank you.

17 Mr. Jeffries:

18 MR. JEFFRIES: In your opinion or your analysis is  
19 there a difference between liquid or granule Diazinon?  
20 Does it make any difference as it travels through the  
21 root zone into the --

22 MR. DIL LON: It does --

23 MR. JEFFRIES: Do you understand my question?

24 MR. DIL LON: And it does make a difference, but  
25 it has much to do with the application rate and the

1 subsequent irrigation and how the parcel is drained as it  
2 does with the actual formulation up front.

3 If someone applies the granule form of  
4 Diazinon and plows it in and then gives it a heavy  
5 irrigation and increases the till water they might run a  
6 lot of that off -- up ahead and into the ditch.

7 If they go through and they're spraying with  
8 an air blast sprayer or something and they get a full  
9 application of the product they might not get very much  
10 run-off at all. So --

11 MR. JEFFRIES: So there is quite a bit of  
12 difference between the liquid and the granule?

13 MR. DILLON: Potentially, yes.

14 MR. JEFFRIES: Thank you.

15 MR. YOUNG: Okay. William Elliott, followed by  
16 Joy Fitzhugh, and then Jody Frediani.

17 MR. ELLIOTT: Good morning, Chairman Young. My  
18 name is William Elliott. That's E-L-L-I-O-T-T.

19 I'm here today to make essentially three  
20 comments on process because I think there are people here  
21 who are far more knowledgeable in science than I,  
22 comments concerning weaknesses in this overall proposal.

23 The first comment I wanted to make deals with  
24 what I view as being illegal renewal by the Executive  
25 Director Order of the 2004 Agricultural Order. The Board

1 may be aware a petition was filed by me with the State  
2 Board this past week in that regard. Certainly, if the  
3 renewal of an executive order is not a modification of an  
4 executive order I can't imagine what is.

5           Secondly, I think there is a concern, at  
6 least on my part, with the impacts not looked at and the  
7 totality of the environment. One of those I think in my  
8 view at least, the staff is in effect placing concerns  
9 over water quality above concerns over air quality. For  
10 instance, as we pointed out in our submissions, the Air  
11 Quality Board has taken great efforts to control the use  
12 of diesel powered engines in the Monterey Bay area and  
13 Salinas Valley.

14           Certainly having to place water purification  
15 machines on farms throughout the Salinas Valley is going  
16 to greatly increase the amount of air pollution as will,  
17 of course, the necessity to operate the machines to empty  
18 them, to service them and everything else. The only  
19 response really to this entire concern that the staff  
20 made was, well, we can't really tell what the farmers  
21 what to do, so it's just speculation if you're going to  
22 use the machine. Of course, these machines are the only  
23 way in which these standards can be met. So, it sort of  
24 follows.

25           The third and final comment, really, is the

1 economic analysis that was done. The Board required an  
2 economic analysis which was simply not done by the staff.  
3 Now, that's definitely part of SEQUA.

4 So I think that when all these things are  
5 considered, along with the comments being made today and  
6 previously by all of the speakers, the best and the only  
7 action that should be taken by this Board today is to  
8 decline to adopt the modifications, to reject the current  
9 proposal and to instruct the staff to start all over  
10 again, and, hopefully, this time do it right.

11 MR. YOUNG: Thank you for your comments.

12 Joy Fitzhugh.

13 MS. FITZHUGH: Good morning. Joy Fitzhugh,  
14 F-I-T-Z-H-U-G-H.

15 And I'm speaking on behalf of the San Luis  
16 Obispo County Farm Bureau today, and also as a prior  
17 watershed coordinator. And I've had feedback from a  
18 number of the small growers that were in the watersheds  
19 that I was working with. And they're very concerned  
20 about the Tier 3 because some of them are small by virtue  
21 of not being able to -- well, they're in a 303D listed  
22 stream area and so forth, and they're having to look at  
23 meeting the Tier 3 requirements.

24 They say we're not going to be able to  
25 continue. We can't afford -- our margin is small enough

1 that the additional reporting monitoring and  
2 implementation will take away all costs -- all  
3 insensitive with the costs. So that I'm looking at  
4 trying to reassure them that this isn't so, but I haven't  
5 found that in the report. And I think as well as looking  
6 at this arbitrary 1,000 acre trigger you need to look at  
7 the small grower who might through no consequence of his  
8 own, be thrown into Tier 3 and have to follow those regs.

9           And I have to follow the prior speaker when  
10 he talked about the economic analysis. When I looked  
11 through the economic issues that were in this report, and  
12 I saw things that were cited from 1990, things that were  
13 cited from '99 as part of the costs, and they said, oh,  
14 this is just to show the expense. No. Ten years ago, 20  
15 years ago does not show the cost. As we all know costs  
16 have gone up tremendously.

17           And I think the implementation of this  
18 program is going to be a lot more costly than most people  
19 think.

20           Lastly, I want to say something about the  
21 fact that we have an Order that appears to be looking at  
22 the program as point source. As we know point source  
23 coming out of a pipe that -- from a factory or something  
24 is very different from the very complicated, complex,  
25 uniquely individual non-point sources. And we're trying

1 to pack them into three tiers, which is better than one,  
2 I'll agree, but we're trying to pack this into three  
3 tiers when everybody is very, very different. And I  
4 think we have to go back and start looking at the fact  
5 that we aren't all a factory, we're all -- somebody said  
6 mother earth kind of regulates how things go, and mother  
7 earth is not one thing.

8 I do urge you to take a good serious look at  
9 the Ag Coalition Alternative, it is looking at what is  
10 practical and what can be done by our agricultural  
11 community.

12 Thank you.

13 MR. YOUNG: Thank you for your comments.

14 Dr. Hunter.

15 DR. HUNTER: Yeah. Thank you, Joy, good to see  
16 you here today.

17 Just so I'm clear on the small farmer  
18 comments that you bring into us today and your concern  
19 about the 1,000 acre trigger. Are you --

20 MS. FITZHUGH: Not the 1,000 acre trigger, I'm  
21 more concerned about the fact that through no -- nothing  
22 that they have done, because they might be on a 303D  
23 listed stream within that area, and small acreage, when  
24 you talk about buffers and so forth, you may end up  
25 taking their whole production land with a buffer. So

1 that's what we're -- what these people are worried about.

2 DR. HUNTER: Okay. I just wanted to be sure I  
3 understood it.

4 MS. FITZHUGH: But the 1,000 acre people do have  
5 an automatic trigger which -- also. So you're looking at  
6 both ends of the spectrum possibly being caught in this  
7 Tier 3.

8 Thank you.

9 DR. HUNTER: Thank you.

10 MR. YOUNG: Jody Frediani.

11

12 (No response.)

13

14 MR. YOUNG: Okay.

15 Cliff Garrison. Cliff Garrison.

16 MS. McDONALD: He had to leave.

17 MR. YOUNG: He had to leave. Was he here this  
18 morning?

19 MS. McDONALD: I have written comments if you  
20 would like for me to read it.

21 MR. YOUNG: Okay. Are these for the Cattlemen  
22 Association?

23 MS. McDONALD: Yes.

24 MR. YOUNG: Okay. Well, why don't you --

25 MS. McDONALD: I still have my own comments.

1           MR. YOUNG: Well, I don't have a problem with  
2 that. You have comments on behalf of the Cattlemen  
3 Association?

4           MS. McDONALD: Yes.

5           MR. YOUNG: If you have comments on behalf of the  
6 Cattlemen Association, go ahead and give us those  
7 comments. And then I'll call you up and you can give us  
8 some additional comments.

9           MS. McDONALD: Thank you.

10                   My name is Susan McDonald, M-C-D-O-N-A-L-D.  
11 I live in Cambria.

12                   Cliff Garrison is the operations manager for  
13 the Hearst Ranches in San Simeon and in Chalame. We  
14 operate in both San Luis Obispo County and Monterey  
15 County. We are primarily a cattle operation with range  
16 land grazing since 1865. Our farming operation consists  
17 of six acres of avocados at the Hearst Ranch and 150  
18 acres of alfalfa and our Jack Ranch, as well as dry  
19 farming hay in irrigated pastures.

20                   I'm here, also, in support of our farmers and  
21 Regional Board to cooperate in achieving water quality  
22 goals.

23                   Some of our thoughts on the Draft Order are  
24 as follows. If you irrigate, there's no way to opted  
25 out. You are assumed to be discharging agricultural



1 waste into waters of the state even if you do not do so.

2 The regulations are based on the chance that  
3 we could discharge, and we can not support that  
4 assumption.

5 At the Hearst Ranch in San Simeon we operate  
6 80,000 acres under a conservation easement and use best  
7 management practices to eliminate risk of waste discharge  
8 from our six acre avocado orchard.

9 We support tier zero, as mentioned at the  
10 last hearing and an exception from the Order. Tiers  
11 should be tied to actual risk, each property must be  
12 individually analyzed.

13 In general, we do not support how the tiers  
14 are set up, especially how proximity to an impaired water  
15 body put us into a higher tier. Recently Chalame Creek  
16 was put on the 303D list for Ecoli and that places our  
17 ranch in a higher risk tier.

18 The listing was based on samples taken from  
19 the one and only monitoring site under the Degenara  
20 Water Bridge on Chalame Creek, a place inhabited by 100s  
21 of swallows, pigs and other uncontrollable sources. Cows  
22 are assumed to be a problem because they are  
23 controllable.

24 These samples do not represent the overall  
25 health of our stream or the management practices of our

1 ranch.

2 Sampling and monitoring must be supported by  
3 science and sound practices the farmer and water board  
4 can agree on. There has to be accuracy of measurements  
5 on the farmers, either nitrate contributors or discharges  
6 for uncontrollable sources; in our case wildlife.

7 Sampling should be a cooperative effort done  
8 at intervals to demonstrate transit water quality.

9 A good example of this is at San Simeon at  
10 the Arroyo Villa Cruz, it's on the impaired list for  
11 exceedent of Ecoli from a sample taken in 2006. I found a  
12 lot of inaccurate data in the document. The monitoring  
13 cite was unrepresentative of 11.2 miles of water body  
14 that we manage solely. We collect our own water quality  
15 data during conservation easement monitoring.

16 MR. YOUNG: Thank you for your comments.

17 Dirk Giannini, Alice Grip, Norm Groot, Edward  
18 Hard.

19 MR. GIANNINI: Good morning, Chairman Young and  
20 Board Members.

21 My name is Dirk Giannini, G-I-A-N-N-I-N-I.  
22 I'm a fourth generation farmer in the Salinas Valley. My  
23 wife and two beautiful daughters as well as my parents  
24 live in homes on a farm in Salinas.

25 We have grown crops on this farm for over

1 80 years. I was born and raised on this ranch and we  
2 currently use the same domestic well for our drinking  
3 water needs today that my parents raised me on. This  
4 well, which is on the lower draining end of the ranch, is  
5 surrounded by lettuce, broccoli, and strawberry  
6 production which has been in place since the 1970s.

7 Obviously, this well, which is tested  
8 regularly, meets drinking water standards. I can state  
9 with a sense of pride that our production of crops over  
10 these decades has not degraded our domestic well water  
11 quality.

12 The Ag Order proposed by your staff has a  
13 number of unintended consequences including the  
14 curtailment of groundwater recharge if all retention ponds  
15 to be required to be impermeable. Under in the Draft  
16 Order by staff farmers and ranchers that use these  
17 retention ponds for reservoirs would be required to  
18 reconstruct them in a manner which prohibits any  
19 groundwater recharge that may contribute to existing  
20 water quality standards. This means that all ponds and  
21 reservation water on farm operations must be lined, which  
22 is a very expensive proposition for any farmer or rancher  
23 of any size or volume.

24 Previously, these retention ponds and  
25 reservoirs were recommended by the Regional Water Board

1 and the Porter Cologne Act due to the groundwater  
2 recharge benefits. This new Draft Order reverses this  
3 practice and the negative environmental consequences of  
4 impermeable containment structures on groundwater  
5 recharge would be substantial, particularly in the  
6 Salinas Valley area.

7           The Draft Order from staff is requiring an  
8 agricultural community to clean tail water. Water that  
9 leaves the ranch to a level that is better than drinking  
10 water standards.

11           Municipalities do not drink treated water to  
12 these standards until the water is actually being served  
13 up for consumption. This Draft Order asks farmers to  
14 become hydrologists and essentially install waste water  
15 treatment systems if they are to discharge any water from  
16 their fields, which is a far different requirement than  
17 drinking water consumption.

18           This standard is based on a presumption that  
19 a flea placed in a lab water sample setting fails to  
20 survive regardless of any other contributing factors to  
21 the flea's mortality. The farmers can not recharge  
22 groundwater and are required to contain their own water  
23 and storm water in impermeable ponds based on a mortality  
24 of a flea that does not even survive in the wild along  
25 the Central Coast, then the reasonableness of this Draft

1 Order by staff must be called into question.

2 MR. YOUNG: Thank you for your comments.

3 MR. GIANNINI: In closing I'd like to  
4 just support the Ag Proposal before you later today.

5 MR. YOUNG: Alice Grip.

6

7 (No response.)

8

9 MR. YOUNG: Norm Groot.

10 MR. GROOT: My name is Norm Groot, G-R-O-O-T. I'm  
11 the Executive Director of The Monterey County Farm  
12 Bureau.

13 As a former agricultural producer now  
14 representing my local agricultural community my main  
15 function is to advocate for the ability of farmers and  
16 ranchers to do what they do best, which is farming and  
17 ranching.

18 The very waters that we're discussing here is  
19 the very livelihood of all farmers and ranchers. Without  
20 this resource there would be no food on your table  
21 tonight. Agriculture knows the value of these resources  
22 appreciates that water quality is important to our  
23 environment. And I come here today in dismay that the  
24 multiple versions of the Ag Order Proposal put forth by  
25 your staff lacks one key element, and that is common

1 sense.

2 Agriculture is fully aware of the impairments  
3 within our regional watershed and is committed to improve  
4 water quality along the Central Coast. No credit has  
5 been given to agriculture for the improvements made to  
6 production practices that resulted in improved water  
7 quality. We know this from the data collected throughout  
8 the current Ag Order when that was successfully deployed  
9 using cooperation among the stakeholders.

10 The multiple proposals from your staff lack  
11 any cooperation from any stakeholders within region three  
12 and any input from agricultural stakeholders in this  
13 process has been met by resistance from your staff.

14 This exclusion of common sense approach to  
15 developing an Ag Order that all stakeholders can agree to  
16 is what's missing here. If our legislators, such as Sam  
17 Farr, Anthony Canella and Louie Salejo find that this  
18 process has gone off track, then there's cause for  
19 concern that your staff has exceeded its boundaries.

20 The assumptions made by staff are based on  
21 data anomalies and use subset science as a backup. As  
22 you've heard in Watsonville the very water quality  
23 reports that the staff proposals are based on has  
24 suggested data sampling techniques.

25 Agriculture within your region has stepped up

1 with a workable viable solution for the next five years.  
2 One that achieves water quality improvements that are  
3 measurable, accountable and verifiable. The object of  
4 any Ag Order should be to help this industry achieve  
5 this standard with a common sense approach that allows  
6 farming and ranching to continue while improving our  
7 environment within the region.

8 I ask that you allow common sense to enter  
9 into this decision and support the agricultural proposal  
10 that provides a solution that we all collectively own a  
11 share of responsibility. We all drink the same water and  
12 we all like to eat safe, healthy food.

13 Thank you.

14 MR. YOUNG: I have a question for you, Mr. Groot.  
15 Are you supportive of groundwater monitoring for nitrate  
16 as far as this overall effort?

17 MR. GROOT: I believe that you will hear later  
18 from the Ag Panel that will make a conclusion that, yes,  
19 we are willing to put a proposal on the table concerning  
20 groundwater monitoring.

21 MR. YOUNG: Okay. That effort represents the  
22 Monterey County Farm Bureau position?

23 MR. GROOT: Our position is included in that  
24 because we are part of the Ag working group coalition and  
25 it's formulated that, yes.

1 MR. YOUNG: Thank for your comments.

2 MR. GROOT: You're welcome.

3 MR. YOUNG: Edward Hard.

4 MR. HARD: Good morning. Edward Hard, California  
5 Department of Food and Agriculture.

6 My comments today are coming directly from  
7 the Secretary, Karen Ross.

8 We are here in spirit in collaboration in an  
9 effort to find ways to solve these problems that we've  
10 been addressing to you for the last several years.

11 I think one of the key pieces that this Board  
12 should know is what is the CFA's interest in this  
13 process? Our interests stems fertilizer. We have  
14 jurisdictional authority for fertilizers -- for  
15 fertilizers that are sold and distributed across the  
16 state. We ensure that they are safe, effective and the  
17 claims that are on the labels meet the guarantees for  
18 what the labels are asking or demonstrating on the label,  
19 not the product.

20 We have authority to license and have product  
21 labor review and registration. We also have an  
22 enforcement division that evaluates whether or not the  
23 fertilizers that are being sold in bulk or in packages  
24 are making sure that their claims are meeting what  
25 they're asking for in terms of their efficacy,



1 scientifically and what is being put forth in the claim.

2           We do not have jurisdictional authority over  
3 application, but herein lies our concerns with this  
4 Order. We have concerns and recommendations. Regulatory  
5 process thus far is extremely heavy on regulatory  
6 requirements, but short on process that creates a  
7 scientifically credible outcome. This stands to create a  
8 lack of credibility and success of this regulatory  
9 process. This regulatory path forward is unsustainable  
10 as it is currently drafted.

11           There's a disproportionate effect within the  
12 economic and environmental conditions in this region  
13 within this Order. It will be undermining successful  
14 efforts that this agricultural community has demonstrated  
15 through this region.

16           There'll be excessive competition among  
17 growers to find scientific answers that are not  
18 scientific. What do I mean by that? This regulation as  
19 it currently stands, that's in all tiers, would have  
20 growers trying to figure out what the nutrient uptake  
21 values are. There are 52, by our count, crops grown in  
22 this region, give or take one of two. Of those 52 crops  
23 only two have ever had scientifically evaluated uptake  
24 values. And those two that have been done are not  
25 scientifically valid.

1           So, this puts us in a quandary. We have a  
2 panel going forward without a lot of effort that's been  
3 put into bringing in the regulatory -- pardon me, the  
4 scientific farm of state government, UC SCFU, they're  
5 completely absent from this process.

6           Our recommendations are this. Perform a  
7 scientific evaluation of the proposed regulation.  
8 Facilitate the identification and scientific data and  
9 needs specifically related to the nitrogen uptake values  
10 for all the crops, all tiers.

11           Facilitate the establishment of common set of  
12 nitrogen uptake curves for each crop that growers and  
13 rely upon. You can't have all these crop advisors going  
14 out that are hired by growers to have their own  
15 evaluation of what the curves are. We need a common set  
16 established by the state which is the University of --  
17 CSU and the University of California.

18           How are we going to do this?

19           Thank you for allowing me time. We are a  
20 state agency in this process and we have been, to this  
21 date, not given enough time to discuss this issue, so,  
22 please, bare with me for one more minute.

23           MR. YOUNG: I'll give you one more minute.

24           MR. HARD: Thank you.

25           Identify and leverage resources to accomplish

1 funding in all tiers that you have identified. All  
2 tiers, specifically, high risk crops. Nitrogen uptake  
3 values of all crops, again, should be identified. And  
4 we, through fertilizer research and education program at  
5 the Department of Food and Ag office have over the years,  
6 21 years now, been evaluating nitrate found in the  
7 groundwater.

8           And we have conducted research by two  
9 individuals that have been mentioned here today. At  
10 least one, Dr. Hartz and Dr. Cann. Those two are -- one  
11 is a specialist with UC and the other one is a farm  
12 advisor from Monterey County. So do we have information  
13 that will help springboard that into action. But what we  
14 don't have is a process that says how are you going  
15 establish a management practice without any science  
16 regarding the uptake values? It's preposterous.

17           Thank you.

18           MR. YOUNG: Couple questions for you.

19           MR. HARD: Yes.

20           MR. YOUNG: Do you think that nitrogen application  
21 can be adjusted so that there's no impact to receiving  
22 water within our region?

23           MR. HARD: I'm going to answer this based on what  
24 the science would tell us. If 52 crops are evaluated  
25 based upon their nitrogen uptake values, we will then

1 have a baseline by which this body can then probably  
2 regulate and dictate to meet our quorum. How are we  
3 going to meet that water quality standards. You can't do  
4 it without standing what those values are.

5 MR. YOUNG: So you're saying at this point you  
6 don't know because the science hasn't been done whether  
7 or not in making any modification to application rates is  
8 going to result in improvements to water quality.

9 MR. HARD: We do not know currently, based upon  
10 what this regulation -- regulation is asking in all the  
11 tiers, based on all the crops within those tiers how we  
12 would use a management practice that would efficaciously  
13 cost effectively meet the water quality standards. We  
14 don't have that.

15 MR. YOUNG: Okay.

16 MR. HARD: Given that timeline that you've asked  
17 growers to meet this, 2014, it takes two to three years  
18 just to evaluate two crops to determine nitrogen uptake  
19 values. So extrapolating that out is not 2014.

20 MR. YOUNG: Does the Secretary have a position  
21 with respect to sampling the groundwater for nitrate?

22 MR. HARD: The Secretary believes that monitoring  
23 of any sort is necessary in any sweep of options. A  
24 portfolio approach is needed.

25 She has been working with the Governor's

1 office as was the Secretary to address these issues. And  
2 you will be hearing shortly some of our other  
3 suggestions.

4 MR. YOUNG: Okay. But I just want to narrow it  
5 down to that one particular item. Does the Secretary  
6 have a position with respect to requiring farmers to test  
7 groundwater for nitrate?

8 MR. HARD: No.

9 MR. YOUNG: Okay. Does the Secretary have a  
10 position with respect to the toxicity sampling that's  
11 being proposed by the staff?

12 MR. HARD: No.

13 MR. YOUNG: Does the Secretary have a position  
14 with respect to whether certain aspects of what staff is  
15 proposing should be done on a voluntary basis versus a  
16 mandatory regulatory basis?

17 MR. HARD: That distinction has not come up. Our  
18 sole interest here is the fact that the regulation as  
19 currently drafted is lacking scientific analysis for a  
20 foundation that makes the regulation effective. All of  
21 those questions you aforementioned won't come into play  
22 until we demonstrated the science is valid.

23 MR. YOUNG: And are you referring to the science  
24 with respect to --

25 MR. HARD: Nutrient uptake analysis in order to

1 establish a nitrate balance.

2 MR. YOUNG: Okay. Thank you for your comments.

3 MR. HARD: Sure.

4 MR. JEFFRIES: You talked about the 52 crops that  
5 are grown and the uptake for the nitrogen value and so  
6 forth, isn't the other part of equation the soil types as  
7 well?

8 MR. HARD: Exactly. The soil variation, the  
9 climate variability throughout this region, and the  
10 various types of crops and their approximation to whether  
11 it's a stream of impairment, all of that factors in. And  
12 these all came out lumped in together. The integrated  
13 approach which heretofore has not occurred. And we are  
14 only coming at it from the angle that we do have  
15 jurisdictional purview over evaluation of regulations  
16 that are promulgated by regulatory bodies and state  
17 government. And part of the issue here is the science.  
18 Pardon me, the science hasn't been done.

19 So what we're asking here is together, our  
20 department as well as the Regional Board and the State  
21 Water Board, essentially federal agencies, such as NRCS,  
22 specifically the RCDs, the UC, SCU get together to figure  
23 out how we're going to solve this Because it's not going  
24 to be done by this Board.

25 You have -- having worked with the Central

1 Valley Regional Water Quality Control Board on their  
2 program before, working with Francis. We have engineers.  
3 We have scientists, and we have geologists. These are  
4 not agronomists.

5 I'm not going after staff. I appreciate what  
6 we've been able to do in crops and regions, but  
7 agronomics is not coming into this process anywhere.

8 MR. JEFFRIES: One more question. Has your agency  
9 taken a position on buffer corridors?

10 MR. HARD: Yes, we have. We believe they are  
11 excessive. We made those comments on May 12, 2010.

12 MR. JEFFRIES: Can you elaborate on the excessive?

13 MR. HARD: Well, I think the issue here is that  
14 when we ask -- this all gets down to, again, buffer  
15 corridors related to science. If we understand what the  
16 crop is doing, those buffer corridors may or may not be  
17 necessary. Okay. You need to back it out in various  
18 scales.

19 As on the face of it, without looking at the  
20 science, buffer corridors have the potential to take land  
21 out of production, which in all intents and purposes, is  
22 dictating what a grower can or cannot do.

23 Our whole objective here is to ensure a  
24 balance between the environment, what growers are being  
25 asked to do. We speak for agriculture in addition to

1 balancing what the public needs and what the environment  
2 needs.

3 On its face, without evaluating the science  
4 depending on what those crops are, buffers seem to be a  
5 stretch in the context of there's a potential there. If  
6 you read the legal fine print that we are taking of that  
7 property.

8 MR. JEFFRIES: Your analysis of sediment control  
9 by the use of buffer zones, have you analyzed that?

10 MR. HARD: We, through the Speciality Crop Block  
11 Grant Program, California Food and Agriculture, which is  
12 the USDA money in collaboration with the State Water  
13 Board funding projects, vegetation, but we have a direct  
14 conflict with the food safety. Those measures have been  
15 asked to remove those buffers in various areas.

16 So, here you have a fiduciary responsible and  
17 at the same time you have a food safety conflict. That  
18 says, well wait a minute, okay, these buffers are posing  
19 a threat to public health. It's a double edge sword.  
20 The buffers are providing a food safety because we're  
21 trying to reduce the sediment going into water quality.

22 MR. JEFFRIES: At the March meeting I asked the  
23 question about the buffer zone and the conflict between  
24 the food safety agencies and this agency. And if I  
25 remember correctly, the comment came back from our staff



1 that there is no food safety regulations on buffer zones.  
2 Is that correct or not correct?

3 MR. HARD: We have a leafy green marketing  
4 agreement. I'm not an expert, I admit, on that  
5 agreement. I do not believe -- if there's anybody in the  
6 audience that knows that document better than I. There  
7 is no stipulation that I'm aware of relative to buffers,  
8 specifically.

9 Anyone else want to --

10 MR. JEFFRIES: I'm sure somebody else will address  
11 that.

12 MR. HARD: This is a public process.

13 MR. JEFFRIES: Hopefully.

14 MR. YOUNG: Thank you.

15 Mr. Hodgkin.

16 MR. HODGIN: The scientific evaluation of the 52  
17 crops --

18 MR. HARD: Yes.

19 MR. JEFFRIES: Is your department prepared to have  
20 that evaluation done?

21 MR. HARD: We have been prepared for 21 years to  
22 select six to eight projects on an annual bases, either  
23 individually or all in one sum. We have a half million  
24 dollars each year that we use. Our priorities are based  
25 out of the State Water Board 1990 Evaluation of Nitrate

1 of the Groundwater, that's been our mandate. Food Ag  
2 Code 1411 Subsection B allows us to do this sort of  
3 research on the basic facts. We do not do this alone. I  
4 would be foolish to stand here and say we're here with  
5 all the capability to do it. This is not a sustainable  
6 way for one agency to run it alone, nor a sustainable way  
7 for a regulatory body, such as yourselves, to run it  
8 alone. We have to do this in collaborative ways.

9 So, getting back and saying, well, how have we  
10 engaged UC to date? We have been doing this for  
11 21 years. Part of the question now is how does the  
12 Regional Board want to participate and help this process  
13 move forward.

14 MR. HODGIN: Just like this has been a long term  
15 process. We only have evaluations for two, and I think  
16 you're questioning the scientific value of those  
17 evaluations.

18 MR. HARD: Yes. Prior to me coming here, and I'm  
19 not going to mention names, but I did speak with  
20 University of California Anne Oren, (phonetic), and that  
21 is a problem that they have identified. And we don't  
22 even have a nitrogen balance in this region. That would  
23 be the goal of the ad hoc committee that was established  
24 in 1990.

25 Things, you know, we need sort of a way to go

1 from point A to point B. But life is a curve, and we  
2 have to stay on topic. And we kind of deviated from  
3 that, collectively, we can't do it alone, and nor can  
4 you. So we need to collectively put our heads together  
5 and figure out how we're going to solve this.

6 MR. YOUNG: All right. I have for you, it has to  
7 do with the Nutrient Management Plan. Staff is  
8 proposing --

9 MR. HARD: Irrigation Nutrient Management Plan?

10 MR. YOUNG: Yeah, the nutrient one. Any reaction  
11 to that, automatically using that?

12 MR. HARD: Right. I mean, having, you know, we  
13 worked with the Central Valley Board on the dairy  
14 program, they have a very similar sort of program in  
15 place, that is a perfect vehicle, but you're asking to  
16 put practices in place, but we don't know whether they  
17 work. And you, as a body, cannot prescribe practices.  
18 That's against -- the Board, the Water Board, but to have  
19 an option to figure out what practices are going to be  
20 beneficial for growers using that plan, how would they  
21 get there? They can't get there without understanding  
22 what that particular crop they're growing is and how to  
23 respond to the nitrogen they're using. That's the  
24 baseline.

25 MR. YOUNG: What practices are you thinking are

1 being mandated as part of nutrient management program.

2 MR. HARD: No practice is being mandated. What  
3 I'm saying is there's the option to use practices through  
4 that plan in irrigation water. And those practices may  
5 or may not be beneficial because we don't have the  
6 nutrient uptake values for those crops that those  
7 particular growers, wherever they may fit in this region,  
8 would be utilized.

9 So, we're kind of like, well, if we do this  
10 practice or find a practice through consultants growers  
11 may or may not hire, that practice, what's the science  
12 behind it? We don't even know the 52 crops in the  
13 region, how they -- how those individual crops are going  
14 to react to nitrogen uptake. It's putting the cart  
15 before the horse.

16 And what we're saying is, to step back for a  
17 second, if you have the propensity to regulate you're  
18 going to have to do it in such a way that -- this is the  
19 devil's advocate problem here -- if you say the worse  
20 crops are in Tier 3 or in Tier 2, you mean to tell me  
21 that you're not going to regulate Tier 2 and Tier 3 to a  
22 science? The same problem that this department is trying  
23 to figure out. This is a science and policy problem.  
24 Okay? And nobody is good at that. You can't merge the  
25 two. This is exactly the problem we're facing here.

1                   We have a policy department, we have  
2 regulation, but yet we don't have the science. What do  
3 we do?

4                   Let me just tell you that one of the points  
5 that our goal here is to integrate science with policy in  
6 the department. Of course, all these issues whether in  
7 the Central Valley or Central Coast try to communicate  
8 constructively, encourage collaboration, identify process  
9 improvement. These comments are about process  
10 improvements.

11                  MR. YOUNG: Thank you for your comments.

12                  Dr. Hunter.

13                  MS. HUNTER: Thank you.

14                   One of the things that I'm most interested in  
15 is in working with the several agencies. You've probably  
16 heard me speak before on the importance of coordination  
17 with agencies. But at the same time I'm really struck by  
18 the fact that since the late Eighties and into the early  
19 Nineties, the agencies that have had jurisdiction over  
20 nitrate in particular, in use of fertilizers, have in  
21 some areas no impact on reducing the problem.

22                   And today I hear you saying that there is no  
23 science. And why is there is no science formally  
24 outlining what the issues are and how the problems can be  
25 resolved? But you're also suggesting that farmers don't

1 understand their own crops and they don't understand the  
2 application of fertilizers. I mean that's what I'm  
3 hearing you say.

4 MR. HARD: Please don't distort my comments.

5 DR. HUNTER: Well, this is what it boils down to.  
6 When you come to the Board and you say within 21 years we  
7 have no idea what best practices are for nitrogen.

8 MR. HARD: When it comes to these 52 crops, we do  
9 not.

10 DR. HUNTER: That doesn't compute. That doesn't  
11 compute.

12 MR. HARD: Statewide is our jurisdiction for  
13 evaluating research on nitrogen going to groundwater.

14 DR. HUNTER: Well, what we know is the data is  
15 showing that in certain places in Salinas -- or Salinas  
16 is one of those areas, nitrogen is increasing, and it's  
17 showing in water. So, what we have to do is consider  
18 what tools we have, what options we have.

19 But I'm very disappointed to hear you say  
20 that we have no science to support that. After all the  
21 effort that farmers did, and that farmers also don't  
22 understand how to do this application. They have been  
23 part of that process as have Monterey County. So --

24 MR. HARD: Farmers do know how to do their job.  
25 The issue is in regulation that is prescriptive in nature

1 basically tells them that they have to do plantings, but  
2 if you carefully look at the plant, how could one  
3 scientifically objectively look at this and say, wait a  
4 minute, Tier 2 and Tier 3, these are the most sensitive  
5 areas we're going to target. That's fine, but when you  
6 look at how those crops respond to granulated or liquid  
7 fertilize application, we don't know, on a baseline, we  
8 don't know. So why would you, as a regulatory body, from  
9 our perspective, we're saying wait a minute --

10 DR. HUNTER: But you're not -- well, I've made my  
11 comments. We're not prescribing practices, we're asking  
12 the farmers and they've come up with a number of -- quite  
13 a number. We have seen improvements in some places. So  
14 I think we have learned. So, I just wanted to be sure I  
15 understood your remarks today.

16 Thank you.

17 MR. YOUNG: Thank you, Mr. Hard.

18 MR. HARD: The Department will be in touch with  
19 the Chair and the State Water Board for consultation.  
20 And part of my presence here today is to inform you that  
21 we are taking this extremely seriously. And the horse we  
22 have in this race is about the way in which the  
23 unsustainable nature of this regulatory approach is to  
24 date because there's no solid nitrogen uptake evaluation  
25 that has been done. And essentially you're asking her to

1 perform.

2 We're working in the best interests of  
3 agriculture. We can't have a bunch of individual  
4 analysis coming out for various crops. It has to be  
5 consistent. It will only help your process, and it will  
6 only help agriculture. If you have a bunch of  
7 individuals analyses for various crops is not going to be  
8 beneficial to agriculture or the environment.

9 MR. YOUNG: Well, the troubling part about what  
10 you're telling us is that we're not going to have the  
11 science for years and years and years. This is the one  
12 agency in the State of California mandated for protection  
13 of water quality and all beneficial uses.

14 We didn't create this job for ourselves, the  
15 legislature did. The buck stops here in terms of making  
16 the decision as to whether we follow the law and apply  
17 the water quality standards.

18 So, I mean, this is a very contentious issue.  
19 There's a lot of competing factors. It may be that  
20 whatever form this Order gets passed, it may be the  
21 impetus for your agency and other agencies to come  
22 together and try to get this figured out. But, you know,  
23 we've heard about the Fish and Game having some, you  
24 know, having regulatory power with the riparian  
25 corridors, DPR has regulatory power. We're looking at



1 the data that shows impasse. So we're trying our best to  
2 try to find a way to get to getting them resolved. So --

3 MR. HARD: We just want to make sure that this  
4 agency knows this is more than just the regulatory and  
5 executive branch problem. This is water management and  
6 water quality issue. And you have water quality  
7 jurisdiction. There is no other alternative. Not on  
8 surface water.

9 MR. YOUNG: I understand. Okay.

10 Thank you for your comments.

11 We're going to take a break and return at 1:00.

12 Okay. Thank you.

13

14 (Lunch break taken.)

15

16 MR. YOUNG: Okay. Next speaker is Don  
17 Hoernschemeyer, then Bridget Hoover, then Nancy Isakson.

18 Oh, yes.

19 Is there anybody in the audience that -- and  
20 I don't know if you've seen the list -- but it's all  
21 alphabetized. I have a request who's name begins with  
22 "Z" to speak out of order because he needs to be  
23 somewhere by 1:30 or 2.

24 So if there's anybody that feels that they're  
25 got going to have time, if they wait to get their

1 comments in, I'll consider taking you out of order at  
2 this time.

3 Okay. Why don't you come forward.

4 MS. AKIN: I am reading the letter from Dr. Don  
5 Hoernschemeyer. I believe you have the spelling over  
6 there. My name is Pricilla Akin of the -- anyway, I'm  
7 from the Local Unitarian Universalist Congregation.

8 Dr. Hoernschemeyer is from the Aktos  
9 Congregation and was not able to get down here.

10 MR. YOUNG: Can you spell the name or do you have  
11 the letter?

12 Okay.

13 MS. AKIN: Members of the Central Coast Regional  
14 Board, as a concerned citizen writer on the health  
15 hazards from water pollution and as a citizen concerned  
16 with the health of every person, and especially children,  
17 and the health of sea otters and marine mammals in our  
18 area, I want to urge you to institute effective  
19 regulation of hazardous run-off from agricultural fields.

20 Many farmers want to take action to minimize  
21 run-off of fertilizers and pesticides from their fields,  
22 and that is commendable, however, history has shown  
23 self-regulation is very slow and usually not effective.

24 Pollution regulations with clear enforcement  
25 actions are required to protect the health of our rivers,

1 oceans and aquifers and, ultimately, the health of the  
2 people.

3 Of course, the regulations must be feasible  
4 and reasonable. The proper role of the farmers of the  
5 area is to speak to these issues. I urge you to enact  
6 regulations that address every water pollutant known to  
7 occur in the Salinas Valley. This should certainly  
8 include toxic pesticides such as Chlorophenol and  
9 Indoprofen, which are being banned in Europe. And the  
10 fungicide and carcinogen Captan of which 300,000 pounds  
11 were applied to crops in this region in 2009.

12 Thank you for your consideration. Don  
13 Hoernschemeyer.

14 MR. BRIGGS: Ma'am, I realize she's got Don's  
15 name, but I don't know if she's got your name.

16 MS. AKIN: Priscilla Akin. Last name spelled  
17 A-K-I-N.

18 MR. BRIGGS: Thank you.

19 MR. YOUNG: Thank you.

20 Sir, come forward, and you must be at the  
21 bottom of my card list.

22 MR. ZELINSKI: Yes.

23 MR. YOUNG: You're Dr. Lowell Zelinski?

24 MR. ZELINSKI: Yes.

25 MR. YOUNG: Okay. Go ahead.

1           MR. ZELINSKI: Dr. Lowell Zelinski,  
2 Z-E-L-I-N-S-K-I. And I have a Ph.D in soil plant and  
3 water relation from the University of California Davis.  
4 And I am a member of the San Luis Obispo County Water  
5 Resources Advisory Committee as well as owning a small  
6 company that does irrigation and fertility consulting in  
7 both Monterey County and in Paso Robles.

8           I want to commend the staff for responding a  
9 to a lot of questions I had submitted in the past and  
10 they did clarify a number of issues that I had. There  
11 are still some other ones. But what I am most concerned  
12 about is the nitrogen use sufficiency requirements, you  
13 can only put on, though, the ratio of one pound of N for  
14 part of N removed.

15           Part of my Ph.D dissertation was looking at  
16 nitrate uptake sufficiency of cotton, and we use labelled  
17 nitrogen so we could track how much was taken up. The  
18 best we could ever do was recover 50 percent of the  
19 nitrogen we applied in the whole plant that we analyzed.  
20 So there's -- a number of speakers have spoken about this  
21 about how it would be difficult to obtain that one-to-one  
22 relationship, and I think it's impossible without  
23 suffering yield losses. The plants are not just that  
24 sufficient in taking up nitrogen.

25           Additionally, I wonder -- I'm sure the

1 Board's aware, but I'd like to reiterate, that the  
2 vegetable growers in Salinas Valley plant a number of  
3 crops a number of times a year and in small blocks within  
4 larger fields, and if they're required to prepare a  
5 nutrient budget for each one of those plantings, there  
6 would be potentially tens of thousands of nutrient  
7 budgets that need to be submitted. They'll go by a  
8 3-acre block of lettuce and then two weeks later they'll  
9 find another 3 acre block, and two weeks later they'll  
10 find another 3 acre block. So I just wanted to make sure  
11 that that was clear.

12 One other thing I want to mention is that one  
13 of the questions I did submit to staff was does the  
14 incidence of methemoglobin anemia in Monterey County  
15 support the contention that a lot of people are drinking  
16 high nitrate water. And the response is, no, it does  
17 not.

18 That's all my comments. Thank you.

19 MR. YOUNG: So, just a followup question for you.  
20 So, what you're saying is that you have to over-fertilize  
21 because at least with your experience with cotton it's  
22 not very efficient in taking up nitrogen.

23 MR. ZELINSKI: Right.

24 MR. YOUNG: And the only way you can get that  
25 50 percent into it is with an over-application.

1           MR. ZELINSKI: Yes, because the fate of nitrogen,  
2 where it goes, it isn't always taken up by the plant. So  
3 it volatilizes into the atmosphere of ammonia gas, or  
4 other things, or urea. So there's a lot of other synchs,  
5 or ways the nitrogen can leave the system.

6           And I say that it's complex. If you make the  
7 nitrogen fertilizer requirement equal to the amount of  
8 nitrogen removed, have you considered the amount of  
9 nitrogen in the water that was being applied with the  
10 irrigation.

11           Additionally, you can -- if you put on  
12 50 pounds of nitrogen, you can pollute more with that 50  
13 pound addition, than with a 200-pound addition depending  
14 on the timing and the method of application.

15           So I think it's not as simple as you would  
16 think of just putting on what the crop needs. There's  
17 much more to nitrogen management than that.

18           MR. YOUNG: Okay. Thank you for your comments.

19           Nancy Isakson, and then Christine Khan.

20           MS. ISAKSON: I prepared a power point.

21           Nancy Isakson, I-S-A-K-S-O-N, and I'm here as  
22 President of Salinas Valley Water Coalition.

23           And I had compared a power point for you. I  
24 just want to summarize some things for you.

25           Salinas Valley Water Coalition is a not for

1 profit organization comprised of agricultural landowners,  
2 farmers, businesses within the Salinas Valley. Our  
3 mission statement includes the statement, the management  
4 of the Salinas River Basin should be based on a  
5 scientific basis, comply with all laws and regulations  
6 and promote the accountability of governing agencies.  
7 And that's how we operated for 20 years and we continue  
8 to operate.

9           Based on that we retain the services of a law  
10 firm, Haram, Lloyd, Carpauli and we also retained the  
11 services of a hydrologist who our Chair will speak to  
12 later.

13           We -- I want to address the legal issues, and  
14 again, I'm just going to summarize, but we believe that  
15 the proposed order oversteps the boundaries of the  
16 legislative authority granted to you and imposes a  
17 duplicate set of regulations, violates the equal  
18 protection clauses of the United States and California  
19 Constitution and fails to protect farmers' proprietary  
20 rights.

21           For these reasons and, really, it tracks with  
22 what Mr. Hard said earlier, The Water Coalition requests  
23 that the Board rejected the proposed order. We think you  
24 need to step back and start over.

25           So, moving -- I apologize. Move through --

1 we believe the Order oversteps the limited authority  
2 granted to you through the California Water Code and that  
3 jurisdiction to implement and enforce some of these  
4 regulations have actually been granted to the Monterey  
5 County Water Resource Agency.

6 I'm sorry, I see this is going through time.

7 I'm going to summarize this. That specific  
8 to nitrate concerns the Monterey County Health Department  
9 and Monterey County Resource Agency have programs in  
10 place to address the nitrate in the groundwater. They've  
11 done this for years. And we ask that you let the local  
12 agencies work with the local solutions.

13 Again, we believe that the Order provides a  
14 duplicative layer and oversteps your authority, and we  
15 think we do need to step back, and I hate to say start  
16 over, but we need to look at, as Mr. Hard said, what is  
17 the problem and how do we best address the solutions.

18 Again, our Chair, Mr. Roberts, who will  
19 address from a hydrologic point because we believe that  
20 that's what you need to do.

21 Thank you.

22 MR. YOUNG: Thank you for your comments.

23 Miss Isakson, I have a few questions for you.  
24 Does the Monterey County Water Agency have any program to  
25 address nitrate in the groundwater?



1 MS. ISAKSON: I believe they do. I thought I  
2 heard Curtis Weekes address this Board, not in March, but  
3 the time before in Watsonville, and I thought he had  
4 discussed that specifically. I know they do -- they have  
5 a committee, I'm not part of that water committee, but  
6 there may be some people here in the room that are, but  
7 Kathy Thomasberg was the water agency that oversees that  
8 as a staff person.

9 MR. YOUNG: But other than what you heard  
10 Mr. Weekes say I think it was up in Watsonville, and I  
11 don't think it was this last March.

12 MS. ISAKSON: No. He was the time before.

13 MR. YOUNG: In July, probably, 2010. Are you  
14 aware of anything other than his comments that he made?

15 MS. ISAKSON: Oh, I know that there have been  
16 programs. I mean --

17 MR. YOUNG: The Monterey --

18 MS. ISAKSON: I couldn't tell you what the  
19 specifics are, but I personally have monitored the water  
20 agency, the Water Resource Agency activity. I know that  
21 they do have programs. I couldn't tell you,  
22 specifically, what they are.

23 MR. YOUNG: Okay. But these are programs for  
24 nitrate?

25 MS. ISAKSON: Yes. And they have groundwater

1 monitoring system in place to monitor that nitrate.

2 MR. YOUNG: I'm aware of all the data they  
3 produce, but I wasn't aware that they had a program to  
4 address the nitrate.

5 MS. ISAKSON: It's my understanding that they do  
6 have a program. They work with the growers, there's a  
7 Adrain (phonetic) Committee.

8 MR. YOUNG: Do you know if the program has been  
9 successful?

10 MS. ISAKSON: I believe that it has shown certain  
11 trends to reducing nitrates, yes.

12 MR. YOUNG: Okay.

13 MS. ISAKSON: In the groundwater.

14 MR. YOUNG: All right. Thank you for your  
15 comments.

16 MS. ISAKSON: Sorry. Thank you.

17 MR. YOUNG: Christine Kemp, followed by Kerry  
18 Lobel, and then Marc Los Huertos.

19 MS. KEMP: Good afternoon members of the Board.  
20 My name is Christine Kemp, K-E-M-P. I'm an attorney with  
21 the law firm of Mullen, Hamily, Khan and Hoff in Salinas.  
22 We represent several agricultural, many agricultural  
23 clients and I'm here to speak on their behalf.

24 I wanted to address two specific issues, in  
25 particular related to the one size fits all nature of the

1 waiver. And with respect to the hundred -- within a  
2 hundred feet of surface water and/or adjacent to surface  
3 water that definition needs to be clarified because you  
4 have agricultural fields that may be adjacent to  
5 surface water within a hundred feet, a thousand feet, but  
6 it doesn't account for levies, which we saw driving down  
7 today, you have a levy, you have an agricultural field,  
8 the water is not running into the water body, but they're  
9 still subject to the tiering criteria.

10 You also have leveling of agricultural  
11 fields, laser leveling where the drainage may be away  
12 from the water body, but again, those requirements are  
13 not being taken into consideration.

14 An adjunct to that is the requirement of  
15 buffers. This is problematic for many reasons, and you  
16 heard some of that today. It removes agricultural land  
17 from production, and for some small farms that could be a  
18 significant loss of their productivity in the ability to  
19 farm their land. It does conflict with the safety  
20 regulations -- not necessarily regulations, but the  
21 agreement, the Leafy Green Ag Agreement that if it's been  
22 put in place, and those are self-regulated agreements  
23 amongst the farmers to address the problem that arose out  
24 of the spinach and the Ecoli problem. And federal  
25 legislation may be coming to implement those. So these

1 are self-imposed regulations that the farmers are  
2 attempting to deal with a problem which arose and are  
3 regulating it. So if you require buffers and then they  
4 can't have buffers because other folks don't want it, you  
5 have a conflict.

6 And there are other ways, proven ways, to  
7 reduce the run-off sediment and pesticide levels using  
8 the folocating agents and the degraded enzymes, and those  
9 alternatives ought to be put in place as well just  
10 requiring standard buffers.

11 So we're asking that alternative methods that  
12 are an important component with the irrigation methods,  
13 and those alternative methods need to be permitted under  
14 the waiver.

15 Thank you.

16 MR. YOUNG: Thank for your comments.

17 Kerry Lobel.

18 MS. BHATNAGAR: I'm here to read a statement on  
19 her behalf.

20 MR. YOUNG: Your name.

21 MS. BHATNAGAR: My name is Christie Bhatnagar.  
22 Last name is, B-H-A-T-N-A-G-A-R.

23 MR. YOUNG: And your reading this for which  
24 organization?

25 MS. BHATNAGAR: For Puente De La Costa Sul. And

1 the person is Kerry Lobel. She's the Executive Director.  
2 She submitted a letter for the members.

3 "Dear Members of the Central Coast Regional Water  
4 Quality Control Board.

5 Thank you for the opportunity to present  
6 written remarks. I regret that I'm unable to join you in  
7 San Luis Obispo today.

8 I write today on behalf of Puente De La Costa  
9 Sul. Puente is a ten-year old 501C3 non-profit  
10 organization. It's mission is to provide vital services  
11 for men and women and children and families living in  
12 rural San Mateo South Coast communities of Pescadero, La  
13 Honda, Lomamal and San Gregorio.

14 Puente region residents on the South Coast of  
15 San Mateo County, the most rural areas in the greater Bay  
16 Area or Puente service area, it covers about 160 mostly  
17 undeveloped square miles, including the unincorporated  
18 areas of Pescadero, San Gregorio, La Honda and Lomamal.  
19 The four communities have no dental or medical providers  
20 pharmacies, laundromats, department or hardware stores,  
21 libraries or supermarkets.

22 Members of this Board are no strangers to the  
23 challenges that nitrate in water have brought to our  
24 communities. Last spring problems at Marche Farms came  
25 to public attention when water tests revealed the

1 presence of nitrates at six times the federal limit.

2 Residents at the farm had been drinking  
3 bottled water at their own cost for more than a decade.  
4 And health inspection reports had cited problems dating  
5 from at least 2004.

6 A likely source of the nitrate contamination  
7 was fertilizer application adjacent to the well.

8 Many residents of our region live in shared  
9 housing adjacent to fields that are in production for  
10 food or flowers. Because our community has no health  
11 care it is impossible for us to measure the health  
12 burdens that may be placed on babies, infants and the  
13 elderly from nitric contamination. However, we find the  
14 health data troubling.

15 Nearly all of us in our community rely on  
16 wells for water for our drinking, cooking and bathing.  
17 We also rely on agriculture and flower culture to sustain  
18 our rural community. Certainly clean water and  
19 agriculture can live side by side.

20 Kerry Lobel, Executive Director."

21 MR. YOUNG: Thank very much for your comments.

22 Okay.

23 MR. LOS HUERTOS: Marc Los Huertos.

24 MR. YOUNG: Okay. Arrienne Martin and then Mibs  
25 McCarthy.

1 MR. LOS HUERTOS: L-O-S H-U-E-R-T-O-S.

2 MR. YOUNG: Go ahead.

3 MR. LOS HUERTOS: I'm a faculty member at Cal  
4 State Monterey Bay. I've been working on water quality  
5 issues and farming for over 15 years, mostly on nitrogen  
6 biochemistry issues, groundwater service, water  
7 contamination as well as pest management practices.

8 And so there's a couple of comments I want to  
9 make. Unfortunately, doesn't have time to boil all my  
10 ideas down into something that lasts only three minutes,  
11 but I'll do my best here.

12 One of the issues that I want to raise is  
13 that, in general, I found that the tiering system does  
14 not relate to water quality risks. And I thought this is  
15 ironic because in Watsonville, both environmental and  
16 farming communities felt that the tiering system wasn't  
17 related to risk.

18 And let me just put it -- back up a little  
19 bit. On a lot of what I've read in mostly national and  
20 international papers on water quality resolution there's  
21 generally a correlation between land use and management  
22 practices and water quality. The problem is when you  
23 apply it to a farming community the correlation then  
24 turns into an assumed causation.

25 And just to highlight this in statistical

1 terms. I don't want to belabor this, but the correlation  
2 of .6, which is really good in sort of environmental  
3 sciences, turns into a R square of .36, which translates  
4 to 36 percent of the variant covered by that correlative  
5 relationship, but that means 64 percent is not related.  
6 And so, in theory with a very good R statistic of .6 you  
7 could be misapplying the mechanisms of water quality  
8 impairment up to 74 percent of the population.

9 I hope that makes sense.

10 So, I also did a lot of research on  
11 vegetative buffer strips for my dissertation, and I found  
12 that vegetative buffer strips actually are very  
13 problematic in California because of the Mediterranean  
14 climate. In particular, we don't have a good  
15 biogeochemical contents to remove the nitrogen using  
16 genetic rotation in the Mediterranean climate because of  
17 the dry season from Marchish until November. So applying  
18 the vegetative buffer strips, wholesale, as a potential  
19 best management practice to remove nitrate, and I'm just  
20 speaking for nitrate, is I would say a misapplication of  
21 that best management practice.

22 And the last thing I just want to say is that  
23 I, on some level, feel like the mechanism of pollution  
24 generally takes place through a watershed or water  
25 source. And I didn't see an explicit linkage to the



1 mechanisms or water impairment through the Ag Waiver  
2 through watershed processes. And that's the one thing I  
3 have to admit I like about the Ag Proposal is that it  
4 does address at least potential address of --

5 MR. YOUNG: Finish your sentence.

6 MR. LOS HUERTOS: So that the linkage in the Ag  
7 Proposal to watersheds in allowing watersheds working  
8 groups to be able to develop monitoring plans within the  
9 watershed is very attractive because it allows watershed  
10 groups to set standards and set targets and potentially  
11 set targets in with response and with approval to the  
12 Board so that the people on the ground can make  
13 appropriate timelines and targets.

14 So I know in San Juan Valley Maryellen Dick  
15 has worked very hard with those harvest growers; they  
16 have a very good idea with -- oh, I'm sorry.

17 Thank you.

18 MR. YOUNG: That was a creative run-on sentence.

19 MR. JEFFRIES: I'd like -- you started addressing  
20 San Juan Valley, I'd like to hear the rest of that.  
21 There's some real critical issues in the San Juan Valley.

22 MR. LOS HUERTOS: It's hard to ignore the red  
23 light on me.

24 But San Juan Valley is very problematic.  
25 It's on the east side of the valley, relatively well

1 drained soils, on the west side, very poorly drained  
2 soil. The poorly drained soils have a high percentage of  
3 tile drains. Those tile drains and the relatively high  
4 water table, an increasing water table, has very high  
5 nitric concentrations, not just in the tiles, but in the  
6 surface water.

7                   So I've been monitoring San Juan Creek for  
8 almost ten years and the concentrations are generally in  
9 the 40 to 50s, sometimes 60s, part per million. And to  
10 address that and the nitrate issues on the San Juan  
11 Valley are a little bit odd because you don't think of  
12 that part of the county as a high Ag area. As it turns  
13 out San Juan has the highest yields of the Central Coast  
14 of Monterey for decades. So it's very interesting here,  
15 it's a perfect microclimate. Unfortunately, they have  
16 imported water. The imported water has raised the water  
17 table. Raising the water table has forced growers to  
18 increase the tile drainage. Their aquifer is relatively  
19 salty, so they can't even use their aquifer water. So  
20 they're creating a system where they've got too much  
21 water, a lot of nitrate because of the high production  
22 value crops that they're using.

23                   And to turn back to Maryellen Dick.  
24 Maryellen Dick has been working with these growers very,  
25 very successfully to start installing best management

1 practices.

2           So, for example, I work with a grower testing  
3 vegetative buffer zones -- not that -- treatment of  
4 wetlands to remove the nitrate using basically plants and  
5 microbial processes to remove the nitrate in pilot  
6 projects right now, and to tell you the truth we haven't  
7 gotten it figured out because we got so much water moving  
8 through these systems that we can reduce the nitrate 1,  
9 or 2 or 3 parts per million, but when you're starting the  
10 40 or 50 parts per million, which aren't even that  
11 growers -- nitrate, it's going to take a long time for us  
12 to figure how to fix that issue.

13           But the nice thing is that now we have on the  
14 ground experience with those growers we have watershed  
15 coordinators as well as depth in dealing with these  
16 growers and we can come up with targets and say ends are  
17 our monitoring stations and growers can up with a  
18 watershed group to monitor a whole bunch of  
19 sub-watersheds, substations for growers and then be able  
20 to use that data to modify individual monitoring  
21 practices that would show up on a CMP site probably in  
22 two, three, five to ten years.

23           I would say that CMP sites were designed to  
24 see the long term trends. So I'm not surprised -- I  
25 actually helped design this -- the monitoring plans for

1 the CMPs, I was not expecting to see changes in the CMP  
2 site for at least five to ten years.

3 MR. JEFFRIES: Thank you.

4 MR. YOUNG: Dr. Hunter.

5 DR. HUNTER: So, the work that you've been  
6 involved with and in a lot of the cooperative work going  
7 on between farm communities and scientists and some of  
8 the technical assistance available, do you think that  
9 under the Ag Order we would be able to see the continued  
10 kind of collaboration on developing CMP, because the  
11 programs are not intended to be prescriptive, so why  
12 would we not see that continued level of effort and  
13 support from the RCUs, funding from RCS, et cetera. I  
14 just want to know where that linkage gets broken.

15 MR. LOS HUERTOS: Yeah. I hope that I didn't say  
16 that that linkage was automatically broken. I have seen  
17 some breakdowns in the linkage. Not as part of this  
18 Board at all, but the Department of Financial Assistance.  
19 Is that what that was? Have come up with some fairly  
20 strict rules on reporting requirements when we get state  
21 funding from the Water Board which has made it very --  
22 what's a word for it? Hesitant for growers to  
23 participate in at least state water funded cooperative  
24 process. A lot of that money goes through the RCD or  
25 Cal State Monterey or even UC, University of California,

1 So it's been very hard for us to get growers to cooperate  
2 knowing that data is going to be reported into a public  
3 entity. And then, potentially, in three to five years  
4 someone turns around and starts suing them for water  
5 quality impairment that they're actually trying to fix.  
6 That's part of it.

7 So that's part of it. The other part of it  
8 is that it's not clear and I don't -- I think your staff  
9 has done a very, a lot of effort and a very good job  
10 trying to come up with approaches on -- on, frankly,  
11 something that no state, no national agency, no water  
12 protection agency has done.

13 I actually co-wrote a paper for the Organic  
14 Press along with a Board member, Brian Dodd, on the Ag  
15 Waiver Program, so I'm fairly familiar with what else has  
16 been done around the country.

17 So, the way the Ag Waiver is written if  
18 you're in a Tier 2 or Tier 3 or Tier 1, developing those  
19 management practices has -- cooperating with funding that  
20 might be linking your data to a state water database has  
21 the potential of refining or changing those Tier  
22 criteria, and growers I think would get really nervous if  
23 they're bumped from one tier to another based on the data  
24 that they are collecting based on their cooperation that  
25 they're hoping to improve water quality.

1                   So I think it's a -- I think it's a  
2 frustration that potential cooperation will then come  
3 back and haunt them in three to five or ten years in a  
4 way that they didn't really anticipate. So I think  
5 you're finding growers, at least in terms my case, I have  
6 a Prop 84 Grant and I can't find growers to cooperate at  
7 all because they are scared to death that somehow in  
8 three to five years a new Ag Order will turn around and  
9 that data will get used to -- I don't mean to hunt them  
10 down, but to create a more difficult circumstance they're  
11 already facing.

12                   Does that make sense?

13                   MR. YOUNG: I've got some questions for you.

14                   With respect to the first part of what you  
15 were telling us about, the risk factors in tiering.  
16 You're familiar then with all the risk factors that staff  
17 has used in creating tiers. Do you feel that any of  
18 those risk factors are inappropriate?

19                   MR. LOS HUERTOS: Yes.

20                   MR. YOUNG: Which ones?

21                   MR. LOS HUERTOS: Well, so, I'm not a risk  
22 analyst, but I taught myself to do risk analysis about  
23 three weeks ago after I started reading the reports.  
24 Some of the things I found that was proximity to a 303  
25 listed body is problematic just in terms landscape

1 processes. So, two speakers ago brought this up, if  
2 you're next to a levy, then you might be next to a 303  
3 listed body, but your water doesn't go through the levy  
4 into that water.

5 So, for example, the Poplar River is polluted  
6 in above Chittenden in San Mateo -- or Santa Cruz, Santa  
7 Clara, and San Mineo County, and meanwhile all the  
8 growers in Poplar Valley that are adjacent to the Poplar  
9 River contributing to the Poplar River, yet they may be  
10 captured within that.

11 I monitor organic farms that are 500 acres  
12 that have tons of nitrate coming off of them, and I  
13 monitor huge farms with no nitrate coming off of them.  
14 And so, again, the size criteria is a little weird for me  
15 because it doesn't link to the impairment issue directly.

16 Does that make sense?

17 MR. YOUNG: Yes, it does.

18 MR. LOS HUERTOS: And then -- I don't know a lot  
19 about pesticides, but let me finish this little train  
20 about that.

21 The other issue is where when I speak to  
22 people about those processes that drive, for example,  
23 groundwater contamination, nitrate contamination, its  
24 soils, it's the geologic formation is what I mean in how  
25 you're connected with the aquifer and things like that,

1 it's irrigation management versus fertility management.  
2 When you -- you can't do anything about where you are,  
3 you can't do anything about the aquifer, you can't do  
4 anything about the aquacludes or the confining layers,  
5 but you can do a lot with the management of the farm in  
6 terms of irrigation and fertility.

7           And currently -- and I'm not going to be a  
8 friend to anybody today -- currently you drive in the  
9 Salinas Valley at night and there are people driving up  
10 and down the valley turning on and off the sprinklers  
11 probably at 10, 12, 14 bucks an hour. And if they can't  
12 make it back in time, the obvious thing is to leave it on  
13 because you don't want to under-irrigate because the  
14 crop would look really bad and no one will do that in the  
15 daytime.

16           So we did some monitoring for the followup  
17 program for the CMP where we put automatic gauges so that  
18 it would measure day and night for basically -- I think  
19 we did like a week or something, I can't remember how  
20 long, but a couple of weeks, and we saw a huge amount of  
21 flow in some watersheds in the middle of the night. They  
22 didn't want to capture the night, of course, so I sent my  
23 staff out to sample it sample at 2 in the afternoon, so I  
24 was missing all these big spikes.

25           So, linking the risk to the practices and



1 behavior would be really appropriate.

2           And what I didn't see in the tier system was  
3 a much more focused educational component. So, for  
4 example, a much more restricted or stringent education  
5 program on certified irrigation managers where we're not  
6 paying someone 12 bucks an hour to drive up and down the  
7 valley, but paying someone 25 bucks an hour to look at  
8 stations to manage the irrigation effectively so that we  
9 really have a well trained cadre of people that really  
10 understand irrigation management in a more sophisticated  
11 way.

12           If you can control irrigation management with  
13 that kind of expertise, then the location kinds of things  
14 become less and less important. And that -- in terms of  
15 risk, that's where I would put my dollars into the  
16 management of people.

17           MR. YOUNG: Well, we have the Irrigation Nutrient  
18 Management Plan as part of Tier 3, are you suggesting  
19 that something like that be put into Tier 2?

20           MR. LOS HUERTOS: I would say that, in general,  
21 growers need to be investing more in having better and  
22 more sophisticated irrigation fertility management, and  
23 it's been something that has been -- what's a nice way of  
24 saying it -- it's not been something high on the list  
25 because there are so many other things that are pulling

1 at agriculture in terms of being able to make enough  
2 money to survive in the valley.

3 So I guess what I would say is instead of  
4 thinking about it in terms of a management plan, but  
5 creating a structure where people would be certified  
6 irrigators through the Water Board and that that would be  
7 sort of the first step so that you have people that are  
8 well trained and required sort of a certification process  
9 because I think that -- to tell you the truth, all these  
10 irrigation management plans, I don't think the Water  
11 Board, the staff is going to be able to deal with all of  
12 that stuff. It would be better to have really well  
13 trained people on the ground knowing what they're doing  
14 and getting paid for what they're doing and having to go  
15 through a fairly rounded certification process.

16 I'm not making sense?

17 MR. YOUNG: Well, you're making sense, I just  
18 wonder if you're going with what's in the plan. Because  
19 it says here that these plans need to be certified by  
20 professional soil scientists, professional agronomists,  
21 or crop advisor certified by the American Society of  
22 Agronomy, or similarly qualified professionals. Wouldn't  
23 they incorporate what you're suggesting?

24 MR. LOS HUERTOS: Yes, it would. I guess what I'm  
25 hesitant to do is to say, therefore, then all these plans

1 need to get submitted to the staff. So --

2 MR. YOUNG: Well, these -- actually, it says here  
3 that this stuff is -- this plan is not submitted to the  
4 Central Coast Water Board with the exception of some key  
5 elements.

6 MR. LOS HUERTOS: Okay. That I --

7 MR. YOUNG: I'm listening to everything in trying  
8 to qualify or figure out what I hear versus what's being  
9 said.

10 MR. LOS HUERTOS: Maybe this is what I'm -- the  
11 distinction I'm trying to make.

12 It would be cool if we had that kind of  
13 people running around within watersheds to kind of link  
14 the grower activities together.

15 Does that make more sense?

16 MR. YOUNG: Yes. I understand.

17 MR. LOS HUERTOS: And then you had a question  
18 about pesticides.

19 MR. YOUNG: Well, the use of the two pesticides  
20 are those reasonable risk factors to use in tiering?

21 MR. LOS HUERTOS: Yeah. I'm not qualified to talk  
22 about pesticides.

23 MR. YOUNG: Thank you.

24 Arrienne Martin, Pricilla Akins.

25 MS. AKIN: Pricilla Akin, A-K-I-N. I'm reading

1 for Mibs McCarthy.

2 Mibs McCarthy is a member of the Unitarian  
3 Universalist Fellowship in Carmel, Monterey Congregation.

4 "To Central Coast Regional Water Board. My name  
5 is Mibs McCarthy and I'm a resident of the Central Coast.  
6 I'm concerned about the nitrate contamination of our  
7 groundwater for environmental, social and economic  
8 justice reasons.

9 Small, poor communities such as San Huerado,  
10 which our residents are paying for this contamination  
11 with their health and also paying for replacement water.  
12 Thousands of other Central Coast residents are in the  
13 same situation. It isn't fair that the cost of treating  
14 or avoiding polluted drinking water should fall on  
15 taxpayers or consumers when the use of fertilizers and  
16 pesticides increases the farmers' profit.

17 It seems to me that every farmer should know  
18 exactly what is in his or her run-off, and should be  
19 responsible to make it safe from contamination. It is  
20 the government's responsibility to regulate industry for  
21 the greater good.

22 The Regional Board has a mandate to protect  
23 water quality for all beneficial uses.

24 I thank the Board for taking up this huge  
25 project to help our Central Coast region.

1           The November 2010 Draft Proposal is so weak  
2 it does not protect the drinking water. Please adopt the  
3 February 2010 Draft and live up to your mandate.

4           Thank you. Mibs McCarthy."

5           That was M-C-C-A-R-T-H-Y.

6           MR. YOUNG: Thank you for your comments.

7           Susan McDonald, Kay Mercer and Larry Meyer.

8           Okay. Susan McDonald.

9           MS. McDONALD: I'm Susan McDonald,  
10 M-C-D-O-N-A-L-D. I live in Cambria on a 303D listed  
11 creek. My neighbors are farmers, but being near a listed  
12 water body does automatically mean that they are causing  
13 or adding to that water body impairment. If there's no  
14 run-off of fertilizers or pesticides, farming can be done  
15 safely.

16           Farmers in my area have changed the  
17 irrigation practices to prevent run-off. They use cover  
18 crop as assurance to protect water quality.

19           Location, I believe, without consideration of  
20 farm management practices should not be used to bump an  
21 Ag operation up to a higher tier.

22           There's also some question about the criteria  
23 being used to define impaired water bodies into this  
24 Order. Table 1 of Appendix A provides the 2010 Clean  
25 Water Act, Section 303D list at -- for toxicity,

1 pesticides, nutrients, temperature, sediment. I'm  
2 wondering, are water bodies in 303D listed for Ecoli and  
3 other indicator bacteria not associated with irrigated  
4 Ag, are they also a trigger for Tier 2 and Tier 3. If  
5 that's the case, it seems like mixing apples and oranges  
6 to me.

7           The criteria for irrigated Ag should be based  
8 on discharges actually made by irrigated Ag.

9           Finally, agriculture is not responsible for  
10 all the constituent pollutants found in local watersheds.  
11 If agriculture is being ordered to clean up pollutants  
12 without any delineation between Ag discharges and those  
13 coming from other sources, particularly urban lawns,  
14 landscape and gardens. Homeowners use many of the same  
15 fertilizers, pesticides yet agriculture is being  
16 targeted.

17           The goal is to improve water quality, but  
18 fairness must be a part of the equation.

19           I support the farmers for water quality terms  
20 and conditions for compliance through a third party group  
21 as a way to accomplish both.

22           Thank you.

23           MR. YOUNG: Thank you for your comments.

24           And, by the way, Ecoli is not on the radar for  
25 this.

1 MS. McDONALD: It's not?

2 MR. YOUNG: It's not.

3 Kay Mercer.

4 MS. MERCER: Hello, I'm Kay Mercer. M-E-R-C-E-R.

5 Thank you for allowing me to come before you. I  
6 want to talk about the draft Ag Waiver and the top three  
7 issues that I see in the current draft that's before you.

8 The first is that it's really not solution  
9 focused, it is a regulation, but there's not a lot of  
10 solutions offered in the regulation. I think it is a big  
11 improvement over what we had in 2010, however, it's over  
12 complicated and it's doubtful whether it could be  
13 administered or enforced by staff. And, in fact, I'm not  
14 sure if it's implementable at all.

15 I do want to talk about anomalies. Robert  
16 Doladall (phonetic) talked to you about groundwater and  
17 nitrates in March. I'd like to talk about a couple of  
18 other situations in the Draft Order where there's anomaly  
19 omissions and some errors.

20 First, I'd like to talk about the list of  
21 pesticides.

22 There's 84 pesticides that are listed,  
23 finding 58 in the Draft Order.

24 First of all, staff, it's obvious they  
25 haven't really consulted with EPA and DPR and Department

1 of Fish and Game. They're not taking into account the  
2 amount of environmental state work and toxicological work  
3 that's done by the state agencies when these pesticides  
4 are registered.

5 Second of all, in terms of the list itself, I  
6 was kind of shocked when I first looked at it because  
7 many of the pesticides that are on the list aren't Ag  
8 chemicals. Some of them are termiticides, which means  
9 they're used to control termites. They're roadside  
10 herbicides, they're not used by Ag. Some are not  
11 registered in California. Some are registered in  
12 California, but aren't used on the Central Coast.

13 So, out of the 84 pesticides 13 of the active  
14 ingredients are used on, approximately, 80 percent of the  
15 crops. Only 13 of the 84 are used on 80 percent of the  
16 crops on the Central Coast. 52 of those are included in  
17 EPRs ongoing surface water monitoring program. 37 are  
18 included in EPR pesticide management zones, which  
19 includes a permit, and covers a specific geographical  
20 area. 13 of those 84 percent are DPR restricted use  
21 pesticides which require permits.

22 So what's the solution to this? Instead of  
23 just saying you use this product, therefore, you're in a  
24 certain tier. It really should have some risk assessment  
25 involved with it.



1           You know, I heard someone say use agronomy.  
2 Agronomy applies here. How -- where is the product being  
3 used? What crop is it being used on? When is it being  
4 used? Why is it being used? How is it being used? How  
5 much is being used? What's the soil type? What's the  
6 hydromorphology? All of those things -- what's happening  
7 in the watershed? All those things go into that.

8           MR. YOUNG: Can you wrap up?

9           MS. McDONALD: I can wrap up.

10          MR. YOUNG: One sentence.

11          MS. McDONALD: One sentence. Your list of  
12 impaired water bodies is impaired itself.

13          MR. YOUNG: Okay. Thank you very much for your  
14 comments.

15          MS. McDONALD: Do you want to hear about the  
16 impairment just real quick?

17          MR. JEFFRIES: I want to hear it.

18          MS. McDONALD: Particularly as it applies to Santa  
19 Cruz County.

20                 The 29 impaired water bodies that are on the  
21 list, I read the reports for the sediment and nutrients,  
22 out of those 12 do not attribute sediment or attributing  
23 or nutrients to irrigated Ag.

24                 So you have 12 water bodies that don't even  
25 have irrigated Ag on there, and there are no attribution

1 to irrigated Ag.

2 I did a -- used ingrated report from the  
3 State Water Regional Control Board and did a digital  
4 inspection of the remaining, all 99 water bodies. The  
5 other 17 in Santa Cruz County that remain on the list  
6 only 15 of those had any measurable irrigated Ag. 15. I  
7 mean -- I'm sorry 15 had no measurable irrigated Ag. The  
8 two that remain that actually had any measurable  
9 irrigated Ag, one had five percent, one had seven  
10 percent.

11 So, you have -- so what happened is you have  
12 growers, you might have some great grower up in the Santa  
13 Cruz hills that is now on impaired water bodies that has  
14 no appreciable irrigated Ag that's instantly in Tier 2.  
15 And so -- or maybe even in Tier 3, depending on what  
16 pesticides you guys decide to make a tiering criteria.

17 And so all of a sudden your own reports say  
18 that irrigated Ag is not a source of impairment and then  
19 you turn around and have -- list these water bodies as  
20 impaired and make it a criteria in a regulation for  
21 irrigated Ag.

22 Thank you.

23 MR. YOUNG: Thank you.

24 Larry Meyer, Kris O'Connor, Barbara Ann Ogle,  
25 and then Dana Perls.

1 MS. O'CONNOR: I'm Kris O'Connor, K-R-I-S,  
2 apostrophe O-C-O-N-N-O-R, with the Central Coast Vineyard  
3 Team.

4 I want to thank you for the latest Draft  
5 including certified growers in the Tier 1 category. We  
6 certainly appreciate this recognition, but in accordance  
7 with our previous letters we still believe that there are  
8 many operations that are not certified that do not pose  
9 threats to water quality.

10 In the May Board Workshop here in San Luis  
11 Obispo the direction was clear, create an Order that both  
12 incentivizes practices and rewards growers. But,  
13 nevertheless, the current framework still presumes that  
14 Ag operators are polluters, that they're guilty until  
15 they can prove they're innocent.

16 This Draft continues to apply a point source  
17 regulatory model for a non-point source program. So,  
18 really, if we were looking at an incentivizing approach  
19 that actually protected water quality like some of the  
20 previous speakers, we would be looking at actual risk.  
21 We would have tiers that had triggers that actually  
22 growers had control over and that related to a risk and  
23 to help protect water quality. And that way you would  
24 incentivize people to adopt things with clean water and  
25 move into different tiers.

1           In May the Board also provided direction to  
2 not require more information that could be managed or  
3 analyzed. I would really disagree with some of the  
4 slides that say that the current draft is actually less  
5 burdensome than the current waiver. It's just not true.  
6 So, there is a lot of work required by this proposal and  
7 people should be paying attention to that.

8           Again, in May one of the directions was to  
9 not use the 303D list because -- I think I had in my  
10 notes somebody said because it's too broad. Still this  
11 hundred -- nearly hundred water bodies is still in there  
12 as a trigger. You know, I don't really consider 100  
13 water bodies as being sort of priority for the area if  
14 we're really going to focus our attention.

15           So, despite the May direction to focus on  
16 surface water and nitrate and organic phosphate, this  
17 latest Draft continues to include riparian areas, storm  
18 water and groundwater. It seems that although some  
19 things get taken out in the new draft that more things  
20 get included.

21           There was some language around storm water.  
22 It was mentioned by a previous grower. That was actually  
23 very contradictory between paragraphs and quite a bit  
24 confusing.

25           We are also concerned about the tier trigger

1 about the topic of even including more pesticides as this  
2 tier trigger. Again, in March some of the language was  
3 used interchangeably between towards detection and  
4 toxicity. I would really encourage the Board to look at  
5 Sara Green's memo that she provided from Preservation  
6 Inc. and make sure that we're talking in the appropriate  
7 language.

8 So, again, I would also like to remind you  
9 that, you know, the material does not really equate, we  
10 really have to be looking at transport, also.

11 So, the Vineyard Team has, obviously, done a  
12 lot of work on this issue. We continue to work with the  
13 staff and the Board to try to come up with a solution to  
14 protect water quality.

15 We're happy to be a resource.

16 MR. YOUNG: Thank you for your comments.

17 Barbara Ann Ogle. Dana Perls.

18 MR. YOUNG: Hi, Dana.

19 MR. SHIMEK: Hi. Steve Shimek, S-H-I-M-E-K. I  
20 have a letter from Pesticide Watch Environmental Fund.  
21 Before I begin, though, I would like to mention the fact  
22 that you asked the question about if anybody knows about  
23 the buffers; it came up during the CDFA's presentation.  
24 I actually met with LGMA about buffers and there is a  
25 requirement about buffers. They asked the question and

1 they asked if anyone had any information.

2 MR. BRIGGS: He's here to read a statement.

3 MR. YOUNG: You're here speaking -- you're giving  
4 someone else's comments, so if someone had asked for  
5 specific questions it would be different.

6 MR. SHIMEK: So the only person --

7 MR. YOUNG: You're here to speak -- to give  
8 comments for Pesticide Watch, please give us those  
9 comments.

10 MR. YOUNG: Yes, Mr. Jeffries.

11 MR. JEFFRIES: Does Mr. Shimek have a card? Or is  
12 he speaking on behalf of someone else?

13 MR. SHIMEK: No, I do not have one.

14 MR. JEFFRIES: You spoke at one time.

15 MR. SHIMEK: I was just trying to answer the  
16 question the panel had asked.

17 MR. YOUNG: Right, but it was asked of someone  
18 else. So, I'm not -- it wasn't an open invitation for  
19 everyone else.

20 MR. SHIMEK: Actually, it was when you asked it.

21 MR. YOUNG: All right. Steve, let's do this. I'm  
22 setting this back to three minutes. Start over. Give me  
23 Dana Perls' comments.

24 MR. SHIMEK: All right. My name is it Steve  
25 Shimek, and I'm speaking on behalf of Dana Perls,

1 Pesticide Watch Education Fund.

2 "The 2011 Draft Order is an improvement on  
3 the 2004 Conditional Waiver which did not prioritize  
4 water quality requirements and did not contain any  
5 compliance or preservation of monitoring provisions.  
6 However, PWEF is very disappointed that in spite of the  
7 immense evidence in drinking water concerns from  
8 contaminated groundwater the 2011 Draft Order remains  
9 significantly weaker than it could be.

10 PWEF is concerned that the only types of  
11 pesticides which are being considered are Diazinon and  
12 Chlorpyrifos. While these two commonly used pesticides  
13 which may affect groundwater contamination a number of  
14 pesticides which severely contaminate is significant.  
15 Rather than only considering two pesticides there needs  
16 to be a more comprehensive list of pesticides which apply  
17 to all areas.

18 Bullet point 2: And I'm summarizing, surface  
19 water and Ag run-off should test for numerous pesticide  
20 indicators what will likely end up in the groundwater.

21 Bullet point 3: Methyldyne is a registered  
22 pesticide should be included in this list of run-off  
23 contaminants.

24 Bullet Point 4: The criteria for tiering  
25 must include groundwater nitrate and pesticide

1 contamination as a factor.

2 We urge you to take timely action to put in  
3 place strict requirements for irrigated agricultural  
4 discharges so the California residents and water is truly  
5 protected and restored.

6 Dana Perls."

7 MR. YOUNG: Thank you for your comments.

8 Susan Petrovich. I understand she's not here. Is  
9 there anybody from the Santa Barbara County Cattlemen's  
10 Association speaking on their behalf?

11

12 (No response.)

13

14 MR. YOUNG: Richard Quandt. Then Bill Ritz, Keith  
15 Roberts.

16 MR. QUANDT: Thank you on behalf of Farmer's for  
17 Water Quality. My name is Richard Quandt, Q-U-A-N-D-T.  
18 I'm president of Grower-Shipper Association.

19 I have nine slides that I would like to  
20 summarize in terms of estimated cost of meeting the  
21 monitoring and the reporting requirements for Tier 3  
22 farmers and their staff's March proposal.

23 Next slide, please.

24 This slide is -- we first reviewed DPR and Ag  
25 Commission of Pesticide Use Report to determine the



1 number of farms that fell within Tier 3. The two  
2 criterias we used was 1,000 acres of vegetables and  
3 strawberries and we broke it down by county.

4 The second criteria was discharging to an  
5 impaired water body and using the pesticide Chlorpyrifos  
6 and Diazinon. You can see the results of the  
7 calculations. We're calculating about 325 of the,  
8 approximately, 1600 dischargers would fall within Tier 3  
9 representing 218 -- 219,000, acres, which is about  
10 53 percent of the total unirrigated acres in the region.

11 Next slide, please.

12 We did try to estimate the Tier 3 enrollment  
13 cost. This was based on the summary of interviews with  
14 Tier 3 growers. We developed a range, and you can see  
15 the range is 25,000 to 30,000 per operation.

16 Next slide, please.

17 We also looked at the annual cost of meeting  
18 the monitoring and reporting requirements in the Order.  
19 You can see the main components of that deal with the  
20 surface water, discharged monitoring requirements and the  
21 reporting requirement under the Annual Compliance Plan.  
22 Our data indicated there would be a range of between \$6-  
23 and \$9,000 per year, per Tier 3 grower.

24 Next slide, please.

25 In terms of one expense not summarized, the

1 previous slide is a 30-foot vegetative buffer that Tier 3  
2 growers would have to install for operations located on  
3 or adjacent to an impaired water body.

4 Next slide, please.

5 We determined there is, approximately,  
6 68 -- 6,870 acres in crop production that would be lost.  
7 In many cases the loss would be more than 30 feet because  
8 many fields are narrow and irregular and they follow the  
9 contours of the natural water body. In certain cases  
10 25 percent of the field would be lost. This slide  
11 attempts to show some examples of that.

12 Next slide, please.

13 There are also perennial crops that may have  
14 to be moved from the vegetative buffers. We calculated a  
15 lost for avocado growers of between 5,000 and 6,000 per  
16 tree and for removal and relocation. Vineyards between  
17 3700 and 1100 per acre.

18 Thank you.

19 Next slide, please.

20 I'm going pretty fast.

21 In terms of the conflicts with food safety in  
22 light of what we have with these vegetative buffers most  
23 of the leafy green growers would have to install buffers,  
24 they would have to install fencing that we calculated at  
25 82 million dollars.

1                   And the last slide, please.

2                   MR. YOUNG:    Wait.  Thank you for your comments,  
3 Mr. Quandt.

4                   I just have a question, though, it's my  
5 understanding staff was not proposing that any trees get  
6 removed if they're in the buffer.  Is that correct or  
7 not?

8                   I'm asking staff.

9                   MS. SCHROETER:  Repeat the question.

10                  MR. YOUNG:  Mr. Quandt is concerned --

11                  MR. THOMAS:  Yes, that is correct.

12                  MR. YOUNG:  That is correct.

13                  Okay.  What about with vineyards and, you  
14 know, vines, would they have to be removed if they're in  
15 a buffer?

16                  MS. SCHROETER:  The Water Quality Buffer Plan is  
17 about addressing the discharge.  There's no requirement  
18 to remove anything within that area if they can address  
19 the discharge.  So, the trees don't need to be removed,  
20 vineyards don't need to be removed, if they control the  
21 discharge, that's the part of the plan.

22                  MR. THOMAS:  There's no requirement to removing  
23 vineyards --

24                  MR. YOUNG:  Speak into the mic.

25                  MR. THOMAS:  Vineyards or trees and orchards, no

1 requirement.

2 MR. YOUNG: Okay. Thank you very much, Mr.  
3 Quandt.

4 MR. RITZ: Good afternoon, Chairman Young. My  
5 name is Bill Ritz, R-I-T-Z, like a cracker.

6 I'm District Representative for State  
7 Senator -- Anthony Canella, previously worked for Senator  
8 Dow.

9 State Senator Canella is a Senator of  
10 District 12. Part of the region falls within his  
11 district, which would be part of Monterey County and San  
12 Marino County.

13 The Senator is also the Senate Chairman of  
14 Agricultural Committee.

15 I have a few comments from Senator Canella.

16 It would seem that all side of this issue  
17 agree that clean water and healthy environment are in  
18 everyone's best interests. It's essential that  
19 collaborative efforts between the Board, staff, the Ag  
20 community, appropriate agencies, all parties, must concur  
21 to develop a reasonable long term solution. Long term  
22 solutions.

23 Communities such as Monterey County are  
24 extremely dependent on the agricultural industry to  
25 maintain a vital economy, create jobs to grow healthy

1 produce that feeds not only California, the United  
2 States, but is shipped around the world.

3           Increasing levels of regulation and  
4 mitigation will threaten very important industry in our  
5 area. Senator Canella has previously submitted written  
6 comments to you urging the Board to cooperate in all  
7 alternatives, such as the Agricultural Alternative  
8 Conditional Waiver.

9           And finally, a regulation of this magnitude  
10 deserves that negotiations include all stakeholders to  
11 create a plan of sound science in achievable goals.

12           On behalf of Senator Canella, I thank you for  
13 your consideration.

14           Thank you.

15           MR. YOUNG: A few questions for you, Mr. Ritz. If  
16 you don't have a position on this, that's fine, I'm just  
17 kind of curious. With respect to the groundwater  
18 monitoring component, does your office have any?

19           MR. RITZ: I couldn't answer that. I have to get  
20 information on that.

21           MR. YOUNG: Right. How about for any of the other  
22 specific components, you know, part of the Order, has  
23 your office looked at --

24           MR. RITZ: I can't answer that. I have to go and  
25 ask the Senator directly.

1                   The message that I bring today is that we  
2 continue to look at this in a collaborative manner. All  
3 sides, all parties. That's what he wanted to bring  
4 forth.

5                   As far as those issues, I can certainly get  
6 those answers for you.

7                   MR. YOUNG: Well, it maybe too late for what we're  
8 doing. I was just curious whether you had them right now  
9 in your pocket.

10                  MR. RITZ: I don't. When would you like them?  
11 Tomorrow?

12                  MR. YOUNG: Now. But that's okay. I didn't make  
13 any assumptions that I did have any information. I was  
14 just trying to find out, perhaps, if you do.

15                  MR. RITZ: Okay. No, I don't.

16                  MR. YOUNG: Okay.

17                  MR. BRIGGS: Also, we did respond to the Senator's  
18 letter.

19                  MR. RITZ: Yes. We got your response. Basically  
20 a mini staff report. And we appreciate that.

21                  MR. BRIGGS: We're trying to collaborate.

22                  MR. RITZ: I don't know if it's collaboration or  
23 more if it was how you felt in a singular purpose.

24                  MR. BRIGGS: We were trying to answer it.

25                  MR. RITZ: Some of them were answered. I think he

1 just feels that more collaboration, more cooperation is  
2 needed in this issue. If -- that should be answered  
3 today, it should be answered after all these things have  
4 been answered and brought forth.

5 I heard a lot of stuff today that certainly  
6 is new things. So, I appreciate your time.

7 MR. YOUNG: Okay. Thank you, Mr. Ritz.

8 Keith Roberts. Followed my Kirk Schmidt, I  
9 think.

10 So, Keith Roberts, Kirk Schmidt and Stuart  
11 Styles.

12 MR. ROBERTS: Keith Roberts. R-O-B-E-R-T-S.  
13 Chairman of Salinas Valley Water Coalition.

14 I'm going to skip passed a couple of slides  
15 here.

16 As Nancy mentioned earlier, we retained a  
17 hydrologist. And some of his comments are based on this  
18 model that was performed by Darnst Livermore National  
19 Laboratory in '96 -- or 2006.

20 Where they loaded they made a simulation  
21 model and they -- the basin area was about 15 miles of  
22 the Salinas Valley, a comparison of the Salinas Valley.  
23 But, they just -- I'll read it.

24 "Investigators used a soil act per model to  
25 study impacts of nitrate loading to the groundwater basin

1 for poultry farms, dairies and agricultural land."

2 And the models there involved increase of  
3 nitrate loads from all sources of nitrates from 1945 to  
4 1985, and conflict loads after 1985, except that the  
5 poultry farming ceases in 2045.

6 Even though the cessation of the poultry  
7 farmer removes about 50 percent of the nitrate load from  
8 the area groundwater basin, the simulation results  
9 indicate that very low reduction of groundwater nitrate  
10 is achieved in 150 years after cessation of poultry  
11 farms.

12 Another interesting result is that nitrate  
13 continued to increase within parts of the basin even  
14 after the cessation of poultry farming.

15 So, this makes it very complicated to align  
16 where nitrates come from, or if the nitrates are an  
17 issue. It appears that your hypothesis is that farming  
18 is the sole contributor to the nitrate load. And this  
19 argues that farming is not the main cause. So, you know,  
20 farming you can't grow crops without nitrogen. You all  
21 understand that, right?

22 Nitrogen comes in various forms. Some of it  
23 moves -- I mean the soil types. Earlier on we talked  
24 about the -- I heard comments about the -- one second?

25 MR. YOUNG: One second.



1           Dr. Hunter is going to have a question for you.  
2 Correct, Doctor?

3           Finish your sentence.

4           MR. ROBERTS: I just wanted to clarify the UC  
5 system, Berkley, Davis, Poly Tech, Cal Poly, state  
6 universities, they all built their models based on laws  
7 of maximum. Okay. And laws of maximum is where you can  
8 put so many units of one thing and then that gives you  
9 maximum production. And the reason for that was there  
10 was a world that needed to be fed.

11           So now you're talking --

12           MR. YOUNG: Mr. Roberts, thank you for your  
13 comments.

14           Dr. Hunter.

15           DR. HUNTER: Yes, just one question.

16           The poultry operation ceased, in past tense,  
17 in 2045. Is that a typo?

18           MR. ROBERTS: No. That's a model. It's a built  
19 model where we simulated cause and effect. And the point  
20 is that you don't have a scientific system that has the  
21 metrics built in to allow -- to determine whether there's  
22 an issue with contamination, how, where, why. It's cause  
23 and effect. You've got to establish cause and effect in  
24 your formulations before you can derive to any kind of  
25 answer for anything.

1           MR. HUNTER:   Okay.   I understand.   I just wanted  
2 to be clear.

3           MR. ROBERTS:   Those are correct numbers.

4           MR. YOUNG:   Thank you for your comments.

5           MR. JEFFRIES:   Mr. Roberts, you took that slide  
6 down, but you talked about poultry.

7           MR. ROBERTS:   Well, poultry is -- on that specific  
8 area, poultry is manure.   The byproduct of poultry is  
9 manure.   If you're asking how that came about it was  
10 because it was a given area that was suggested that it  
11 was carbon nitrate solution.

12           MR. JEFFRIES:   Well, I wasn't really focusing on  
13 poultry, but it just triggered that -- and I'm not  
14 familiar with the whole region -- but in Salinas Valley,  
15 Castorville, Moss Landing, parts of Santa Cruz County had  
16 approximately 400 diaries from the late 1800s until  
17 probably 19 -- late '60s.   And I think I've asked this  
18 question before.   I know in different soil types water  
19 travels through those at a different rate.   And so,  
20 consequently, I'm wondering -- and I'm not a scientist,  
21 but I'm wondering with all -- you're talking about  
22 poultry manure, I'm talking about cows, dairy cows  
23 manure, which don't exist except for maybe one or two  
24 moonglows is the only one -- and shocks, dairy, is the  
25 only two active ones that I believe in the Salinas Valley

1 from different times. How long does that take, those  
2 nitrates to travel through the ground to get to  
3 groundwater? And one of the things I'm grappling with is  
4 why do we hold hostage all these farmers today for the  
5 issue of collective nitrate for the last 150 years?

6 MR. ROBERTS: That's a point well taken. I  
7 totally agree with you. That's -- this is the  
8 fundamental reason why you have to tie hydrology,  
9 agronomy and scientific basis to encounter all the data  
10 before you can make an assumption that one individual  
11 person, thing, activity. It could be as simply as  
12 dinosaurs, it can be as simply as cows, 50 years ago, it  
13 could be things that we don't have a clue.

14 And you're exactly right, the capacity of the  
15 soil, it's cation exchange capacity, it's electric  
16 conductivity, it's organic matter. And there's a lot of  
17 areas that if you bring in agronomy into play, that will  
18 hold materials into place.

19 What I'm saying is you can make improvements  
20 but you can't go back and change it unless -- the only  
21 way you're going to make improvements is to do cause and  
22 effect and determine what specific item you need to work  
23 on at a time. It has to be parallel hypothesis to prove  
24 or disprove to do cause and effect before you can make  
25 any kind of regulatory suggestion that would economically

1 destroy farms, devalue land, put many people out of work.

2 And the evidence is there are other items  
3 that could take care of specific -- algae bloom, there's  
4 enzymes, there's dilution. You can add water, you can  
5 add enzymes, you can do things to lower the specific  
6 thing. And anybody that has waste charge into ponds has  
7 that ability to do it. So why not think in a bigger box  
8 and work on the specific areas of input.

9 MR. YOUNG: Thank you for your comments.

10 Kirk Schmidt.

11 MR. SCHMIDT: Chairman Young, Members of the  
12 Board. Kirk Schmidt, Executive Director of Preservation,  
13 Inc. S-C-H-M-I-D-T.

14 I'm, as you're aware, Preservation, Inc., the  
15 Cooperative Monitoring Program and the existing waiver.  
16 I'm going to restrict my comments to the Cooperative  
17 Monitoring Program as proposed in the current Draft.

18 Dealing with surface water quality the proposal in  
19 the current Draft is very similar to the existing  
20 Cooperative Monitoring Program. There appears to be some  
21 changes in sites, and in addition of extensive pesticide  
22 monitoring, four times in the second year, as well as  
23 metals, monitoring four times in second year.

24 We've done, with exception of metals, we've  
25 done those type of sampling in the past for the

1 Cooperative Monitoring Program. However, we continue to  
2 have a problem with our inability to conduct method and  
3 physical habitat assessment because it requires  
4 trespassing on Ag properties. The current protocol used  
5 requires measuring the habitat for 100 meters to 250  
6 meters upstream from the cooperative monitoring site. We  
7 do not have access to those properties. Our legal  
8 counsel advised us that trespassing is a strict liability  
9 and we can no longer ask our contractors to conduct that  
10 type of monitoring.

11           However, it seems that because of the  
12 protracted length of time the adoption of this waiver  
13 will take it may be appropriate to adopt a surface water  
14 quality cooperative monitoring program now so that we can  
15 have assurances going out into the future what the costs  
16 will be so that we can determine what the assessments to  
17 farmers will be for next year.

18           In order to do that we have to meet with  
19 farmers this summer. We can not meet with farmers unless  
20 we know what the program will be next year. The MRP,  
21 unlike the Order itself, is -- it can be changed by your  
22 Executive Officer. And we believe that it is time to  
23 start the discussions of what the MRP for the Cooperative  
24 Monitoring Program for surface water quality will be for  
25 next year so that there can be a continuity between this

1 year and next year given the fact of -- due to a lack of  
2 quorum you have an inability to adopt a waiver at this  
3 point.

4           The second thing is there are some items in  
5 the MRP that could be simplified. There's reasons to  
6 support accuracy, but there's no reason to call for  
7 additional costs to achieve that accuracy.

8           One of the examples, which will come out on  
9 the presentation, is a change in the groundwater proposal  
10 that they have from requiring a professional engineer or  
11 a hydrologist to conduct the sampling at what will be  
12 over 3,000 wells to someone who is a trained person.  
13 Indeed, this is the procedure that's used for food safety  
14 now where you just have to have someone adequately  
15 certified and trained to conduct the sample and not  
16 require someone at an additional cost to come do the  
17 sampling.

18           Thank you.

19           MR. YOUNG: Thank you for your comments.

20           Stuart Styles.

21           Stuart Styles. Okay

22           (No response.)

23           MR. YOUNG: Michael Taloff, T-A-L-O-F-F.

24           (No response.)

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Wilton Webster.

(No response.)

MR. YOUNG: C.Z. Whitney.

MR. WHITNEY: I'm Howard Whitney.

MR. YOUNG: There are two Whitneys.

MR. WHITNEY: C.Z. Whitney. C.Z. W-H-I-T-N-E-Y.

Chairman Young, Board Members, about eight years ago under pressure from environmental and political activists Central Coast Water Board undertook an enforcement action against two north San Luis Obispo County landowners who cleared some brush from the property. Yes, there was some saltation due to an above average rainy season which followed several months later. However, most of the saltation was more likely due to a large wild land fire that occurred in the same area just a month or so after the brush was removed.

To the ensuing administrative adjudication process each landowner agreed to staff recommended mitigation and a \$24,000 fine. Your Board, however, pressed once again by activists, withdrew the agreement and subsequently fined the landowners \$125,000 apiece.

What concerns me is the proportionality between clearing some brush and allegations of responsibility for nitrate and pesticide levels.

1                   According to your web site fines issued by  
2 your Board at the administrative level are huge. What  
3 concerns me more is that there is ample credible  
4 testimony that the science on the proposed Order is at  
5 best incomplete. If the Order is adopted as proposed,  
6 farmers, operators, landowners, fractional interest  
7 owners and anyone else who might be subject to this Order  
8 will likely be forced to spend inordinate amounts of  
9 money on mitigation, fines, legal fees, and other  
10 associated costs.

11                   Can the regulation withstand the financial  
12 strain imposed on them or will loss of land, equipment  
13 income and other assets simply become a path to  
14 insolvency. And if that becomes the case, in 2, 3, maybe  
15 5 years down the road, it becomes evident that the Order  
16 is based on inadequate, incomplete, defective, and/or  
17 otherwise flawed science. What happens to those who have  
18 faltered under an unjust and unfounded regulatory yoke,  
19 and who will make them whole?

20                   Thank you.

21                   MR. YOUNG: Thank you for your comments.

22                   Now, your other half, Howard Whitney.

23                   MR. WHITNEY: Chairman, Board Members, thank you.

24 My name is Howard Whitney, W-H-I-T-N-E-Y. I'm a  
25 professional geologist, certified hydrogeologist, and I



1 have over 25 years of experience.

2 I worked on numerous agricultural  
3 contamination assessments, conducted field  
4 investigations, and numerical modeling of chemical based  
5 transport.

6 I've also personally witnessed the  
7 devastating effects of the blue baby syndrome at an Ag  
8 site that I sampled when I was a young guy. And it  
9 sticks with me to this day.

10 I fully support the staff recommendations for  
11 the water quality monitoring. I applaud the wisdom,  
12 courage and professionalism of the Board, staff to  
13 develop these ground breaking and critically necessary  
14 water quality rules. The Draft Waiver is the most  
15 professional technical regulatory document that I've ever  
16 seen and I've seen a lot. And there's a lot of wiggle  
17 room in this document. There's some comparisons with  
18 point source contamination, completely different.

19 My clients would crawl over broken glass to  
20 get this type of regulatory environment in their fields.  
21 However, the current draft represents the minimum level  
22 of monitoring to provide any meaningful water quality  
23 improvements. So I implore the Board, don't water this  
24 down.

25 Why? You know the reasons. Ag everywhere

1 produces the greatest environmental impacts of water  
2 quality resulting in countless exposure pathways that  
3 degrade human health and aquatic life. No other industry  
4 or pollution source is even on the same environmental  
5 radar screen.

6 The Central Coast has some of the most  
7 degraded water quality in the nation. And it's also not  
8 surprising that our region has the most productive Ag  
9 life.

10 Let's see. This is going to be very  
11 expensive to clean up. I believe that in order for this  
12 to be successful we need a cleanup fund to do this. And  
13 I think that the farmers have been misled by their  
14 consultants in this regard. This is a very serious  
15 problem that requires a lot of very serious work and none  
16 of their consultants has the proper qualifications  
17 required under the Water Code to address water quality  
18 investigation and cleanup.

19 The professionals that they do have that have  
20 presented information that's been useful, but it doesn't  
21 address the entire problem.

22 25 years ago when I parachuted over a  
23 superfund sites, we didn't know what was going on. There  
24 was no science at that time. We invented it. There's a  
25 whole industry of environmental professionals that are

1 currently working and wasting their time on underground  
2 source tank work that results in almost no exposure  
3 pathways, and they can get to work on this. But the  
4 farmers need the funding.

5 And, Mr. Ritz, please, have your boss working  
6 on getting a cleanup fund established to address this  
7 issue. This is critically important and the farmers need  
8 the money to do it. They can't do it all on their own.

9 Thank you.

10 MR. YOUNG: Thank you for your comments.

11 Joel Weiley.

12 UNANNOUNCED SPEAKER: He got detained at a  
13 business conference up in Sacramento.

14 Taxpayer and voter USA.

15 MR. YOUNG: Salvador does not wish to testify.  
16 Okay.

17 All right. That concludes the list of public  
18 speakers. Now, do we go back to --

19 MR. JEFFRIES: Before that, Mr. Chairman, I would  
20 ask, if I can have Mr. Costa come back, if I may.

21 MR. YOUNG: Sure.

22 MR. JEFFRIES: He addressed, slightly, the Tier 3  
23 issue and other people have spoken on this, but I think  
24 Mr. Costa has spoken on that more extensively, and I'd  
25 like to hear what your real concerns are about Tier 3 and

1 what this really means to you as a farmer.

2 MR. COSTA: I could go up and pick up and grab the  
3 list of things included in Tier 3 that weren't on the  
4 slides to start the meeting. There's about eight reports  
5 and monitoring plans and analysis that are components of  
6 the Nutrient Management Plan. You see the Irrigation  
7 Management Plan up there, two extra things that Tier 3  
8 has to do that Tier 2 doesn't. Okay. But when I say the  
9 devil is in the details, it's in everything that's a part  
10 of that plan. And it's extensive.

11 And as I said, it's exponential, it's not  
12 just twice, or three times of somebody else doing it,  
13 it's an enormously different work load and task load, and  
14 monitoring and reporting load expected of Tier 3 that's  
15 not of the others.

16 And there is a scenario, and it wasn't hard  
17 to figure out where a vegetable grower that wasn't using  
18 Chlorpyrifos and Diazinon, and it wasn't adjacent to the  
19 impaired water bodies would fall all the way to adjacent  
20 Tier 1, yet the acreage situation being a 1,000 acres  
21 would throw the other into Tier 3. That's why I  
22 commented how it could not even be adjacent tiers.

23 But my comment about the exponentially of  
24 that load was in great part, most part related to the  
25 Irrigation Management Plan. I want to make sure that

1 everybody sitting behind the table understands all the  
2 details, not just the executive summary portion that, you  
3 know, Tier 3 is going to have to do, you know, some  
4 additional plan, extra work, because there's a lot of  
5 little subpieces on every bit of that.

6 And, I mean, in my opinion, I probably looked  
7 at three or four additional people in my operation, and I  
8 fully expect to not be in compliance at some point  
9 because there's so much that's due, so much  
10 documentation, so much reporting, I feel like we're going  
11 to be reporting on the reporting by the time it's over.  
12 And I expect to miss a deadline, have my employees miss a  
13 deadline and be out of compliance somewhere.

14 And my concern would be that when I talk  
15 about being set up to fail, it's for reasons like that,  
16 and I would be concerned about the Board setting  
17 themselves up to have something that's not enforceable.  
18 What I am fearful of is not being able to comply. Then  
19 my next question is, okay, what are you going to do when  
20 that happens? Because I think we kind of need to know  
21 that. I think a lot of people would want to know that,  
22 up front. What is that plan? I mean, it's not a simply  
23 thing we're looking at.

24 MR. JEFFRIES: Mr. Costa, can I ask you, I assume  
25 that you qualify in Tier 3 what you know is Tier 3.

1           MR. COSTA:  If you did it on a ranch-by-ranch  
2 basis, we would have ranches that would fall into each of  
3 the three tiers.  If you look at the operation as a  
4 whole, then we would fall into Tier 3, if you looked at  
5 the whole operation.

6           MR. JEFFRIES:  As a farm operation, if you looked  
7 at total acreage, you would qualify for Tier 3.  If you  
8 looked at individual ranches, then you would be in what  
9 tier?

10          MR. COSTA:  Ultimately, some would be in 2 and  
11 some would be in one.  It's going to depend on chemical  
12 use and crops grown.  We have one ranch that's a  
13 vineyard.

14          MR. JEFFRIES:  So you wouldn't be in Tier 3 at  
15 all?

16          MR. COSTA:  No.  We would have ranch -- we would  
17 be in Tier 3.

18          MR. JEFFRIES:  As well.

19          MR. COSTA:  Yeah.

20          MR. JEFFRIES:  So you have 1, 2 and 3.

21          MR. COSTA:  Yes.

22          MR. JEFFRIES:  Okay.  Thank you.

23          MR. YOUNG:  Mr. Costa, before you leave.  I was  
24 reading through the Irrigation and Nutrient Plan  
25 Management Plan monitoring requirements during the lunch

1 hour. I have a much better feel for the details that  
2 you're speaking of. And they're in there. And is there  
3 anything, specifically, that you think is unduly  
4 burdensome to have to contend with or is just the breath  
5 of all those components put together that does it?

6 MR. COSTA: It's the breath of all the components,  
7 but even when you sit and think about discharge  
8 monitoring, surface water discharge monitoring, when that  
9 comes to an individual basis, I've tried to talk every  
10 time about how complicated it gets and how fast it gets  
11 complicated, because the definitions still talk about  
12 run-off as water that leaves the field versus water that  
13 leaves the ranch. So that already starts to complicate  
14 everything because, you know, we work on systems where we  
15 are trying to consolidate water to some point on the  
16 ranch in order to be able to deal with it, or treat it,  
17 or put it back on the ranch. And so, that definition has  
18 never changed. And even if we don't have a drop of water  
19 leaving our final collection point and accessing a stream  
20 which will determine to have, you know, irrigation  
21 run-off, but yet that water is not leaving the ranch,  
22 it's leaving the field to get to some other point on the  
23 ranch where we're dealing with it at that point. I mean  
24 that is one of the problems.

25 When I look at the discharge monitoring,

1 individual monitoring, I mean, it's part of a watershed  
2 group on one of these site creeks in the Salinas Valley,  
3 and you can take the point, the monitoring point and  
4 figure out I thought pretty easily who all the players  
5 were that need to be sitting around the tailgate having a  
6 conversation about what we're showing up on the  
7 monitoring results. And that's what with did. And half  
8 of that group is sitting in this room. And it wasn't  
9 hard to do. It was a cooperative -- everybody was  
10 sharing information. We're looking at the results, you  
11 know. We've seen, you know, what the trends were and  
12 weren't, and we did do something productive about it from  
13 the time we left that meeting on somebody's yard adjacent  
14 to that creek. It was being monitored. And that's why  
15 there's such support for that kind of process.

16 I mean, that made sense. Because, I mean, I  
17 get chills just thinking about it. I get wound up  
18 thinking about it, just about where this is going and how  
19 much time we're going to spend on a sidetrack versus  
20 being out on the ground trying to adjust the problem and  
21 being in the middle of it and making management decisions  
22 with the best information we can gain. And the  
23 information that, you know, that we get now is a lot  
24 different than the information my dad got 30 years ago.  
25 I'd rather be out on the ground than in an office



1 managing the staff filling out a bunch of forms.

2 Thank you.

3 MR. JEFFRIES: Can I make another comment before  
4 we go?

5 MR. YOUNG: Yes.

6 MR. JEFFRIES: It just brought to a point in  
7 Watsonville and today there was mention of San Huerado  
8 area, and there's been a lot of conversation about water  
9 contamination. Yes, they've had water contamination, but  
10 that particular place, if you've been around Salinas  
11 Valley, that has had water problems from day one when it  
12 was built back in the 1940s when the military occupied  
13 that. It had inadequate septic systems and consequently  
14 over the years it has expanded its problems. And I don't  
15 want people to think that all the issues are attributed  
16 to Ag and use of nitrates which has been kind of implied  
17 by individual speakers.

18 So, yes, there is problems there. Yes, there  
19 has been new programs, new water developed for that  
20 particular area, but it goes for a long period of time.  
21 A lot of different types of chemicals that have been used  
22 from rubber being developed and scientific development  
23 from military use of discharge of hydrocarbons directly  
24 underground and a whole gamut of things. So I don't want  
25 to underplay that -- the issue that those folks have not

1 had good water because they have not had good water, but  
2 it stems for a lot of years and a lot of uses and not  
3 proper uses of that particular land.

4 So I just wanted to clarify that.

5 MR. YOUNG: Ms. Dunham.

6 MS. DUNHAM: We have a couple of comments.

7 MR. YOUNG: Okay.

8 MS. DUNHAM: I think there's three of us.

9 MR. YOUNG: Remember to say your names before you  
10 speak. Okay. Go ahead.

11 MR. MERKLEY: Thank you again, for this -- whoa,  
12 is that loud?

13 MR. YOUNG: That's fine.

14 MR. MERKLEY: It's echoing through my mustache.

15

16 (Interruption by the court reporter.)

17

18 MR. MERKLEY: Danny Merkley, M-E-R-K-L-E-Y.

19 We listened carefully to the March 17th  
20 meeting. We heard comments made about the groundwater of  
21 our proposal, and we have developed language to address  
22 those comments.

23 Tess Dunham and Rick Tomlinson will present  
24 that additional information. I'm the window dressing.

25 MS. DUNHAM: Thank you. You did a fine job.

1                   So, again, as Danny said --

2                   MR. YOUNG:    Can you spell your name.

3                   MS. DUNHAM:   Yes.    I'm sorry.    Tess, T-E-S-S,  
4   Dunham, D-U-N-H-A-M, Somach, Simmons & Dunn, here  
5   representing a number of agricultural groups and the  
6   farmers for the water quality.

7                   So the two key takeaway points that we took  
8   based upon what appeared to be comments from all of you,  
9   were that the need to be a better understanding of the  
10   audit process.   And there was some concerns that our  
11   original proposal in March did not necessarily address  
12   groundwater and groundwater monitoring maybe to what this  
13   Board what like to see.

14                  Due to the circumstances that we have, we  
15   took that to heart.   We went back and we have some  
16   suggested changes to our alternative proposal in  
17   response.

18                  First, the audit process.   We have a goal  
19   that we really wanted to make sure that the audits  
20   themselves were objective and based on sound technical  
21   information.   So to achieve that we have created some  
22   additions to what was our attachment B from last time to  
23   try to create some more objectivity and transparency in  
24   the audit process.

25                  So we have added some key components that the

1 third party coalition group would need to establish a  
2 technical advisory committee in order to help them  
3 establish what is the appropriate audit process. That  
4 technical advisory committee would consist of people like  
5 Professor Marc Los Huertos, who testified here earlier  
6 today. The technical experts who have some in depth  
7 knowledge about agriculture, agronomy and the disciplines  
8 that we deal with on a daily basis. And there would  
9 normally be grower representation on the technical  
10 advisory committee and their specialities would be  
11 limited and could not be more than 50 percent of their  
12 committee because it needs to be objective and it needs  
13 to be technically based.

14 We would also then suggest that there needed  
15 to be another component that would make sure that as the  
16 auditors conduct their work that there's a way to review  
17 the audits as done by the auditors. And so the work plan  
18 as developed by the third party coalition group would  
19 have to have some type of a check balance on that audit  
20 review process.

21 Third, we think it is important that a third  
22 party coalition alternative have some input from the  
23 public. And in order to address that we would require  
24 all the third party coalition groups that would go into  
25 the alternative would need to establish a public advisory

1 committee so they have that interaction with the public  
2 to talk with the local department of health or the county  
3 Ag commissioners, and the different other people in their  
4 local area in order to help advise them, advise them  
5 along the way.

6 And, specifically, one of the components of  
7 our proposal was an aggregate audit report annually and  
8 this group would be tasked with reviewing that annual  
9 report before it was ever submitted to the Regional Board  
10 to make recommendations back so we have stakeholder and  
11 public input into our process.

12 Now, going on to groundwater, which is  
13 probably a bigger issue. So we went back, based upon the  
14 comments received by all of you, and we have developed a  
15 draft groundwater assessment monitoring and reporting  
16 program for your consideration that would go along either  
17 as a stand alone for all the groundwater monitoring  
18 requirements currently within the Order, or also in  
19 conjunction with the coalition alternative.

20 And the goal here is to set up a process to  
21 assess groundwater quality and to provide feedback for  
22 growers based upon the assessment and the identification  
23 of areas of concern.

24 MR. YOUNG: 30 seconds.

25 MS. DUNHAM: Okay. So, to -- additions to

1 address: We would -- it would be a cooperative,  
2 dischargers would be allowed to participate much like the  
3 surface program and coordinate with the existing  
4 programs.

5 You would have to develop a work plan. You  
6 would rely on existing information. You would identify  
7 other additional monitoring sites that may be necessary  
8 if there's a lack or a gap in the data information.  
9 There would be a developed monitoring plan. All that  
10 goes to the Regional Board for review and approval. And,  
11 of course, timelines for collection of data, culminated  
12 with a final report that goes back for characterization  
13 of assessment, monitoring results, any typical monitoring  
14 type of reports. And then to --

15 MR. TOMLINSON: Just simply to conclude, we would  
16 ask that you direct staff to --

17

18 (Interruption by the court reporter.)

19

20 MR. TOMLINSON: Rick Tomlinson, T-O-M-L-I-N-S-O-N.

21 We would just ask that you direct staff to  
22 further incorporate the third party coalition that we  
23 presented and to work with us on integrating that into a  
24 draft order.

25 I would just comment that the decision you

1 have before you is really amazing because we presented  
2 you with a program that we have not found anywhere else  
3 in the nation. Certainly, our proposal, if adopted,  
4 would be the strictest Ag Waiver in the state and we  
5 believe in the nation as well. If not the, it certainly  
6 will be one of them. There's nothing else that we found  
7 that individually audits individual farms.

8           And so, you have two choices before you.  
9 Either one is going to result in the strictest program in  
10 the state and definitely one of the strictest in the  
11 nation. And so it's amazing that we are not in a  
12 collaborative process when agriculture is coming to you  
13 with that type of a program and yet we still have such  
14 challenges in communication and a lack of cooperation.

15           And so some of the comments you heard  
16 earlier, I think particularly the Senator about we really  
17 need to move from this point forward into a collaborative  
18 process. That's the only way we're going to be  
19 successful is by working together. Whatever you finally  
20 adopt we must have that collaboration, otherwise we're  
21 all going to end up with failure.

22           MR. YOUNG: Okay. Thank you for your comments.

23           MS. DUNHAM: We do have copies that -- of the  
24 documents that we have prepared to -- or the groundwater  
25 program as well as the additional audit revisions to our

1 attachment that we submitted in March.

2 MR. YOUNG: And these were not submitted before  
3 the cutoff for what reason?

4 MS. DUNHAM: They have been developed through --  
5 just as your staff will probably make adjustments and  
6 recommendations to you in their presentation, we have  
7 been listening to you in this process. The cutoff was in  
8 January, we, obviously, learned a lot between now and  
9 January.

10 They're here for you. You can take them.  
11 It's up to you, Chair, whether you want to have them in  
12 the record or not; that is your discretion.

13 MR. YOUNG: You can hand them to Miss McChesney.

14 MR. BRIGGS: Thank you for your proposal on the  
15 groundwater program. Just on that part what you just  
16 talked about, which was most of it, aside from the not  
17 reporting initial results, do you see anything in the  
18 Draft Order that we have for the Board that would  
19 preclude you using that approach?

20 MS. DUNHAM: I'm not quite sure I understand.  
21 Explain it one more time, the question.

22 MR. BRIGGS: So, aside from not reporting the  
23 individual results, which I gather was not part of your  
24 proposal.

25 MS. DUNHAM: Actually, in our proposal we would



1 report the analytical results, but in -- for the wells  
2 that were determined to be necessary for the assessment,  
3 you know, that are representative, and spacially  
4 representative, there would be reporting of the  
5 analytical results, but just like with Gamma and other  
6 data, the wells will be reported and identified on a  
7 township section versus ID specific property location,  
8 which is a safety function.

9 MR. BRIGGS: So, aside from that, is there any --  
10 do you know if there's anything in the groundwater  
11 monitoring that we've proposed that would preclude you  
12 from proceeding with the proposal?

13 MS. DUNHAM: Other than your's is required to be  
14 done individually, this would be on a cooperative,  
15 spacial distribution and then requiring every grower to  
16 have samples in individual wells.

17 MR. BRIGGS: So it's a cooperative part.

18 MS. DUNHAM: Yes.

19 MR. TOMLINSON: In the draft proposed Order it's  
20 an individual requirement, so once it's done, then there  
21 is no benefit to doing anything other than what is  
22 required in that tiering proposal, versus a collaborative  
23 or cooperative program, a cooperative monitoring program  
24 for groundwater that would use existing data and  
25 supplement that where needed.

1 MR. BRIGGS: Okay. I think we can clarify that.  
2 Okay.

3 DR. HUNTER: Thank you very much. I have one  
4 question on the audit. Just so that I'm clear on the  
5 time frame.

6 The audit first remains an aggregate  
7 assessment, but there would be a review by the technical  
8 committee, or technical assessment committee. And what  
9 kind of timeline would that involve?

10 MS. DUNHAM: Okay. So the -- how the audit  
11 process would work on a timing is first the third party  
12 group would submit, I think it's within six months, a  
13 work plan to Mr. Briggs, the Executive Officer, outlining  
14 how they would conduct all the audits within the term of  
15 the Order. That's one of the big requirement is that  
16 every grower participating in that group would be subject  
17 to an audit. And so that work plan has to be submitted  
18 within six months. Once that work plan is approved then,  
19 of course, you go forward and you start conducting your  
20 audits.

21 The technical advisory committee would  
22 probably be established somewhat in parallel pending EO  
23 approval of the work plan. And the technical advisory  
24 committee's role would be very up front work as we  
25 currently can see to help develop what is the process?

1 What is the auditor going to look for? You know, it's  
2 kind of like to have the professional say, okay, when you  
3 go out on a farm what are you going to actually look for?  
4 How are you going to rate it? How are you going to  
5 determine if that grower is implementing an appropriate  
6 management practice for the crop that he's growing. So  
7 the technical advisory committee would be designed to  
8 help set all of that up in a very objective, scientific  
9 technical fashion so it's clear as to what the auditors  
10 would do when they are actually auditing the individual  
11 participants.

12 DR. HUNTER: Then, I also note in the original  
13 document of December on page 17 it says that the  
14 aggregate report could be subject to appeal and that no  
15 reports will be submitted to the Water Board until that  
16 appeal is resolved.

17 MS. DUNHAM: I think the version in March changed  
18 it a little bit. And I think what we're talking about  
19 there is, first of all, the third party group would have  
20 to submit an annual report to the Regional Board  
21 summarizing all the results of the audit that was done  
22 within that year, aggregate reports.

23 What we're talking about there is an  
24 individual independent audit that has been done on an  
25 individual participant. If there's some disagreement

1 between the participant and, perhaps, the results that  
2 the auditor came up with, we are suggesting within our  
3 revised attachment "P" that there has to be some process  
4 for that individual participant, whether you want to call  
5 it an appeal, or something to go back to the third party  
6 group to say, "I disagree with these audit results," and  
7 it's developing a process to address that. And so that  
8 individual's audit, basically, wouldn't be finalized  
9 until that appeal had been satisfied, and whether it may  
10 be, sorry, the auditors claims are absolutely correct,  
11 and you weren't doing what you were supposed to be doing,  
12 and, therefore, you need to be subject to make some  
13 improvements. Or it may be, okay, yeah, we see that  
14 there's some gray, and perhaps, you were doing it and the  
15 auditor didn't interpret it.

16 So it has to resolve that before that  
17 person's audit is considered to be finalized.

18 DR. HUNTER: And is there a timeline for that  
19 process?

20 MS. DUNHAM: There is. In the revised attachment  
21 B, I think that the individual auditor, basically, or the  
22 individual participant has to make a challenge to their  
23 audit within, let's see, kind of have -- a lot of that  
24 would be developed in the work plan, but -- oh, where did  
25 it go? 30 days. Or that's when the group would have to

1 terminate the participation if they didn't respond after  
2 that review process has been set. But I believe we have  
3 it set up that the third party group would develop as  
4 part of the work plan, the details of what the  
5 termination and the appeal process would be. So it would  
6 probably be like a 30 to 60 day time frame, but I don't  
7 see it specified here and it would be developed in the  
8 details of the work plan that would go to the Executive  
9 Officer for approval.

10 MS. HUNTER: Okay. Thank you.

11 MR. TOMLINSON: If there is specific timelines  
12 that you would suggest we would welcome. That the key  
13 here is that we just simply want to due process, but  
14 certainly if someone was to be terminated, that would  
15 definitely be reported.

16 MR. YOUNG: Okay. Thank you.

17 MR. JEFFRIES: Mr. Chairman.

18 MR. YOUNG: Yes.

19 MR. JEFFRIES: I have a couple questions.

20 Some of this goes back to the presentation,  
21 and some of the information they have submitted -- I hope  
22 I can put it in some -- I'm trying to remember. I wrote  
23 these down what it really means today. But I know you  
24 addressed the confidential proprietary information. Are  
25 these farm plans considered part of that? And are the

1 audits considered part of that confidential proprietary  
2 information?

3 MS. DUNHAM: So that the farm plans under your  
4 current program and even as I believe as have staff has  
5 proposed, continue to remain on the farm in order to  
6 protect the confidentiality of the farm plan. It would  
7 not go into the Regional Board's offices. They currently  
8 are and would be under all proposals available for  
9 inspection by Regional Board staff upon arrival,  
10 basically, on the farm for another inspection.

11 So, while they are -- don't go into the  
12 Regional Board's office because that would then make them  
13 a subject to public exposure, they are available to  
14 Regional Board staff for review to determine their  
15 accuracy.

16 MR. JEFFRIES: I know that's been a real concern  
17 for the farming community that some information should  
18 not be released to the public.

19 I'm not sure how you're going to put all  
20 these people together. I'm seeing all the signatures  
21 that were submitted with your letter and your proposal.  
22 What percentage do you think that in our region that you  
23 would have enrolled in this program that you're  
24 proposing?

25 MS. DUNHAM: Boy, you know, I honestly,

1 Mr. Jeffries, I don't know, but if I -- I would imagine  
2 people that would follow in their Tier 2 and Tier 3 would  
3 take a very close look at participating. And based upon  
4 the numbers that Mr. Quandt put forward, that would be  
5 more than at least half of the acreage within the region,  
6 if not the actual number of growers.

7 So you would capture in a fair amount of  
8 actual acreage.

9 MR. JEFFRIES: Then if we don't have a hundred  
10 percent enrollment, then are you going to submit -- with  
11 your plan would your organization submit that information  
12 to the regional staff?

13 MS. DUNHAM: Submit what information?

14 MR. JEFFRIES: Well, the remainder of the farmers  
15 that did enroll in this program.

16 MS. DUNHAM: Well, the way the program would work  
17 is that the farmers would elect to participate into the  
18 third party group and they would notify the Regional  
19 Board of their elections. You will know which ones want  
20 to participate in this program versus those who have  
21 decided to remain under other components of your Waiver.

22 MR. JEFFRIES: Well, what brings my question is  
23 because Preservation, Inc., has about 93 percent  
24 enrollment, according to my notes --

25 MR. YOUNG: Acreage.

1           MR. BRIGGS:   Okay, 93 percent of acreage.  I  
2   assume that there's going to be lack of either acreage or  
3   farms or ranches that will participate in this.  Are  
4   we -- are you going to know?  And are we going to know?

5           MS. DUNHAM:   You will know.

6           MR. JEFFRIES:  We will know?

7           MS. DUNHAM:   You will know.  This is not an  
8   umbrella.  The way it has been set up in a strike out on  
9   an underline version that was we presented to you in  
10   March is people would make -- it's a voluntary decision  
11   to use the coalition alternative as their choice for  
12   compliance with the Order.  And they could say, yep, I  
13   want to go with the Coalition Alternative approach to  
14   comply with the provisions of the Order.  Or I'm going to  
15   stay with whatever you end up adopting, ultimately, and  
16   whether that maintains the current requirements for Tier  
17   2 and Tier 3 or not, then comply with the waiver as you  
18   end up adopting it for other people.  It's a voluntary  
19   selection that I want to take this path versus the other  
20   path that has been set forward.  So you would know who is  
21   under what program.

22           MR. JEFFRIES:  Have you taken analysis of the  
23   costs between the staff's proposal and your proposal?  I  
24   know that the gentleman gave a presentation on behalf of  
25   the grower/shipper, and there was some numbers that were



1 pretty outstanding in that presentation.

2 MS. DUNHAM: I don't know that we have -- have a  
3 cost comparison between what it would cost for our  
4 alternative compared to yours.

5 Do we? No, we do not.

6 MR. JEFFRIES: The opinion, and I asked Mr. Costa  
7 to come back up to clarify some of his concerns on the  
8 Tier 3, and I didn't see anything really in your proposal  
9 that addressed the tiers per se. The 1,000 acres  
10 criteria compared from farms to ranch because I looked at  
11 a farm that could be many ranches where a ranch would be  
12 a singular facility.

13 MS. DUNHAM: So, how -- basically what our  
14 proposal would do is you would know -- you would make the  
15 selection into the Alternative Coalition Third Party  
16 Group and the current requirements as they are proposed  
17 under the staff's Order for Tier 2 and Tier 3 would  
18 basically go away as they exist now and instead you would  
19 be subject to participating in the coalition group and  
20 the audit provisions that we are proposing.

21 And in the audit criteria that we have  
22 established it's actually looking at different risks for  
23 different parts of your operation, would be kind of part  
24 of what the audit criteria would need to include and  
25 would be risk based.

1                   And there are four different areas of the  
2 risk that we had identified, that would toxicity and  
3 sediment, storm water, toxicity in irrigation run-off,  
4 nutrient irrigation run-off and nitrate leaching to  
5 groundwater. So it's separates out four of the main  
6 issues and components. So it's risk based on those  
7 versus one collective determination.

8                   And then your, you know, everybody would be  
9 audited equally. And the main thing here is that you're  
10 implementing management practices to address those areas  
11 of risk that you have for your individual operations.  
12 It's far more individual operations based versus trying  
13 to create nebulous categories that may or may not reflect  
14 a risk of an individual operation.

15                   MR. JEFFRIES: My next question you already asked  
16 and that was the groundwater. And I was going to ask you  
17 why didn't you have the groundwater segment to your  
18 proposal, but you addressed that.

19                   What would be your process to notify regional  
20 staff of violations or violators?

21                   MS. DUNHAM: We have included within this a  
22 participant termination process that once a person's  
23 audit has been resolved, if they need to make  
24 improvements, they need to make them. If they fail to  
25 make those improvements within a certain amount of time,

1 that, you know, it's been identified that their  
2 operation's management practices are deficient, and if  
3 they fail to make improvements, if they fail to improve  
4 their management plan, and they fail to make on-farm  
5 improvements, then we will, the third party group, would  
6 terminate the individual's participant of participation  
7 within 30 days and that notification would be made to the  
8 Regional Board that this person is no longer in the  
9 coalition; you need to do something with him now. So we  
10 do have that.

11 MR. JEFFRIES: Okay.

12 MR. TOMLINSON: Just to add to that previous  
13 question about the staff proposal. We spent a  
14 considerable amount of time trying to go through in a  
15 strike out mode and off different ideas. As you might  
16 recall in March I had some of those comments just in my  
17 presentation, but, what happened is it just -- the way  
18 the proposal is written there's too many things that  
19 cross reference, and so you couldn't really start making  
20 the changes and have everything still make sense. And so  
21 what our proposal is is truly an alternative.

22 So it's -- whatever improvements the staff  
23 think that might be made, you know, if you so desire,  
24 then you can add ours into that and there's an  
25 alternative. Or you can just simply go with the

1 coalition approach, you know, altogether.

2 But, the way that the strike out document was  
3 offered to you in March was to build upon the fact that  
4 the staff proposal did allow for a coalition to be  
5 created. But to Mr. Briggs point, it would never be  
6 created under the current staff proposal because there's  
7 no reason to create it because each -- all those  
8 requirements fall on each individual farm. As long as  
9 they fall on each individual farm you'll never have the  
10 opportunity to work together cooperatively because you're  
11 still going to have to do all those individual  
12 requirements.

13 So they're just fundamentally different. Two  
14 different ways to get at the same thing.

15 MR. JEFFRIES: It would be nice if we could have  
16 all these resolutions, ordinances and waivers all in  
17 laymen's language so we can all understand it clearly.

18 MS. DUNHAM: But I may be out of a job.

19 MR. JEFFRIES: Well, I was just going to allude to  
20 that, you would have to have half of our audience be  
21 attorneys to interpret it to their clients what this  
22 really meant. But anyway.

23 My next question is, have you addressed the  
24 tile lands? And the reason I -- I brought this up before  
25 because I lived in Salinas, former mayor of Salinas.

1 West of Salinas is mostly titled irrigated lands, and  
2 some of the best agricultural land in the world. And I'm  
3 concerned not only of loss of economy, but loss of jobs  
4 for my citizens in our area. Because I can see some of  
5 staff's requirements and I know they're saying, well,  
6 we're not stopping agriculture from using tile lands  
7 and -- but when you do look at the final it's the  
8 run-off, the discharge, and I understand that we have to  
9 do something with the discharge, but we can't limit these  
10 people to no crops or one crop because of the type of  
11 ground that they have and so forth.

12 So, have you considered that, because not  
13 only Salinas Valley has tile land, but I'm sure there's  
14 some in Santa Maria, there's some in San Juan Basin that  
15 we have to be concerned with.

16 MS. DUNHAM: So, there's two responses. First of  
17 all, we have identified that, you know, the issue of  
18 nutrients in the irrigation run-off may also come from  
19 operation of tile drains. So, we do recognize that it is  
20 an issue, and it is in one of the categories of risk that  
21 we have identified that kind of needs to be a part of the  
22 audit process.

23 With the technical advisory committee, I deal  
24 with the technical advisory committee is they would  
25 convene and then determine. So if we're looking at

1 auditing someone's operation to evaluate, you know, are  
2 they, you know, what they are doing to address the issue  
3 of potential nutrients within a tile drain, we would be  
4 looking to the technical advisory committee to advise us  
5 as to what should we do? What should growers be doing in  
6 those circumstances where we do have tile drains.

7           So we don't have the answer here, but it is  
8 one of those complex issues where the professionals and  
9 the experts that we would look towards from the technical  
10 advisory committee, which is why it's so important.

11           MR. JEFFRIES: I think that relates to some of the  
12 comments we heard earlier that the scientific analysis  
13 for this hasn't caught up with today's world and needs  
14 more investigation.

15           I that's my last question --

16           MS. DUNHAM: And, actually, and just one other  
17 thing real quick on that. The other thing that we have  
18 alluded to in here is that there may be some  
19 circumstances where growers and, you know, common  
20 drainages or common watersheds, or sub-watersheds might  
21 want to implement some type of an electric water  
22 treatment system in an area where there are tile drains  
23 and the third party group would look for to help  
24 facilitate those types of opportunities where it may be  
25 necessary and that may be exactly the type of situation

1       which something like that might work.

2               MR. JEFFRIES:   I'm just thinking how many acres of  
3       land you have to take out of production to do something  
4       like that.

5               But the ultimate goal is that we have to  
6       clean up the water.   That's the ultimate goal.   That's  
7       what I'm here for.

8               My last question is to deal with the food  
9       safety, the corridors which I talked to earlier, the  
10      other agency that was here.   I didn't see you address  
11      that totally.

12              MS. DUNHAM:   As far as, well, with our proposal  
13      you wouldn't be subject to -- if you went with the Third  
14      Party Coalition Alternative you wouldn't be subject to  
15      the water quality buffer plan requirements that were  
16      within the staff's proposal.   So, it would still,  
17      obviously, you still need to address sediment run-off,  
18      you still need to look to appropriate management  
19      practices, but there's no specific riparian buffer  
20      requirements or vegetative riparian buffer plan  
21      requirement --

22              MR. JEFFRIES:   Was it considered?

23              MS. DUNHAM:   What?

24              MR. JEFFRIES:   Was it considered?

25              MR. DUNHAM:   You know, we did, but, again, going

1 back to consideration of what is the appropriate  
2 management practice, and, you know, again, this program  
3 just like yours can't -- would not be able to specify  
4 specific management practices.

5 Now, I would, you know, obviously, take issue  
6 with the staff's proposal. I think it does try to  
7 specify a 30-foot buffer, riparian buffer corridor in the  
8 MRP, which is a management practice, and I think that  
9 crosses the line, so we have to avoid doing that.

10 And so it goes back to what are the  
11 management practices that individual grower has employed  
12 to deal with sediment. And, perhaps, it would -- maybe  
13 they're using riparian, if they're able to, but if  
14 they're not because of food safety, then they're going to  
15 have to look at other alternatives. And we believe that  
16 there other alternatives out there that people are using.

17 MR. TOMLINSON: The only thing I would add to that  
18 is, at the federal level the Food and Drug Administration  
19 is required now by new federal legislation to implement a  
20 new regulation for individual farms next year. A draft  
21 of that is expected at the end of this year. And in  
22 anticipation of that a lot of the retailers and some of  
23 the trade associations have been working on a harmonized  
24 metric.

25 So I'm not familiar with what is in the leafy



1 green metric, but the harmonized metric calls for  
2 individual risk assessments, individual farms to make  
3 that decision about how to handle buffers and habitants  
4 and so forth.

5 But all of that will be part of a different  
6 regulatory process, but it will start at the end this  
7 year and will be governed through the Food and Drug  
8 Administration.

9 MR. JEFFRIES: Thank you very much.

10 MR. YOUNG: Thank you.

11 Okay. Well, we're going to take a break,  
12 actually, the reporter would like to rest her hands and  
13 fingers. And 3:30 we'll come back.

14

15 (Break taken at 3:12 P.M. to 3:30 P.M.)

16

17 MR. YOUNG: Okay, Mr. Briggs, so, we're ready for  
18 staff to give us their comments and response to what they  
19 heard.

20 MR. BRIGGS: We had a speed meeting and so we have  
21 Monica Barricarte who we introduced to you earlier at the  
22 table.

23 Matthew Keeling, and Lisa McCann. Angela  
24 will be joining us in a few minutes. I think we will  
25 hear a little bit from Jill North, who is sitting

1 directly behind Ms. McCann.

2           So we've taken notes of things you might want  
3 more clarification on, responses and that sort of thing.  
4 Certain things -- everything that would take a long time,  
5 considering the testimony and all the responses we have  
6 received. So we will try to get the important points.

7           So are you leading off, Angela?

8           MS. SCHROETER: I am Angela Schroeter. I am  
9 Senior Engineer, Engineering Geologist and Program  
10 Manager for the Agricultural Regulatory Program.

11           Before I begin, I just want to thank you all  
12 for taking the time. It's been one long day. One long  
13 process. Your contribution is appreciated.

14           So as Roger mentioned we're going to provide  
15 you with a brief summary of key public comment areas.  
16 Staff's response to the issues brought up. Some changes  
17 to the Draft Order that staff is recommending based upon  
18 testimony heard on March 17th as well as testimony heard  
19 to the continuation today.

20           You'll also hear from individual staff who  
21 worked on specific areas of the Draft Order. And I'll  
22 respond to some technical issues.

23           Michael Thomas will speak to make the staff's  
24 final recommendations.

25           So the Board provided a significant

1 opportunity for public input to the Draft Order. Staff  
2 has publicly released three versions and continues to  
3 recommend changes that are responsive to many of the  
4 issues raised.

5 At the March 17th Board Meeting, and again  
6 today you heard additional testimony that was reflective  
7 of the major public comment areas the Board has heard  
8 throughout the process.

9

10 (Interruption by the court reporter.)

11

12 MR. SCHROETER: Sorry.

13 The Board has heard from individuals about  
14 the significant impacts from nitrate loading to  
15 groundwater in our agricultural wells, as well as impacts  
16 to public drinking water that supplies private domestic  
17 wells.

18 The Board has heard from individuals,  
19 communities, schools and environmental justice  
20 organizations who are impacted by agricultural discharges  
21 that protecting drinking water should be among our  
22 highest priorities.

23 The Board has also heard comments that  
24 agriculture must be accountable for the associated  
25 impacts to water quality, similar to any other individual

1 business industry. And that data should be made  
2 available to the public about the impairment caused by  
3 agricultural discharges.

4 MR. YOUNG: Slow down a little bit, Angie.

5 MS. SCHROETER: You also heard the Board should  
6 not be one-size fits all and that not all farms cause the  
7 same level of water quality impairment.

8 One example of that is testimony heard from a  
9 Strawberry Commission on March 17th, that strawberries  
10 should be considered low risk to water quality.

11 We also heard about cost and economic  
12 issues, both from the perspective of the farmer as well  
13 as costs effected by the pollution agricultural areas.

14 In addition, the Farm Bureau has presented an  
15 agricultural industry proposal to regulate agricultural  
16 discharges, which is based upon third-party coalitions.

17 Throughout the process all day we've also  
18 have heard some specific comments on the Draft Order.  
19 For example, there's been comments that the Order should  
20 tier based upon individual farms instead of operations.  
21 We've heard that acreage is an inappropriate tiering  
22 criteria. We've also heard that the Order should include  
23 additional pesticide, like Pyrethroids and others rather  
24 than just Chlorpyrifos and Diazinon.

25 We've also heard that the Order shall allow

1 the use of the University of California Nitrate Hazard  
2 Index including soil type.

3 And finally, we've also heard that the  
4 Executive Officer should not have the authority to modify  
5 the tiering criteria.

6 Now, to address the public comment areas  
7 individual technical staff who work on specific areas of  
8 the Draft order will respond to some of the technical  
9 issues.

10 Before we do that, I wanted to just clarify  
11 some issues we just heard on -- from some of the speakers  
12 today, quickly. For example, the issue of pond and  
13 lining came up. I just want to clarify there's no  
14 requirement in the Draft Order to line ponds. There is a  
15 requirement that any pond retention basin must be  
16 monitored as part of the MRP, but there's no requirement  
17 that ponds must be lined.

18 I also wanted to clarify part of the criteria  
19 and issues brought up about whether or not a farm  
20 actually drains to a water body how someone ends up in  
21 Tier 3 and not even discharge to a surface water body.  
22 And that change was made in the March 2011 Draft, and  
23 that criteria is now clarified to say drain 2. And I'll  
24 show that in the slides. So that should take care of  
25 that comment too.

1           Tile drains, I wanted to bring that up,  
2 briefly, because Mr. Jeffries asked a question. Tile  
3 drains don't have any other additional requirements than  
4 the rest of those types of discharges in the Order.

5           So, Jill North is going to present a response  
6 based upon the food safety issues.

7           MS. NORTH: Jill North, I'm the Environmental  
8 Scientist here at the Regional Water Control Board.

9           I just want to mention a couple of the  
10 speakers that addressed -- mentioned that we had  
11 conflicts to the LGMA metrics. And I just wanted to  
12 mention I've been working with food safety and water  
13 quality and promoting co-management before the 2006  
14 outbreak and working with the LGMA providing comments,  
15 and they have been very responsive to our comments and  
16 they are not in conflict with any of our buffer  
17 requirements that we have. They do not state anywhere to  
18 remove vegetation in the LGMA metrics. I just wanted to  
19 say for the record.

20           MR. YOUNG: What do they require?

21           MS. NORTH: Excuse me?

22           MR. YOUNG: What do they require?

23           MS. NORTH: They have buffers that are set, so  
24 they have sets for, say, confined animal units, or for  
25 cattle operations, so there may be some 30 foot buffers

1 for the -- I know that's the one cattle, but they don't  
2 require vegetation removal at all. And they also have a  
3 specific statement within the metrics that you need to  
4 adhere to with the state and federal environmental  
5 regulations. I think they specifically call out any  
6 regulations for riparian protection and habitat  
7 protection.

8 That's in the -- and then also --

9 MR. THOMAS: Before you go on. Does that make  
10 sense to the Board that the requirements are that they  
11 comply with state and federal regulations to protect  
12 habitats?

13 MR. YOUNG: Well, I understand that, yeah.

14 How many pages -- this is the -- you call it  
15 the Green Levy Marketing Unit?

16 MS. NORTH: Leafy Green Marketing Agreement.

17 MR. YOUNG: Okay. How many pages does that make  
18 up?

19 MS. NORTH: It's about that thick, (indicating).  
20 About 80. I'm guessing.

21 MR. YOUNG: That much?

22 MS. NORTH: They have a lot of different --  
23 they're looking at flooding and water and farm practices,  
24 and --

25 MR. YOUNG: Okay.

1 MS. NORTH: And animal entry.

2 MR. YOUNG: Is that in a finalized form?

3 MS. NORTH: Yeah. They continually edit it and  
4 will update it based on public comment, yeah. The most  
5 final form is available online.

6 MR. YOUNG: Okay.

7 DR. HUNTER: Jill, one question. LGMA, can you  
8 say what that is for people who don't know.

9 MS. NORTH: Leafy Green Marketing Agreement. And  
10 then there's also been comments about the FDA. And I  
11 just want to say the FDA, that's the Federal  
12 Modernization Act that was passed in January of 2011 that  
13 has written into the law that would take into  
14 consideration environmental practices and also wild life  
15 habitat written into that law.

16 And the FDA is also working -- they have a  
17 special panel convened with -- that EPA and SRCS is  
18 working with. And I participated in the farm safety  
19 coalition network that has also worked with FDA and  
20 agriculture to address the food safety and water quality  
21 issues promoting co-management and we support. NRCF has  
22 a document and our Order refers to it as well. It has a  
23 document that looks at water quality and food safety  
24 practices on how you can bring environmental conservation  
25 practices into practice along with the food safety



1 practices. So, we also work with them to help develop  
2 that.

3 So the group that panels with the EPA and  
4 NRCCF is working with FDA because they also want to  
5 promote environmental practices and environmental safety  
6 in addition to the food safety. So that is coming down  
7 the line. I heard one gentleman talk about it coming up  
8 pretty soon here.

9 The other thing I'd like to address is  
10 Mr. Quandt had some acreages, estimated acreages lost to  
11 the 30-foot buffers of almost 7,000 acres. If -- I just  
12 want to explain that that only applies to a subset of  
13 Tier 3. And if they did chose to go with the 30 foot  
14 buffer, it would only affect 83 acres total. So, all of  
15 his calculations and finances that went along with the  
16 7,000 acres are not correct.

17 That's all I can say.

18 MR. YOUNG: Folks, please don't comment by  
19 mumbling and whatever you're doing. This isn't an event.

20 Listen, you know, the issue I raised about  
21 what Mr. Quandt had put up there I'll just say this is  
22 that he was making an assumption that, you know,  
23 everything was going to be removed from the buffer. He  
24 had numbers attached to it. And my questions, you know,  
25 show that that wasn't true. So, I mean, to what extent

1 then do you accept everything that's in his presentation  
2 on those tables. I mean it just leaves some doubt as to  
3 what is good and what isn't.

4 And, you know, if you want to just take, you  
5 know, the worst case scenario that all of these  
6 situations and proposals and events, it's going to skew  
7 things such that it does not help us. So, I'm not  
8 surprised that there might be something else in there  
9 that's a little bit inaccurate. I wish it would have  
10 been looked at a little more carefully before he  
11 presented it to us.

12 Continue.

13 MS. NORTH: That's all I have to say.

14 MS. McCANN: I just wanted to clarify one other  
15 item about -- on top of what Jill said about the buffer  
16 requirement.

17 My name is Lisa McCann,  
18 M-C-C-A-N-N, Environmental Program Manager.

19 That also that the water quality buffer plan  
20 requirement is for the purpose of controlling sediment  
21 discharges, and the Order provides an alternative. The  
22 discharges can be controlled by protecting the soil and  
23 other notable areas that are impacting the adjacent water  
24 bodies that are impaired sediment through temperature.

25 MS. SCHROETER: So that brings us to Matt Keeling.

1           MR. KEELING: Matt Keeling, K-E-E-L-I-N-G. I'm a  
2 Water Resource Control Engineer on staff here. I was  
3 brought into the process as a groundwater quality expert.  
4 I'm the primary author of the Environmental Groundwater  
5 Quality Condition found in Appendix G of the proposed  
6 Order.

7           I'm just going to speak briefly to you  
8 regarding some of the comments that we've heard back in  
9 March today regarding our assessment of the nitrate  
10 loading and the water quality impacts that we used as the  
11 basis for our findings for this Order.

12           We've heard public testimony indicating  
13 nitrate impacts may be more severe in some areas than we  
14 previously thought. We've also heard testimony claiming  
15 regarding the inflated significance of a nitrate loading  
16 that's associated with irrigated agriculture and  
17 resulting water quality impacts, or otherwise been wrong  
18 in our interpretation of the available information.

19           I can't emphasize enough how widespread and  
20 severe the nitrate impacts are to groundwater and  
21 drinking water supplies are in our region. There's  
22 really nothing else in our region to compare it. Not  
23 even sea water intrusion in Los Osos, the oil field, all  
24 combined.

25           Simply put, nitrate contamination is in our

1 drinking water supply wells than any other contaminate,  
2 or group of contaminants in our region and within the  
3 state.

4 Now, although there are other sources of  
5 nitrate in the groundwater that are relevant, like septic  
6 systems, waste water treatment plants, dairies. A  
7 gentleman brought up poultry facilities, irrigated  
8 agriculture is by far the primary source of loading in  
9 our watershed on a regional basis.

10 Now, land use, water use, nitrogen isotope  
11 studies, fertilizer sale data all point to this fact  
12 along with water quality data documenting that there are  
13 severe nitrate impacts within our rural areas subject to  
14 intensive irrigated agricultural land use.

15 We've also heard testimony claiming that the  
16 impact results of Ladasyn nitrate and that the current  
17 loading is either inconsequential or not occurring.  
18 Ladasyn nitrate is real and it's significant. We  
19 acknowledge that. In many ways the nitrate that can be  
20 detected in wells today is clearly from nitrate loading  
21 that occurred decades ago. However, relatively recent  
22 groundwater studies, fertilizer and irrigation efficiency  
23 studies, nitrogen balance and update ratios, I mean we do  
24 have some of that data available to us. And shallow  
25 groundwater indicate nitrate loading is ongoing and is

1 significant from irrigated agriculture.

2 Now, nitrate loading as it occurs today will  
3 be the legacy nitrate that shows up in our drinking water  
4 supplies in years and decades to come.

5 I also want to speak to -- there was a  
6 comment made by a woman, I think Jeff Young, Chairman,  
7 you questioned it regarding the Monterey County water  
8 resource agencies nitrate programs. Now, back in 1997  
9 the Monterey County water resource agency they put  
10 together a -- let me look at my notes here real quick,  
11 there was a Nitrate Technical Advisory Committee and they  
12 basically produced a draft document. It was their  
13 nitrate management plan, program document. It had a  
14 bunch of elements in it. It was a five-year plan. And  
15 they haven't completed all the elements of the plan.  
16 Most of the elements of the plan were primarily focused  
17 on water quality monitoring, source reduction outreach,  
18 educational research, and then they also had elements of  
19 the groundwater protection program where they went out  
20 and they tried to do outreach with domestic well owners  
21 and individual well owners in trying to alert them to the  
22 risks of having wells in agricultural areas and what they  
23 could do to, you know, be educated about the risk.

24 The effectiveness of the programs we really  
25 have no idea because they have not been tracking them.

1 They have all been voluntary.

2           If we look at what the water resource agency  
3 has done with regard to irrigation efficiency I think  
4 they deserve significant cudos. They've done a lot of  
5 work in working with the growers in Monterey County who  
6 approve irrigation efficiency. I think we can't set that  
7 aside from nitrogen loading because the loading is  
8 primarily affected by irrigation efficiency as well as  
9 fertilizer application efficiency. So there is the  
10 likelihood that their irrigation efficiency programs have  
11 resulted in, you know, potential improvements in reducing  
12 nitrate loading in groundwater. But we do not have any  
13 information or data that's been contracted that shows  
14 that that's the case.

15           MR. YOUNG: They did submit data to us.

16           MR. KEELING: They submitted data to us that is  
17 somewhat censured. They were in a bit of a difficult  
18 position. They've gone out and they've had something  
19 about 390 agricultural wells that were available to them  
20 to sample. They've got voluntary agreements to access  
21 and sample those wells. As part of the agreements  
22 they've agreed to keep the well information, the location  
23 information confidential.

24           So, the data that we get is a 30,000 foot  
25 elevation view of what the groundwater conditions look

1 like on a map. We can't pinpoint where the wells are,  
2 where the hot spots are, you know, within township.  
3 We're not even within township range section basis at  
4 this point. We could probably work that out from them,  
5 but what we really want to get is the individual well  
6 data. The problem was they gave that to us, their  
7 monitoring program, basically dissolved overnight.  
8 Nobody would let them on site if they shared the well  
9 information with us.

10 MR. YOUNG: Is there a trend that can be picked up  
11 from the data that was reported that way?

12 MR. KEELING: Well, in the two most recent  
13 sampling events that they conducted, there's one in  
14 1993, and the most recent was 2007. Overall it looks  
15 like there's an increase.

16 MR. YOUNG: An increase?

17 MR. KEELING: An increase. The problem with that  
18 is it needs to be qualified because the wells that they  
19 sampled in 1993, the location and the number of wells is  
20 not the same as the number and location of the wells that  
21 was sampled in 2007. So you can't really make a  
22 comparison.

23 What they have done is they have taken  
24 individual wells that they have sampled several times  
25 over the last 15, 20 years and they have done trend

1 analyses on those. Some of those wells show decreases,  
2 some show increases.

3 Overall, if you compare the 1993 and the 2007  
4 the average concentrations have increased and the number  
5 of wells had that exceed the drinking water standards has  
6 increased. But, again, it's difficult to make that  
7 comparison definitively to say that there's been  
8 increases because it's not --

9 MR. YOUNG: It's a gross comparison?

10 MR. KEELING: Yes.

11 MR. YOUNG: Okay.

12 MR. KEELING: We've also heard testimony regarding  
13 whether quality monitoring for agricultural supply wells  
14 is appropriate. You very pointedly, Mr. Chairman, asked  
15 questions about that trying to get feedback from some of  
16 the people giving testimony. In case we have any doubts  
17 regarding this issue, there's essentially three reasons  
18 why water quality monitoring for agricultural supply  
19 wells is important.

20 First, growers should be sampling irrigation  
21 water for nitrate accounting during irrigation to reduce  
22 the amount of additional fertilizer that they're applying  
23 to their crops. Available water quality data that we  
24 have indicate there are agricultural supply wells in our  
25 region that contain nitrate concentration up to 15 times



1 drinking water standard. This nitrogen is available for  
2 crop update.

3 Accountability for the available nitrate in  
4 irrigation water may be one of the most effective ways  
5 and immediate ways that we have in reducing nitrogen  
6 loading to our groundwater basins in our region. Just  
7 think about if they eliminate applying a certain amount  
8 of fertilizer and using what's already in the  
9 groundwater. That's an off the top reduction in the  
10 amount of the amount of applied nitrogen.

11 Secondly, we really need to begin to start  
12 collecting water data in these ways now so that we have a  
13 baseline that we can use in the future to compare to and  
14 we can do trending analyzes so we can see whether we  
15 actually made improvements through the Ag Order or other  
16 methods that we've implemented over time that have been  
17 effective.

18 This also speaks to the problem that we have  
19 with getting the Monterey County Water Resources Agency  
20 data. We need to start collecting our own data because  
21 we cannot get the well data from the agencies that have  
22 them.

23 And lastly, we need these data to help us  
24 prioritize implementation of Ag Order and to protect our  
25 drinking water supplies. I think data are necessary to

1 identify drinking water supply wells that may be at risk  
2 of nitrate impacts. And to better understand the source  
3 of potential problems whether it be permeable soils,  
4 improperly constructed or damaged wells, irrigation  
5 systems that don't have adequate backflow prevention.

6 Now, if an individual well or groups of wells  
7 within a certain area contain nitrate 10 times the  
8 drinking water standard, we should be asking ourselves  
9 why and try to figure that out to prioritize our efforts  
10 to look at these areas.

11 MR. YOUNG: What is its legacy, nitrate?

12 MR. KEELING: In many cases it will be and that's  
13 something that we'll have to determine. We go in and  
14 look at the wells, the depths of the well in the areas  
15 and that may very well be the case, but I think it  
16 warrants an additional investigation to rule out the  
17 other possibilities that there is continued uploading or  
18 impacts that are associated with some problem that could  
19 be easily fixed.

20 MR. YOUNG: So what would we be looking at? The  
21 way the data that comes in from the irrigation of the  
22 nutrient management plan, because that's only in Tier 3.

23 MR. KEELING: Yeah.

24 MR. YOUNG: That's your proposal.

25 MR. KEELING: One of the things we can check to

1 look and see, you know, have they provided information  
2 regarding backflow prevention for irrigation to make that  
3 as kind of a higher order of our level of our review of  
4 what information is provided to us on that database.

5 MR. YOUNG: That seems to be -- that doesn't seem  
6 to be as obvious to me as the statement made by the  
7 gentleman, I forget who is it is right now, that you have  
8 to over-fertilize at least in the crops that he had  
9 studied, the plant uptake is just not that efficient.  
10 There was -- I'm just kind of --

11 MR. KEELING: I suggest you look at this in a  
12 different way. Plants uptake nitrogen very efficiently.  
13 Plants are very efficient. It's how we grow them that's  
14 not necessarily efficient. The inefficiency is in the  
15 irrigation management and the fertilizer applicant and  
16 the timing.

17 You know, you try to plant the maximum amount  
18 of crops in an acre of land and you want to grow it as  
19 fast as you can and turn around and bring it to market,  
20 it becomes difficult. The efficiencies start to come --  
21 fall away.

22 Now, this is my own kind of a big picture.  
23 I'm not an expert technologist, I'm not an agronomist,  
24 but I've been looking at a lot of this stuff for a couple  
25 of years now. Whether or not we can reduce that to zero,

1 at this point, I don't think so, but I don't think we  
2 should have a short-sighted approach. Why should we try  
3 because we'll never get there. I think we should try to  
4 see how close we can get to that bar. And if we get to  
5 that place we can learn lessons that will enable us to  
6 improve our technology.

7 MS. SCHROETER: To answer your question more  
8 directly. A few of the things that we would look at  
9 immediately in your report, what practices were being  
10 reported in terms of the general nutrient management of  
11 the double tier to have annual compliance forms similar  
12 to the management practices checklist that are already  
13 required. Look at what practices are being recorded  
14 there.

15 For those individual farmers which had a high  
16 nitrate loading risk, we would also be looking at total  
17 nitrogen applied.

18 MR. YOUNG: Looking at that last --

19 MS. SCHROETER: Total nitrogen applied.

20 MR. YOUNG: Well, I think most farmers are  
21 probably willing to cooperate and make improvements in  
22 what they're doing. I think that there's probably a  
23 generalized fear that, you know, anything they may do  
24 that gets reported to us is going end up with  
25 administrative penalties being assessed against them.

1                   So, you know, at what point down the line,  
2                   um, I don't know what I'm looking for. You know, what is  
3                   compliance? And what can be said to those that are, you  
4                   know, kind of fearful for, you know, there's, I think, a  
5                   fear of participating in providing information and  
6                   because, you know, the more you give a regulatory agency  
7                   the more it's going to end up biting back at us.

8                   I understand our approach because we are a  
9                   regulatory agency and that is how we operate and there is  
10                  some coercive effect in having statutes and regulations  
11                  set up for us to seek compliance. But it's kind of a  
12                  very unique program we're trying to implement, and I'm  
13                  just trying to get a sense for, you know, where this  
14                  transition lies between collecting information and  
15                  analyzing and seeing what's going on, and then when the  
16                  shoe drops and --

17                  MR. THOMAS: Do you want to say something?

18                  MR. BRIGGS: Yeah. You're talking as if you're  
19                  going to be dropping something and losing control of  
20                  enforcement in terms of followup, and this is the kind of  
21                  thing that could come back to you. People are concerned  
22                  about mandatory minimum penalties with NPDS permitting  
23                  program, this is not that situation. And it's not like  
24                  you're giving up your control over enforcement and  
25                  throwing it into a penalty machine or something and it's

1 going to run wild. You are the ones who would be making  
2 those decisions.

3 And the case of the gentleman mentioned from  
4 the north county, that was a decision the Board made  
5 based on the facts. Actually, the staff had recommended  
6 a much lower penalty. Came to the Board. That's your  
7 decision. So, it's not something where you're abdicating  
8 authority and it's going to throw people to some, you  
9 know, wolf in the closet. Those are things that come  
10 back to you.

11 We would follow up with escalated enforcement  
12 actions of an administrative nature, but when you're  
13 talking about penalties, that's something that would come  
14 back to you.

15 MR. KEELING: I'm sorry, you got us off topic  
16 there.

17 MR. THOMAS: I was just going to add what Roger's  
18 talking about the process that we go through, two level  
19 process; staff level process, then the Board's process  
20 and everyday staff is dealing with enforcement issues or  
21 potential enforcement issues. We're doing that right now  
22 with the Ag Program where we have individuals where we  
23 have sent out notices of violations. They then contact  
24 us, and talk to us about the situation, their particular  
25 situation, and we work with them on that. And we decide

1 in some cases in the more egregious cases where a person  
2 just ignores or refuses to do it, those are the kinds of  
3 cases we relegate to the Board, the others go away or  
4 settle. And then when those cases go to the Board then  
5 the Board decides whether they're going to take an  
6 action.

7 It would be the same thing in this case. The  
8 same thing that's going on with the existing Ag Order  
9 that was adopted in 2004 is going on with the new Order,  
10 that same two level process. And the staff level would  
11 be prioritizing and considering the circumstances of each  
12 case and those that warrant actual enforcement action or  
13 actual recommendation to the Board for enforcement.

14 As Roger pointed out, there is no mandatory  
15 minimum type of situation in this case. It doesn't  
16 exist.

17 MR. YOUNG: Okay. Continue.

18 MR. KEELING: They took me off.

19 MR. YOUNG: They took you off?

20 MS. SCHROETER: Next we'll hear from Monica  
21 Barricarte.

22 MS. BARRICARTE: Good afternoon. My name is  
23 Monica Barricarte. B-A-R-R-I-C-A-R-T-E. I've been here  
24 with the Water Board for about three years now. And I am  
25 the person that is going to provide -- or present our

1 response, the staff's response to the issues raised by  
2 the Strawberry Commission during the last meeting we had  
3 at Watsonville, March 17th.

4 I am the person bringing the response today  
5 because I was the staff assigned to prepare all the  
6 requirements of the Nutrient Management Plan, that we  
7 talk about today many times, along with my colleagues and  
8 Mr. Thomas that is a hydrologist.

9 Both of us gathered a small group of experts,  
10 a technical advisory committee that provided us equal on  
11 the miles factor on the nitrogen ratios that was raised  
12 today.

13 The staff was formed by experts from the  
14 University of California Cooperative Extension. They  
15 have experience with the fertility and the first layer  
16 application of the crops raised in the Central Coast. We  
17 also have a certified crop advisor that has experience in  
18 limitation of the Nutrient Management Plan for vineyards  
19 and a certified crop advisor with experience in Nutrient  
20 Management Plan with vegetables. And we also have a  
21 colleague from the Central Valley who has experience in  
22 the development of a nutrient management plan for the  
23 dairy program. And he also worked for the Ag Program in  
24 the Central Valley. And he's the one who actually  
25 provided input on how much reporting can staff handle,



1 and how much we can actually evaluate. That's why you  
2 see there are parts of the Nutrient Management Plan we  
3 only require two elements to be reported to us.

4 I also worked on the section of an order on  
5 the best management practices because I have experience  
6 when I worked with the different conservation in the  
7 Santa Maria area. I was one of the two people running  
8 what is called the irrigation lab. I had a chance to  
9 work with growers. And I also am a certified crop  
10 advisor. I was certified for about two years.

11 So, if you remember, during the March 17  
12 meeting, the Strawberry Commission was presenting  
13 preliminary information of a study that was suggesting  
14 that strawberries should be consider low risk, a crop  
15 with low risk for the potential of nitrogen leaching to  
16 groundwater. And they concluded that based on that  
17 saying that the majority of the acreage we're managing in  
18 a manner that the nitrogen was in the groundwater. We,  
19 staff, here, it was our response we actually do not agree  
20 with that. We disagree with those conclusions for two  
21 reasons for that.

22 First of all, the strawberries have been one  
23 of the high risk with a potential of nitrogen leaching to  
24 the groundwater by the University of California and the  
25 Division of Agriculture of Natural Resources. They

1 evaluate many crops and they concluded that strawberries  
2 was a high risk. We did didn't do that.

3 They made the criteria and they made the  
4 assessment and those -- the criteria is based on  
5 intrinsic characteristics of the crop. One example would  
6 be the pruning. Like strawberries are considered higher  
7 risk for potential of leaching of nitrate on liquid on  
8 the crops. So, they, basically, the University of  
9 California Agricultural Natural Resource Division says  
10 strawberries are high risk. The Strawberry Coalition  
11 said they are low risk.

12 And secondly, what, we the staff, took a  
13 closer look at is the data they had presented, and we  
14 actually don't think that the results that were presented  
15 prove or can show that strawberries are low risk. And  
16 I'm going to go through a few reasons why.

17 First of all, the study was based on a small  
18 subset of growers, about 10 percent for the whole region.  
19 We don't consider that to be a significant number.

20 Then the Santa Maria areas were  
21 unrepresented on many levels, but mainly because none of  
22 the participant growers applied compost. So, in other  
23 words, compost application was not evaluated as part of  
24 the studies that was presented. We seen that as a  
25 shortcoming.

1           Also, the resource person they were from half  
2 of the growing season, of the strawberry growing season,  
3 they presented data from what they call the production  
4 season, which was March on. So they said the window time  
5 that is missing that is when the crops are established.  
6 And we believe -- suspected that during that time a  
7 significant amount, a high amount of leaching of nitrate  
8 due to the first application, the compost application.  
9 None of that was part of the evaluation. We re-evaluate  
10 it as a gradual study, but the data has not been  
11 presented yet.

12           So, basically, we disagree. We don't think  
13 that the results prove the strawberries are low risk, and  
14 actually, we thought that the data was insufficient  
15 mainly because it boils down that the point of the  
16 studies was not to show the level of risk on the  
17 strawberries in the region.

18           We think this data project is the greatest  
19 project and is going to actually provide extremely  
20 valuable information, especially on the amounts of  
21 nitrogen that the strawberries need to grow in the  
22 region. We -- I mean a few presenters, people today made  
23 that comment that several of the growers have an unknown  
24 amount of nitrogen to grow, and so this project is going  
25 to provide that information for the strawberries.

1           Also, it shows that at least some growers are  
2 already implementing efficient irrigation of the nutrient  
3 management of the crops, and they could minimize the  
4 nitrogen loading to the water even when they are growing  
5 high risk crops.

6           So, we also wanted to bring this up that we  
7 also provided -- we have included incentives for those  
8 growers who if, in fact, they are already meeting the  
9 targets that we proposed, they could apply to be  
10 considered as the low tier. So the growers would have to  
11 show the -- actually, show that they are low rate to the  
12 quantity. And in this case, an example would be like  
13 they would show recordkeeping of the total amount of  
14 nitrogen applied. They have to calculate the target they  
15 are already meeting, and that actually compared with the  
16 targets that we are proposing, they would be consider as  
17 a low for -- qualified low tier.

18           So, as a conclusion staff recommends that  
19 nutrient management plant requirement and the least of  
20 the crops that are considered to be high risk for  
21 potential of nitrogen leaching to groundwater to be  
22 adopted as the most reason conditional without any  
23 changes.

24           I would also like to take the opportunity to  
25 respond to a few comments, questions there were raised by

1 you before regarding nitrate ratios.

2 Mr. Borel, Mr. Costa were concerned that  
3 ratios that we were proposing are based on how much is  
4 removed at harvest, the nitrogen amount removed at  
5 harvest. And they said that they don't think they can  
6 meet those ratios. We want to clarify to them that the  
7 ratios 1.0 and 1.2 is based on what the crops need or  
8 what they call the crop uptake. It's actually the total  
9 amount of nitrogen applied compared to what the crop  
10 needs or uptake, not the amount of nitrogen that is  
11 removed at harvest. That's a big difference.

12 I don't understand why that confusion came  
13 along. It was when we were preparing these requirements  
14 with the technical advisory committee we did studies that  
15 is a tentative ratio target. We actually decided to step  
16 down and actually started with a -- with the first step  
17 that would be a target based on what the crop needs.

18 We actually don't think at this point the  
19 developed target based on what is removed at harvest like  
20 Mr. Borel said we need more data and more technology to  
21 actually be able to develop targets for them. We  
22 actually do have that. That would be the next step.

23 Another question that was raised, I guess  
24 this would be a good time to answer. We do know that the  
25 nitrogen, typical nitrogen uptake like many crops in the

1 Central Coast for the one -- the crops called high risk  
2 crops there are about five crops that we'd like to get  
3 data that could be used as a target as a value that would  
4 be considered as a typical nitrogen crop. We do need the  
5 numbers for broccoli. We have broccoli, celery and a  
6 significant amount of lettuce and now strawberries.

7 Thank you.

8 MS. SCHROETER: We do have several other comments  
9 on recommended changes.

10 MS. McCANN: Lisa McCann, M-C-C-A-N-N.

11 I just wanted to go back around to a couple  
12 of issues in response to the Farm Bureau's proposal based  
13 on what we heard and what we spoke to you about on March  
14 as well as listening to some of the additional aspects of  
15 the proposal today.

16 In general, the Draft Order does support  
17 industry use of coalitions and audits. It's Condition 10  
18 on page 12. We do support and encourage industry in  
19 their efforts to assist farmers to improve water quality  
20 and to work to comply with the Order. And we see this as  
21 a continuation of improvements that were initiated and  
22 had been in progress in a collaborate way among industry  
23 for the existing Order.

24 In addition, we think industry should be  
25 helping farmers to specifically measure, account for and

1 report individual and specific effectiveness at  
2 controlling their individual discharges and reducing  
3 pollution loading.

4 The proposal even with the additional  
5 comments made today still in staff minds does not include  
6 adequate monitoring, reporting, time schedules or  
7 milestones.

8 The Draft Order does allow cooperative  
9 monitoring, as you know, similar to the current  
10 cooperative monitoring program for surface water  
11 monitoring and also completely provided for the  
12 opportunity for growers to join together for cooperative  
13 groundwater monitoring as well, but the staff still  
14 recommends that that monitoring include individual  
15 drinking water wells and irrigation production wells at  
16 the various farms. That's two times that those wells  
17 would have to be sampled in the entire five year period  
18 of the Order.

19 And, also, wanted to mention that the  
20 opportunity for a trained professional to collect that  
21 data is also available in the RPS currently. That's the  
22 Monitoring and Reporting Program.

23 Just the issue of groundwater sampling; we've  
24 seen some changes and heard some different ideas about  
25 how hard sampling was originally proposed in the December

1 proposal from the Farm Bureau, then it was not included  
2 in the March proposal and then we heard today that it is  
3 in some capacity included in the proposal as currently  
4 presented.

5           And the proposal doesn't protect drinking  
6 water, Agriculture Proposal does not protect drinking  
7 water. We have several requirements including, for  
8 example, the requirement to backflow prevention devices  
9 on the irrigation systems, and chemicals are applied  
10 through the irrigation lines to prevent drinking water  
11 from being polluted.

12           And the last comment is that the Agriculture  
13 Proposal as proposed still does not appear to be  
14 enforceable. When I say still does not appear, even with  
15 the changes that we heard today. Briefly, for example,  
16 there's no reporting on any individual discharge on the  
17 conditions of that any individual discharge on what  
18 management practices would be implemented on whether  
19 they're effective, whether loading is being reduced from  
20 any particular farm.

21           And, also, there are no requirements in their  
22 proposal to have to comply with water quality standards.

23           Angela is now going to talk, specifically, about  
24 comments that we heard on changes to requirements in the  
25 Order and staff's response to those.



1 MS. SCHROETER: Okay. So one of the things that  
2 we have heard consistently and again today was that  
3 tiering criteria is not based on actual impact to water  
4 quality. One of the challenges with the tiering criteria  
5 is that the only effective way to tier based upon impact  
6 to water quality is to require individual discharge  
7 hydrozation for purposes of tiering.

8 The staff actually evaluated that as an  
9 option back in November 2010 and the conclusion at that  
10 time was it wasn't reasonable to ask every discharger to  
11 characterize their discharge for the purposes of putting  
12 it in a particular tier.

13 So the challenge then is you have to select  
14 indicators or processes of other items that are more  
15 reasonable to collect that would still help establish  
16 acceptable water quality.

17 So one of the specific comments that we have  
18 heard is that the office should not use acreage -- I'm  
19 sorry, this one draft order action should use individual  
20 farms not operations. Staff agrees and is recommending  
21 changes to the draft order to reflect this.

22 So, you might recall the slides I showed in  
23 March of the three various individual farms that belong  
24 to an operation. So staff's recommending that we change  
25 the draft order to tier based upon the individual farms

1 and not the operations. So this focuses the  
2 characteristics of individual farms and is responsive to  
3 the concerns that individual farms be pulled into a tier  
4 despite their association of a particular operation.

5 The Board has also heard comments that the  
6 use of acreage in a tiering criteria is inappropriate.  
7 Staff evaluated fresh water quality specifically relative  
8 to nitrate loading risk based upon individual farm  
9 acreage and still concluded that farm size is a  
10 meaningful tiering criteria for this purpose.

11 The next few slides will provide details  
12 about staff's evaluation. So the purpose of this slide  
13 is to show you the range and farm size for those farms  
14 that grow crops identified by University of California as  
15 having a high potential for nitrogen to groundwater. So  
16 of those -- of a total of 3,000 farms that have submitted  
17 updated notice of intent about 13072 farms that grow crop  
18 types for a high potential for nitrogen to groundwater.

19 It's important to note that that represents,  
20 approximately, 189,000 acres or more than 40% of the  
21 totally area in the entire region.

22 To be clear, again, this is not a graph of  
23 all of the farms in the region. It's just the subset  
24 growing those crop types.

25 On the x axis here we have farm acreage

1 categories. So, for example, here, we have farms that  
2 are less than 10 acres, and the second farm we have farms  
3 that are between 10 and 49 acres. And then the far right  
4 you have farms that are greater than 1,000 acres.

5 On the y axis we have a number of farms  
6 within that acreage category. So, you'll notice that for  
7 this first one, for example, we have 91 farms that are  
8 less than 10 acres. The second farm you have 331 farms  
9 that are between 10 and 49 acres, and then here at the  
10 very far end, for example, we have 11 farms that are  
11 greater than 1,000 acres.

12 So what that points out to you here is that  
13 the average farm size for those farms for a high  
14 potential for nitrate to groundwater is off 50 acres.

15 MR. YOUNG: Slow down.

16 MS. SCHROETER: What's interesting about that 50  
17 acres is that it's also the average farm size just  
18 overall. So keep that number in mind because it's going  
19 to play into how we evaluated the relative risk to  
20 groundwater.

21 So, remember I showed you this slide on March  
22 17th and this is a slide that was used as part of a  
23 training irrigation management plan for the University of  
24 California Extension. It represents data from more than  
25 100 fields and it shows the seasonal nitrate

1 applications.

2                   Before I explain this slide, I should point  
3 out this is another example where we have data on crop  
4 uptake value for nitrate. So here, remember, we have  
5 seasonal and fecal applications for lettuce. The high is  
6 92 and the lettuce is 17. Average is about 215.

7                   So, we have data from lettuce that the  
8 average crop uptake for nitrogen is 140 pounds per acre.  
9 So if you take this average pound per acre for the spring  
10 planting season, you subtract it -- you subtract the crop  
11 uptake, you get an excess nitrate on average of about  
12 75 pounds per acre. This is not to say that all  
13 vegetable growers apply. I'm just using the example here  
14 of what's being presented by the Poly Extension of the  
15 average seasonal application.

16                   So, again, let's remember that the sort of  
17 average excess nitrogen to lettuce is off 75 pounds per  
18 acres.

19                   So, this is an evaluation that staff did to  
20 look at relative nitrate loading. If we compare farms  
21 using acreage, we can evaluate that relative loading  
22 starting with the average farm size of 50 acres. So  
23 50 acres was at 75 pounds per acre of potential excess  
24 nitrogen. You get about 37, 50 pounds of nitrogen, that  
25 is excess on a farm size of about 50 acres. So that's

1 excess nitrogen for that particular farm, which is the  
2 average farm size.

3 If you then look at a 100-acre farm, you'll  
4 notice that if you take the 75 pounds per acre, you get  
5 7500 pounds of excess nitrogen.

6 So in comparison to the average farm in the  
7 50s we have about twice as much nitrogen loading  
8 potential. And you can continue to go down on the list.  
9 So 500 acres you get 37,500 pounds of nitrogen -- pounds  
10 of nitrogen excess, potentially, which is about 10 times  
11 relative nitrogen loading.

12 So you can sort of return to this analysis to  
13 do a relative nitrogen loading risk. It's not to say  
14 that all farms are loading this amount of nitrogen. My  
15 example here is to show that there is some relative risk  
16 to farm size if you take the average values. In the  
17 actual -- the actual amount of nitrogen applied is going  
18 -- can vary by crop. So this is just an example of how  
19 we evaluated that data. This is just to show that a  
20 smaller -- even smaller farm size you can get a fraction  
21 of what you get if you had a 50-acre farm.

22 So staff evaluated sort of relative nitrate  
23 loading and tried to create some scenarios on how we can  
24 assess relativeness about it. And what we started  
25 looking at was magnitude. So if you're between 50 and

1 500 acres you're within the average. Once you're in the  
2 larger than 500 acres you start getting more of a  
3 magnitude higher of potential nitrate loading.

4 So staff's recommendation is that for this  
5 particular criteria that we use this breakdown for  
6 tiering criteria. So that would be less than 50 acres  
7 for Tier 1, between 50 and 500 for Tier 2, and greater  
8 than 500 for Tier 3.

9 And what I want to point out here is that  
10 that results -- now in looking -- remember that we're  
11 looking at individual farms, not operations, so that  
12 would result in about 69 individual farms or 56,000 acres  
13 in Tier 3 for those criteria.

14 The majority of farms would be -- acres would  
15 be in Tier 2, and then a lesser amount would be in Tier  
16 1.

17 So this is how the recommended change would  
18 look in the Tier 3 criteria. So assessing operations  
19 with 1,000 acres it would say farms greater or equal to  
20 500 acres in growing crop types for the potential of  
21 nitrate to groundwater.

22 So the next change that we elect to recommend  
23 in response to the comments that the Draft Order  
24 shouldn't allow the use of a nitrate hazard index  
25 including soil types. Staff agrees and recommends

1 changes to the Draft Order to allow the use of nitrate  
2 hazard index to them.

3 A little bit of background on that is that we  
4 considered using that originally but opted not to use the  
5 soil aspect nitrate hazard index because we thought it  
6 would be too burdensome to growers to have to evaluate  
7 the soil types in the Central Coast region.

8 I have since March 17th talked to Dr. Levy  
9 who came and spoke to us on March 17th with the Farm  
10 Bureau team and he assured me that farmers could evaluate  
11 soil types usually and that the nitrate hazard index  
12 available to them can accommodate the soil types on the  
13 Central Coast.

14 The Board also heard comments that the  
15 tiering criteria should include additional pesticides  
16 rather just Chlorphyrifos and Diazinon. The concerns  
17 related to this comment are that the toxicity inherent to  
18 agricultural areas are due to more than just Chlorphrifos  
19 and Diazinon. That lots of pesticides cause toxicity,  
20 not just those two. And that by focusing on these two  
21 chemicals you can encourage some growers to switch.

22 Staff evaluated the possibility of including  
23 additional pesticides material in the criteria and  
24 concludes that changes are not warranted at this time and  
25 that the related requirements in the Draft Order are

1 protective of water quality and addressed the concerns  
2 that I just mentioned.

3 Specifically, the Draft Order includes  
4 toxicity monitoring of surface receiving water.  
5 Monitoring for toxicity just like it is currently,  
6 generally shows impacts caused by multiple individual  
7 pesticides.

8 In addition, the Draft Order, MRP, also adds  
9 individual pesticide monitoring different from the  
10 existing monitoring program of, approximately, 50 of the  
11 most common agricultural pesticides in surface receiving  
12 water.

13 This is a new Draft Order, again, different  
14 from the existing monitoring program. This will provide  
15 a data to identify the detection of and any change in the  
16 current receiving water related to the specific  
17 individual pesticides.

18 In addition, the Draft Order also requires  
19 Toxicity Identification Evaluation Studies or TIE to be  
20 conducted where there's persistent unresolved toxicity.  
21 This is another improved aspect in the Draft Order, MRP,  
22 which is different from the existing program.

23 Then, finally, in terms of the Tier 3  
24 individual discharge monitoring requirements include both  
25 toxicity and Chlorpyrifos and Diazinon. The Tier 3 MRP



1 also provides the EO with the authority to add additional  
2 pesticides to the individual monitoring based upon  
3 pesticides use. So if a grower was to switch from, say,  
4 Chlorphyrifos and Diazinon, for example, and there's  
5 still persistent toxicity, the EO could change to adapt  
6 the monitoring program for that grower.

7 It's also important to point out that the  
8 Draft Order included explicit findings which would allow  
9 the Board to modify the pesticide criteria in a program.  
10 This is the beginning, not the end. The Draft Order  
11 provides the opportunity for staff to recommend for the  
12 Board to consider additional pesticides in the future.

13 Finally, a less significant issue, but  
14 important nonetheless, is that there would be conflict  
15 consequences to adding new pesticides to the tiering  
16 criteria at this time. Staff was attempting to be  
17 reasonable in the tiering approach by starting with the  
18 chemicals and not a wide variety or amount of them. The  
19 specific chemicals that we included are the known sources  
20 of severe toxicity on the Central Coast.

21 Including additional pesticides would elevate  
22 in those unknown number of growers to the higher tiers.  
23 Tier 3 potentially. This would give staff additional  
24 time to evaluate impact to these changes. This would  
25 result in an unnecessary delay and order adoptions and

1 ultimately delays in the water quality program.

2 The staff concluded that it's not necessary  
3 at this time to add additional pesticides to tiering  
4 criteria in that the Draft Order and MRP are an  
5 improvement on the existing Order and are protective of  
6 water quality.

7 MR. YOUNG: What about we heard testimony that  
8 they are in use and they are being picked up in receiving  
9 waters.

10 MS. SCHROETER: And the Draft Order includes  
11 adding those individual pesticides to MRP and, also, if a  
12 grower was to use that pesticide, an individual grower in  
13 Tier 3 the EO could adopt their monitoring requirements  
14 to include those chemicals.

15 MR. YOUNG: Well, what would be the significance  
16 of adding that now, one additional chemical?

17 MS. SCHROETER: It's actually a group of  
18 chemicals, so it's not just one chemical. So,  
19 potentially, what we have to do is to go through the  
20 database just like we did in the program to evaluate  
21 where that's been used and how that would impact the  
22 tiering criteria.

23 MR. YOUNG: The staff doesn't have the data on how  
24 many farmers are using pyrethroids in the Central Coast  
25 region?

1 MS. SCHROETER: It's a little bit complex for that  
2 because we don't have at the regional board the data for  
3 each individual farm. What we have to do is look at the  
4 pesticide use data as reported by permits.

5 MR. YOUNG: By who?

6 MS. SCHROETER: By the permit. DPR permit. And  
7 we have learned that data and figured out who is using it  
8 based upon that analysis.

9 However, our preliminary analysis shows that  
10 it would be a significant increase likely.

11 So, finally, an easy -- an additional change  
12 that we're recommending based upon the comments that the  
13 Board should have exclusive authority to modify the  
14 tiering criteria not the Executive Officer. Staff agrees  
15 recommending changes to the Draft Order to reflect that.  
16 And we agree that making this change provides more  
17 stability and certainty in the tiering criteria so that  
18 growers can plan and implement based upon sort of a more  
19 predictive tiering criteria.

20 MS. HUNTER: While we're waiting for the  
21 monitoring program to be structured now for receiving  
22 water quality, will we see or pick up any problems  
23 associated with growers or is that data going to somehow  
24 get implemented?

25 MS. SCHROETER: I believe, yes, but I'll defer

1 that question to Karen.

2 MS. WORCESTER: Karen Worcester,  
3 W-O-R-C-E-S-T-E-R.

4 In the second year of the program, receiving  
5 water monitoring program has enhanced components that  
6 include pesticide monitoring along with the toxicity  
7 monitoring. So when they do, for example, the sediment  
8 toxicity monitoring, they will also do monitoring to  
9 anything that's attached to the sediment. It will  
10 ultimately be maybe 10 or 12 that may be requiring  
11 monitoring.

12 MS. HUNTER: Two or three --

13 MS. WORCESTER: No, this is the receiving water.  
14 Now, the individual monitoring for Tier 3 what we're  
15 discussing now, staff is recommending not adding  
16 additional pesticides, but what we did do is we changed  
17 the required toxicity monitoring. It originally included  
18 two tests in water; one that's for invertebrates and one  
19 for an algae. The invertebrate is sensitive, more  
20 sensitive to OP pesticide. So we substituted the algae  
21 test for another type of invertebrate test that is  
22 subjective to pyrethroids.

23 MS. HUNTER: So over the five years you can start  
24 to see some characterization of the pyrethroids problem?

25 MS. WORCESTER: Yes.

1 MS. McCANN: Let me clarify something, Karen, so  
2 that it's clear. We're not recommending adding to every  
3 tiering criteria, but as an individual discharger in 2,3  
4 is using a pyrethroid the Executive Officer requires them  
5 to monitor for that individual discharger.

6 MS. HUNTER: And then that could develop from the  
7 receiving water data?

8 MS. McCANN: It could develop from the receiving  
9 water data and it could also develop directly from their  
10 pesticide use through our knowledge from the regulation  
11 use, pesticide use information that is linked to the  
12 individual farms.

13 MS. HUNTER: And would it also come through in the  
14 annual compliance report? Are they required to apply --

15 MS. McCANN: Yes, yes, they are.

16 MS. SCHROETER: So this is the summary of the  
17 recommended changes to the Draft Order; tiering  
18 individual farms instead of operations. Modifying the  
19 tiering criteria to look at acreage relative to nitrate  
20 loading. Allow the use of nitrate hazard index.  
21 Removing the Executive Officer's authority to modify the  
22 tiering criteria. And finally just sort of more  
23 administrative, we would need to adjust the dates in the  
24 Order and MRP to reflect Board adoption because those  
25 dates are getting old at this point.

1           So we feel like these changes will improve  
2 the Draft Order focusing efforts on the emphasis of the  
3 characteristics of individual farms, and prioritizing  
4 dischargers opposed to higher water quality.

5           These changes do result in some changes  
6 that -- in numbers in farmers and tiers. Most  
7 substantively the change from operations to farms and in  
8 the acreage. So, we went down from operation of 1,000  
9 acres to a farm of 500 acres or more.

10           So, this is sort of a summary of how,  
11 overall, the numbers of growers and acreage would fill  
12 the tiers. Again, this is just an estimate and it's  
13 based upon the data that we have received from the  
14 updated notice of intent.

15           So, for Tier 3 we estimate, approximately,  
16 100 farms, individual farms, and this represents about  
17 20 percent of the acreage. So this is a pretty  
18 significant reduction from the November Draft. If you  
19 remember, we were at about 230,000 acres before.  
20 However, what we do think is that at this reduced acreage  
21 the requirements for Tier 3 will be more focused on those  
22 that would be implementing the necessary requirements.

23           So, for example, before it was subset, we  
24 would have to implement the irrigation management plan.  
25 So we captured the subset more here versus the entire

1 operations.

2                   However, it's still consistent that for Tier  
3 2, which is those requirements that are most similar to  
4 the existing Order, they still have a majority of OP  
5 farms and the majority of acreage in that Tier 2. The  
6 smaller amount of farms, 630 acreage representing what we  
7 would identify as very low threat.

8                   So, again, our recommendation is those  
9 changes we feel is reasonable and responsible given the  
10 severity of the water quality conditions.

11                   We feel that the requirements for Tier 3 are  
12 reasonable given the severity and magnitude of the  
13 potential threat to our water quality. And that a  
14 majority of the farmers would have similar requirements  
15 as they currently do.

16                   MR. YOUNG: Couple of questions for you.

17                   Let's say we have a small watershed which has  
18 just Tier 2, is there no individual monitoring for --

19                   MS. SCHROETER: That's correct.

20                   MR. YOUNG: Is there going to be individual  
21 groundwater for Tier 2?

22                   MS. SCHROETER: That's correct. So --

23                   MR. YOUNG: For riparian?

24                   MS. SCHOETER: Yes.

25                   MR. YOUNG: For surface water, what if you don't

1 see an improvement in surface receiving water over a  
2 2,3,4 year period and all we have is the collective  
3 monitoring stations out there in the watersheds. What's  
4 the next step? What mechanism is in this program for  
5 trying to further delineate who might be contributing to  
6 a problem?

7 MS. SCHROETER: Well, there are some mechanisms,  
8 but let me first describe that we would conduct  
9 implementation of the Order somewhat to what we do now.  
10 So we wouldn't just be looking at the receiving water, we  
11 would be looking at what the Tier 2 growers were  
12 reporting according to the annual compliance report in  
13 terms of the practices they're implementing, if  
14 necessary, the total acreage apply if they're are higher  
15 risks in terms nitrate loading. So we would be able to  
16 sort of discern within that data the potential water  
17 quality.

18 The Annual Compliance Report also asks for  
19 characteristics of discharge. We would be able to sample  
20 the volume of receiving water. Things like that. If  
21 receiving water didn't improve, we have -- there are some  
22 options. One, we could adapt the MRP, for example, to  
23 get more explicit information about that. We can also  
24 look at, basically, the information that we do have  
25 potentially elevating some growers if necessary to a



1 higher reporting level in Tier 3 --

2 MR. YOUNG: Based on what? The Board would have  
3 to do that, I assume, or are you saying that EEO could  
4 elevate people?

5 MS. SCHROETER: The current Draft Order gives the  
6 Executive Officer the authority to elevate growers to a  
7 higher level.

8 MR. YOUNG: And vice-versa.

9 MS. SCHROETER: And vise-versa. The discharger  
10 can provide information if they belong to a lower tier.

11 MR. BRIGGS: What we're recommending as far as  
12 maintaining the Board authority is on the tiering  
13 criteria itself.

14 MR. YOUNG: Now, going back, Angela, to your  
15 slides with the breakdown of the high nitrate use crops,  
16 the nitrate. When I look at that I come up with a  
17 similar reaction as I had when I looked at the slides  
18 based on the aggregate coming up to 1,000 acres. I just  
19 want to throw it out to get your reaction.

20 The real issue here is just the fact of the  
21 amount of per acre potential excess fertilization, that's  
22 really what the standard that you're using through all of  
23 this. And you could have 10 farms side by side, on one  
24 side of a river all in Tier 2. On the other side is the  
25 same amount of acreage combined with one farm is 1,000

1 acres and you have two different tiers, but the risk to  
2 water quality would be the same.

3 MS. SCHROETER: So, you're talking about the  
4 collective impact of the discharge. That's true. If you  
5 look at, for example, we grouped the acreage, so in terms  
6 of these categories, these bars, we know how much acreage  
7 is within each category, and it's not in significant.  
8 So, a large number of smaller acre ranches do contribute  
9 to nitrate loading.

10 And, in fact, it was a difficult evaluation  
11 for staff in terms of trying to assign tiers using this  
12 data. If you look at even a 10-acre farm, or a 50-acre  
13 farm, 750 pounds of excess nitrogen for a single cropping  
14 season that may occur multiple times over the year is not  
15 insignificant alone. And so how do you justify putting  
16 that particular farm in a lower tier?

17 But, again, you recognize that we're trying  
18 to prioritize and start somewhere and so we made judgment  
19 calls, essentially, you know, evaluating the various  
20 options. One is what if everybody goes to Tier 3 and/or  
21 drawing these different lines.

22 So, what we -- one reason why staff is  
23 comfortable with this recommendation is because each of  
24 the tiers includes a level of nutrient management  
25 requirements. Tier 3 you have an increase in nutrient

1 management plan. At Tier 2, you have a basic farm plan,  
2 plus total nitrogen applied reporting for a subset of  
3 those. And then for Tier 1 you have the farm plan  
4 without reporting. So we thought that that was a  
5 reasonable sort of scale requirement.

6 THE COURT: Okay. Michael.

7 MR. THOMAS: Couple of things. Just a couple of  
8 things that I wanted to reiterate, but not spend very  
9 much time on.

10 One of them is something we presented to the  
11 Board over and over again. And it's established in our  
12 staff report and in the Order that the water quality  
13 problems in our region are severe, both the  
14 groundwater and surface water problems are severe. The  
15 water quality conditions report that we submitted to the  
16 Board relies heavily on literature and empirical data.  
17 It's probably one of the most referenced reports that we  
18 have ever written. And we have slides that we can show  
19 you if you're interested, that summarizes the number of  
20 references and the timeline for those references.

21 These problems that exist in our region are  
22 well known throughout the state, throughout the country.  
23 And the studies that have been done on these problems  
24 have been done by a multitude of people, a multitude of  
25 organizations. And the studies all indicate the same

1 thing. It's not like we have a little bit of data that  
2 indicates that we may have a problem or that we have a  
3 competing body of literature. The overwhelming majority  
4 of the literature describes severe water quality problems  
5 in our irrigated agriculture.

6 This Order addresses those water quality  
7 problems. When we started this process two-and-a-half  
8 years ago the Board made it clear and the Executive  
9 Officer made it clear that we have to draft an order that  
10 addressed the water quality problems. Our legal counsel  
11 also made that clear to us. Otherwise the Order isn't  
12 valid. We have to address those problems. We have to  
13 address them directly, and we have to achieve water  
14 quality standards over time. Also, we need an Order that  
15 is enforceable with respect to those water quality  
16 samples, otherwise it's not a valid Order.

17 The tiering approach we think is reasonable.  
18 No matter what tiering approach we come up with you  
19 criticize it. We have to start someplace.

20 It's important to remember that in starting  
21 someplace we are undoubtedly going to revise that  
22 criteria over time. The more we learn, the more  
23 information that's submitted to the Board, the more the  
24 Board learns about the problems, the more likely it is  
25 that we will modify and improve that criteria.

1           The way this Order is set up, the Board has  
2 the authority to change that criteria, not the Executive  
3 Officers. So we will be bringing that issue back to the  
4 Board. So this isn't the end result. It's not intended  
5 to be the end result or to be perfect, it's a starting  
6 point. We can modify it as we go.

7           The Order is flexible. It allows growers to  
8 implement various management practices to use their own  
9 skills, their own expertise to work with professionals  
10 that are out there to apply unique approaches on their  
11 own properties, but to achieve water quality standards.  
12 That is the purpose of this agency to achieve those water  
13 quality standards to require achieving those standards  
14 over a reasonable amount of time. Growers have  
15 flexibility to implement different practices to do that.  
16 This order allows that.

17           Finally, there have been many changes in  
18 response to comments. We hear both sides, all side of  
19 this issue. We hear that staff is completely  
20 unresponsive on one end of the scale. On the other end  
21 of scale we hear that staff is bending over  
22 backwards to accommodate the Ag industry. That we have  
23 changed our draft over the past year and a half, our  
24 drafts, multiple drafts to the point where they no longer  
25 have any meaning.

1           We have changed the draft significantly over  
2 a year and a half. And Angela just went over additional  
3 changes that were made today, or proposing today in  
4 responding to comments again. I think the record shows  
5 that we have been responsive.

6           With that, I'll turn it over to you.

7           MR. BRIGGS: Thank you, Michael.

8           Some of these things will be a bit of a  
9 reiteration, but I'm going to get the last shot here --

10  
11           (Interruption by the court reporter.)

12  
13           (Break taken.)

14  
15           MR. YOUNG: Okay. Mr. Briggs.

16           MR. BRIGGS: Thank you, Mr. Chairman.

17           We heard a lot about the toxicity of the  
18 surface waters and the contamination of drinking water.  
19 These are the most serious issues the Water Board has  
20 ever faced and has addressed. We believe, actually, a  
21 couple Board members may have pointed out in their  
22 questions, the Water Board is the only agency with the  
23 authority and responsibility to address and resolve these  
24 issues. There isn't anybody else.

25           The public has a right to clean water, no one

1 has a right to pollute public waters. But nitrates in  
2 groundwater and surface water from agricultural  
3 discharges have been documented for decades; that's the  
4 legacy part, but they continue to increase today in many  
5 locations, not everywhere. But overall, we see increases  
6 and it's time to reverse that trend.

7           Unfortunately, many Central Coast residents  
8 are drinking water from a new water source that they have  
9 to pay for because the original drinking water wells  
10 became contaminated. Private individuals and taxpayers,  
11 therefore, are shouldering the burden of costs for  
12 replacement water both temporarily, for example, bottled  
13 water and long term from new and deeper groundwater wells  
14 or wellhead treatment, and we have a lot of examples of  
15 both.

16           But there are solutions, that's the good  
17 news. We've heard a lot about technical assistant  
18 providers, researchers and consultants that have shown  
19 examples over and over again of success. That's good  
20 news. Growers indicate many are already implementing  
21 these practices that are successful and that they're  
22 achieving targets. That was part of the strawberry  
23 conditions presentation last time.

24           And as we've seen in other arenas like  
25 storm water and other parts of the regulatory world that

1 the Board deals with, the Water Board must adopt the  
2 necessary requirements or they will not be implemented to  
3 do the scale and the areas where they are needed most.

4 The problems that we have in our watersheds  
5 are extremely serious. In the areas where good Ag  
6 practices are making improvements, that's great. Those  
7 folks should keep going and keep doing what they're  
8 doing. Those operations won't have problems being in  
9 compliance with this proposed Order. For the other  
10 operations we need to have a more accountable regulatory  
11 framework to make more progress, and we need to get  
12 going.

13 Farmers have been continuously learning  
14 better ways to operate since the beginning of farming.  
15 They need to continue to do so, but with increased  
16 awareness and emphasis on their -- the effects of their  
17 operations on the watersheds, the effects of the drinking  
18 water on their downgraded neighbors.

19 As we get into implementation we will use  
20 adoptive management to change and improve as well. Much  
21 of the interaction that we'll have of growers will come  
22 from the information that's submitted according to the  
23 monitoring reporting program. We can actually  
24 adjust that program, administratively, as pointed out  
25 here just recently, as we have learned how to make it



1 work more efficiently for it to be more effective, make  
2 more sense in ways that would minimize the regulatory  
3 burden on the growers. But we can make those adjustments  
4 once we get going with implementation.

5 And we've heard a lot of comments that  
6 agricultural dischargers must be accountable to the  
7 public by recording information that verifies compliance,  
8 and that resolution of the severe water quality problems  
9 requires that accountability just like any other  
10 individual business or industry that is regulated by the  
11 Water Board.

12 Existing and potential water quality  
13 impairment from agricultural waste discharge run-off  
14 takes on added significance and urgency. Given the  
15 degraded drinking water and the threats of public health  
16 that are associated with that, the limited sources of  
17 drinking water supplies that we have in our region, and  
18 the proximity of our agricultural lands to critical water  
19 dependent habitat. We must not delay the necessary  
20 actions to correct these problems. It's the -- again,  
21 it's the Water Board's role and responsibility on all of  
22 those fronts.

23 A gentleman today talked about his experience  
24 with underground tank cases and even postured that all  
25 those cases pale in comparison to the issue that we're

1 looking at today. And I'm not saying that we're talking  
2 about solvents spill cases or underground tank cases  
3 here, but we are talking about groundwater contamination,  
4 it's more widespread than those types of cases.

5 A couple of you Board members who have more  
6 tenure will probably recall some groundwater  
7 contamination cases with MTBE or benzene where we  
8 actually had buses of people who showed up at our Board  
9 meetings. And, Mr. JEFFRIES, I think you might recall  
10 you had to tell people they couldn't shake their signs in  
11 the back of the room. It was kind of like a  
12 demonstration.

13 These people were pretty excited because they  
14 relied on wells that were in the area of these  
15 contaminations, and were coming to the Board meeting  
16 demanding severe and swift action. And the Board agreed  
17 with swift and -- actions and that they adopted  
18 aggressive demanding orders with frequent updates on  
19 cleanup projects in nearly every meeting for years until  
20 the threats were resolved.

21 The reason I'm pointing this out is for some  
22 perspective. Those were cases where the wells were not  
23 contaminated. They were not even tainted. There were no  
24 detections at all, they were merely threatened by a  
25 nearby release. And yet we have stringent Board orders.

1           So contrast that regulatory action for merely  
2 threatened wells with the issue that we have today. We  
3 have wells all over the region in the heavy duty  
4 irrigated Ag areas that are not only threatened or merely  
5 tainted, but we have sole source drinking water wells  
6 that are degraded, contaminated beyond maximum  
7 contaminate levels with many of them two times, five  
8 times, 10 times up to 16 times the maximum contaminate  
9 level.

10           And we have on top of that, is if that  
11 weren't urgent enough, we have areas that are nutrient  
12 ladened, and we have toxic surface waters in a large  
13 percentage of the waters in our agricultural areas.

14           The situation is dire. I've worked on  
15 pollution issues in the region for 37 years, and never  
16 have we had an issue before us that is as severe, as  
17 broad in terms of types of problems, both surface and  
18 groundwater and yet the proposed Order is not draconian.  
19 It is measured with tiers. It's reasonable, it allows  
20 time for improvements.

21           And while it's not Draconian, another thing  
22 that it's not is perfect. We've worked on it for  
23 two-and-a-half years. We could continue to debate and  
24 revise the Order for two-and-a-half more years and we'd  
25 end up with a draft that's, guess what, not perfect.

1           Taking the time to chase an unattainable goal  
2 of perfection delays what we must do. Such delays would  
3 mean that we're ignoring the urgency of the situation,  
4 the urgency is the high percentage of surface waters that  
5 are toxic and our are groundwater that's polluted.

6           Now, toxicity is more short term. We should  
7 be able to see more short term improvements with that  
8 problem. Groundwater is long term, and yes, it will take  
9 a lot of years to solve that problem, but as one of our  
10 Board members said almost a year ago in response to that  
11 notion, well, we better get started. So, I recommend  
12 that it's time we adopt the Order.

13           And the last slide that we have here is just  
14 a reminder of the fact that since we have a panel, how  
15 does the Board take action? So I recommend that you  
16 deliberate as you would as if you were a full Board  
17 making a decision today, the only difference is that your  
18 vote today is translated into a recommendation to the  
19 next quorum of the Board.

20           And if you want changes, I ask that you  
21 please make them specific just as you would if you were  
22 adopting an order as a full Board in the form of a motion  
23 and a vote, and that way, we, the staff will know without  
24 guesswork exactly what it is to bring back to the full  
25 quorum of the Board.

1                   Thank you.

2                   MR. YOUNG:   Okay.   Who would like to go first?   I  
3   have my own thoughts on what I would like to see happen,  
4   but I don't know if you want me to be the first one to  
5   speak.   I will if you want me to.

6                   MR. HODGIN:   I think it's more in terms of a  
7   question for staff.   Every workshop --

8                   Let's try this one now.   Is that okay?

9                   It's interesting.   Okay.

10                  Anyway, in every workshop we heard concern  
11   about what's the proprietary nature of any kind of well  
12   test and what is found in individual wells.   I think  
13   that's a clear difference.   Staff very clearly wants to  
14   know the condition in specific wells so that they can  
15   begin to map the problem and understand it better.

16                  The data available now is pretty much under  
17   regional basis, according to what's been said here.   The  
18   Ag folks really are very nervous about reporting  
19   individual ranch well conditions.   And I've heard some  
20   people suggest that maybe there would be future problems  
21   if their information was reported now.

22                  So, I'd like a comment from staff about is  
23   there a middle ground?   Is there some way that we can  
24   honor the concerns of the Ag industry and still  
25   accomplish the Water Board goals?

1 MS. McCHESNEY: Can I just say something first?  
2 The Water Code -- when the Board issues a waiver of  
3 distributing pilot, the Water Code requires that you have  
4 monitoring unless you have some reason of monitoring that  
5 it's not necessary because it's not a high risk problem  
6 or not a significant water quality problem. If you  
7 require monitoring, the monitoring is required by the law  
8 to be recorded publicly. So, if your Order requires  
9 monitoring, it has to be recorded.

10 Now, given that there could be some  
11 information about the wells that would not be publicly  
12 recorded, but the data is needed to be available.

13 Your second question about the proprietary  
14 information. And there is a section in the Water Code  
15 that requires that the Board requires protect the  
16 proprietary information, trade secrets, that kind of  
17 thing. So it is required to be protected and the  
18 Board -- staff feels that they can regularly in making  
19 sure that water proprietary information, trade secrets  
20 are protected from public disclosure.

21 So they can still answer the question,  
22 there's some middle ground, but I just wanted to let you  
23 know if you require monitoring, it needs to be required  
24 to be recorded.

25 MR. HODGIN: Just to go back to your first point,

1 you're saying that the suggestion that the Farm Bureau,  
2 for example, could get together and obtain information on  
3 a kind of a group basis and they might know the  
4 individual ranches, but we won't know here? That's not  
5 going to be possible.

6 MS. McCHESNEY: If you require monitoring by  
7 individuals, that monitoring data has to be recorded  
8 publicly, or cooperatively, or however you require  
9 monitoring to be developed and submitted. It's required  
10 by law to be reported publicly.

11 MR. YOUNG: What if there's group monitoring?

12 MS. McCHESNEY: The group monitoring has to be  
13 recorded publicly, yes.

14 MR. YOUNG: Whatever wells they're using?

15 MS. McCHESNEY: Right. I mean, I'd have to look  
16 up the specific section of the law, but there is some  
17 information about individual drinking water wells that  
18 doesn't require to be recorded publicly, but the data has  
19 to be recorded.

20 MR. HODGIN: I want to make sure I understand  
21 this. A coalition of some sort could not do the  
22 monitoring, perhaps, number the wells or something, but a  
23 number would -- you would not necessarily know which  
24 specific ranch it was on? There's some possible way to  
25 honor both things. It's not a choice, I'm hearing you

1 say.

2 MS. McCHESNEY: I'm just --

3 MR. THOMAS: Perhaps the other option is, Francis,  
4 we could make it clear what our enforcement priorities or  
5 enforcement and approach would be so that if the concern  
6 is that information submitted to the Board that we take  
7 enforcement action on. We can do a better job of  
8 explaining what our enforcement priorities are and when  
9 and in what condition we would propose enforcement  
10 actions.

11 From staff's prospective, as I was mentioning  
12 earlier, there's this process that we go through and the  
13 vast majority of enforcement cases or potential  
14 enforcement cases never come to the Board and never even  
15 result in issuing the fine. They resolve at a staff  
16 level. And we work with the dischargers. If we think  
17 there's a problem or a violation we always work with the  
18 dischargers. They often explain to us what the situation  
19 is in their case and then we make a decision on whether  
20 we move forward. And often it is resolved at that level.

21 I understand the fear because this is a  
22 regulatory enforcement agency. But the reality of it is  
23 that most of these cases are resolved without moving the  
24 Board, without resulting in --

25 MR. HODGIN: What I'm hearing you saying is we



1 cooperate now not necessarily be --

2

3 (Interruption by the court reporter.)

4

5 MS. McCHESNEY: The law requires issuing a waiver  
6 the waiver. The waiver shall include, but need not be  
7 limited to the performance of individual groups of  
8 watershed basin monitoring and that the purpose of the  
9 monitoring is to be designed to support the development  
10 and implementation of the waiver program including but  
11 not limited to verifying the adequacy and effectiveness  
12 of the waiver's conditions.

13 And you can consider values, duration,  
14 frequency and consistency of the discharge, the extent  
15 and type of existing monitoring activities, et cetera.

16 Monitoring results shall be made available to  
17 the public.

18 So that's, basically, those are the kinds of  
19 things that monitoring is supposed to evaluate. And,  
20 yes, monitoring information can be used for enforcement.  
21 It's required by law to have monitoring and that the  
22 purpose is to evaluate whether, in fact, your conditions  
23 are working and that water quality protection is being  
24 achieved.

25 MS. SCHROETER: Just to follow up on that, just to

1 add a little bit of perspective, Mr. Hodgin.

2           The Draft Order requires for Tier 1 and Tier  
3 2, two samples, that's it. Two samples over five years.  
4 So I'm not sure what ramifications or consequences that  
5 are being anticipated from two samples. But for context  
6 I think it's important to recognize that there's a lot of  
7 dischargers similar to those that are being regulated by  
8 this Order that would have a similar concern.

9           So, for example, in region five as part of  
10 the dairy order, they also have an irrigation management  
11 plan. They have been required to sample their wells  
12 annually over their time period. They're submitting that  
13 data.

14           So, in the underground storage tanks, also,  
15 there is a little bit different type of program,  
16 obviously, but what I wanted to recognize that many of  
17 those dischargers are small family owners and they live  
18 at their areas of business and they also have concerns  
19 about reporting that data. And I think in that context  
20 there is some level of confidentiality in terms of  
21 private residence, address, things like that that are not  
22 part of public distribution data.

23           So, it's out there. Things -- we're  
24 reporting data like this already.

25           MR. HODGIN: I wanted to comment on what you were

1 just saying, and confirm then that we would be able to  
2 gather the data, but not -- the public would not  
3 necessarily know the street addresses or location of that  
4 data?

5 MS. SCHROETER: There are very specific rules  
6 about confidentiality in terms of private --

7 MS. McCANN: Private wells and location.

8 MS. SCHROETER: Right. I'm not certain what those  
9 are. But I know, as an example, for the underground  
10 storage tank program the way that is being interpreted  
11 there is that if your business is your private residence,  
12 for example, then those well locations don't show up in a  
13 way they can be displayed to the public, but they're  
14 reported to the Board as part of the reporting  
15 requirements. So that's one area that we can at least  
16 look into to see how that would affect the reporting.

17 DR. HUNTER: I just want to be sure the very first  
18 line of the section that says that you could require  
19 individual or group monitoring.

20 MS. McCHESNEY: The conditions of the Waiver shall  
21 include but need not be limited to the performance of  
22 individual groups or watershed-based monitoring.

23 DR. HUNTER: Okay. Thank you.

24 MR. YOUNG: Anything else, Monica?

25 DR. HUNTER: No. Okay. I can go.

1           Well, I appreciate everything that has come  
2 into the record through the series of meetings and I've  
3 learned a lot. And as I expected I am -- I continue to  
4 appreciate the challenges that are -- that we are all  
5 confronted with. And we all have distinct and different  
6 purposes for wanting to see some of these problems  
7 addressed, and we're all considering short term and long  
8 term impacts on the types of approaches that are going to  
9 be required.

10           I'm also, you know, learning a lot about the  
11 legacy issues. And I also recognize that the agencies  
12 that have been working on this, and I said this earlier,  
13 with a lot of passion, the agencies are working on these  
14 issues I realize that, but, still we see that at the  
15 county level the changes aren't being implemented.

16           Thank you, Matt, for the update on the  
17 Monterey County Park. I had those same questions. I saw  
18 in the report that, you know, these committees were  
19 formed, and advisory bodies were formed, five year plans  
20 are put into place, these are all voluntary efforts. And  
21 I think, it's commendable that we have seen come out of  
22 those efforts and we see some improvements, but we see  
23 still places that are being -- that are continuing to  
24 drag.

25           And when you consider that in rural areas

1 folks are relying on well water almost 100 percent, I  
2 believe, except where they're buying bottled water, that  
3 is huge. I know that in the letters we received the  
4 public health agencies supports this Order. And that  
5 tells me something. That tells me that they see this as  
6 contributing and adding to the tools that are going to be  
7 put into place in order to start to clean up the water.

8 I do appreciate the legacy component of  
9 nitrate impacting on groundwater, but at the same time I  
10 know that in other aspects of the Regional Board's work  
11 that we do hold landowners accountable for whatever the  
12 conditions are, and clean up has to proceed especially  
13 when it triggers such serious effects, health effects.

14 Generally, though, those situations are  
15 pretty small and limited to, you know, small segments of  
16 communities, perhaps, in urban areas, perhaps not, but  
17 not on this magnitude.

18 So, again, you know, I have to agree with Mr.  
19 Briggs that the magnitude of this issue really requires  
20 that we take some significant action.

21 And thank you for bringing up the MTBE issue  
22 because while I wasn't part of the Board when the  
23 majority of that work went on, I certainly was part of  
24 the public and very aware of it, you know, seeing the  
25 kind of outcomes that have occurred, it's remarkable. We

1 changed the way things were done. We changed business as  
2 usual.

3           So, what I have to say to staff at this point  
4 is, you know, I like the changes that have been proposed.  
5 I think the effort to be responsive to finding some  
6 middle ground, not middle ground in the sense of  
7 compromise for the sake of compromise, but some  
8 considered evaluation of where our program can be more  
9 effective in terms of considering the criteria that we're  
10 all trying to keep our eye on.

11           The farmers have come forward and pointed out  
12 that, you know, they don't think the tiering structures  
13 is really meeting the need. I'm not sure that that's the  
14 case. I think there are some good efforts here to  
15 identify some criteria that could start us off, as  
16 Michael said, this is a starting point. I certainly  
17 regard it as that.

18           I do have some questions about the individual  
19 monitoring, which I think is really at the heart of  
20 beginning to characterize what -- where the problems are  
21 and what practices need to be innovated in order to  
22 address them. And I use that word very carefully.  
23 Innovative meaning we need solutions to individual farm  
24 operations.

25           I'm interested in the regional concept in

1 terms of the small scale sub-watershed, subset of -- the  
2 subset of the monitoring data that could, perhaps, give  
3 us the same kind of characterization. And my question  
4 would be to Francis. I'm thinking of the alternative  
5 farm plan where the coalition is looking at the regional  
6 scale. I don't know how small that scale is, so I have  
7 questions about that.

8           Let's say that we have a sub-watershed and we  
9 have ten operations going on in that -- or ten farms, in  
10 that sub-watershed, and if that sub-watershed was found  
11 in five years not to be meeting the criteria, what action  
12 would we be able to take? What enforcement could we look  
13 at in terms of enforcing the regulations? Would we be  
14 able to take action against all ten, or how could we use  
15 that farm alternative plan for cooperative development of  
16 the MPs and cooperative monitoring and so forth, and  
17 still have some way to be able to address  
18 non-compliance?

19           MS. McCHESNEY: Well, the way that the Order is  
20 set up, and that's typical of this kind of waiver for  
21 non-point sources is that if you find that after  
22 some period of time that the conditions of the waiver are  
23 not being effective, then the first step is to look at  
24 the dischargers to see if we could make it more  
25 effective. But in terms of enforcement, if they comply

1 with the conditions of the waiver and the conditions are  
2 the way it's proposed now, is to do these plans, farm  
3 plans of monitoring and evaluate, and meet the standards.  
4 And if they're not working, if they don't do them, that  
5 would be the first level.

6           Then the second level is if that's not  
7 effective, have them submit new plans so the enforcement  
8 may issue an order to submit additional plans about what  
9 they would do. And issue -- make an order to require  
10 people to clean up. The water plan provided for that.  
11 We would need to evaluate the information of who among  
12 the ten in your example would be responsible for that.  
13 Possibly it would be all ten. I have to look. There  
14 might be evidence that only some of them are responsible.  
15 Just look at the evidence you have about whether you  
16 would order all of them to address the problem. You'd  
17 have the authority to do that. You'd have the authority  
18 to require alternate water supply to be provided which  
19 would be more effective.

20           DR. HUNTER: So there is where I think the  
21 alternative farm plan leaves us with a gap in terms of  
22 certainty of where the source is and who -- which of the  
23 operations we should take action against.

24           And, you know, it just seems to me to be  
25 creating a situation where we have that for a tool other



1 than the continuing modification of the farm plan.

2           So that -- I'm talking about surface water  
3 monitoring. Groundwater monitoring I think I've heard  
4 everybody today, and I agree, we cannot wait. We need to  
5 develop our own data. We need to take the lead, I think,  
6 in creating a process in a timeline for aggressive  
7 groundwater issues. It is a long term problem. But,  
8 apparently, the work that's gone on through the other  
9 agencies has had very little effect, so, I think this is  
10 our time to take this issue up and develop regulation and  
11 get that part of the program going.

12           I think I'll stop there.

13           MR. JEFFRIES: I guess I'm next, Mr. Chair.

14           MR. YOUNG: You are, Mr. Vice Chair.

15           MR. JEFFRIES: I'm not going to be redundant. My  
16 two colleagues who have already spoke. I hope I won't be  
17 anyway.

18           I was really impressed with the Ag proposal.  
19 I really thought that they did an outstanding job and  
20 they came a long ways. The only thing that was lacking  
21 in the proposal today was the groundwater monitoring,  
22 which I thought was really critical for this plan to  
23 work.

24           Now, also, I think the staff has made some  
25 adjustments in -- and come aways, as well. But I think

1 that for us to proceed we need to instruct the staff to  
2 reanalyze the Ag proposal in depth and come back to us.

3 I'm concerned with proprietary information.  
4 I think that's critical for Ag. I'm concerned about the  
5 cost, because all those folks work on small margins to  
6 make their farms and ranches work.

7 The small farmer that has 50 acres or 100  
8 acres, he doesn't have the availability or resources to  
9 go out and hire a lot of professional people to do all  
10 these specialized work that needs to be done. That's why  
11 I think with the joint efforts of putting a group  
12 together in watersheds is an important thing for all of  
13 us to look at.

14 I think all the testimony that we heard for  
15 the last year or two years has been very important to all  
16 of us to come to some conclusion that's going to be  
17 beneficial for everybody.

18 I think you've heard me say over and over  
19 again I'm concerned about the economy. Agriculture is  
20 one of the biggest economy engines we have in the state  
21 of California, as far as that goes, in the world. And  
22 especially in our region we're fortunate that we do have  
23 this type of Ag business in our area. I'm concerned  
24 about jobs. I'm concerned about the land that would have  
25 to be put out of production.

1           So all those things that we're all concerned  
2 about I think that the staff has addressed a lot of  
3 those. The Ag proposal has addressed it I think a little  
4 bit further because they're used to dealing with those  
5 things on a daily basis.

6           So with that, Mr. Chair, I would recommend  
7 that we -- I would propose that we send this back to the  
8 staff and take an in-depth analysis of the Ag Waiver  
9 compared to what the staff has proposed. I'm not saying  
10 compromise.

11           There's, you know, our job -- and I took an  
12 oath to do a certain job is to protect the water quality  
13 of the state of California. And I think the ultimate  
14 thing is that's what we have to do, but how we get there  
15 is another way of handling it. And I surely don't want  
16 to put people out of business by implementing some type  
17 of a program or an Ag Waiver that would do so.

18           So that's what I'm looking forward do. And  
19 that would be my proposal. I would support the Ag Waiver  
20 that was proposed by the Ag Coalition.

21           MR. HODGIN: Would you be willing to put some kind  
22 of a time limit? I think we're all aware that at some  
23 point we have to get started trying to clean up and do  
24 that as soon as possible. I hate to see it drag on.

25           MR. JEFFRIES: No, it can't drag on, and I think

1 Roger pointed that out that, you know, it's been two and  
2 half years, and it could be another two-and-a-half years,  
3 and another five years. And, you know, I'm here -- my  
4 term is up next year, and I would hope and I would think  
5 that we can have this done somewhere in the next few  
6 months. I don't think we're that far apart. And I think  
7 there's a lot of cool heads in this room that could make  
8 this happen.

9                   And I've heard a lot of compromise, if you  
10 want to call it compromise, but I think they've listened  
11 to this Board and the Ag has come back and reasonably  
12 said we realize that these are some of the concerns, this  
13 is what we're willing to do. And I think the staff has  
14 done the same thing.

15                   So, I think, yeah, maybe I don't really want  
16 to put a timeline on it, but I would like to see it  
17 done -- I'd like to have it done today, or last year, but  
18 we're talking about, you know, this isn't an easy issue,  
19 this is a gigantic issue. Not only for us but for the  
20 whole state of California.

21                   So, Mr. Chair, the hour's getting late, but  
22 that would be my recommendation.

23                   MR. YOUNG: Okay. And I have some shared thoughts  
24 with what everyone has said.

25                   It's difficult for me to sit here and listen

1 to new information, you know, what the California Farm  
2 Bureau Group put up for consideration, I would like to  
3 have staff take a look at because I can't sit here and do  
4 everything that I've got to do and know exactly what  
5 they're proposing and give it fair consideration.

6 Can staff take -- I know Miss Dunham,  
7 submitted some written material that was in strikeout  
8 format and I gave it to Francis. Is that correct?

9 MS. McCHESNEY: That's correct.

10 MR. YOUNG: Does that have -- does that  
11 incorporate the material that you presented today?

12 MS. DUNHAM: There are two different sets of  
13 documents. There's the set that we presented --

14 MR. YOUNG: Please talk into the mic.

15 MS. DUNHAM: There are two different sets of  
16 documents, there's the set that was presented at the  
17 March hearing and then two documents today that build on  
18 what was submitted previously. So they would go  
19 collectively together.

20 MR. YOUNG: Okay. So what I would propose is that  
21 we direct staff to take that material and analyze it and  
22 compare it to what staff is proposing in their Order so  
23 we can see, you know, what the differences are. Where  
24 there's common ground, what can be used, how similar they  
25 are. Because I can't get a clear enough handle from the

1 presentation that I have down on that.

2 Now, could staff do that and come back to us  
3 in July?

4 MS. McCHESNEY: I won't be available in July to be  
5 here.

6 MR. YOUNG: Well, there is another lawyer who is  
7 available; is that correct?

8 MS. McCHESNEY: But I did want to comment on your  
9 proposal that those documents were submitted after  
10 January.

11 MR. YOUNG: I understand that.

12 MS. McCHESNEY: And the comments came in --

13 MR. YOUNG: I understand that, but -- you're  
14 right. They are. But I think in my sense in how to  
15 approach this whole thing it's not an easy thing for us  
16 to get our hands around and try to make sure that we  
17 considered everything, because we're going to vote at  
18 some point, and it's going to happen soon, and that's  
19 going to start a five-year period.

20 I would like to give the Farm Bureau  
21 Proposal, you know, as much consideration as possible.  
22 And let's face it, the collaborative approach that we  
23 were hoping was going to work, you know, so over the  
24 years, it hasn't really worked that well. This is  
25 something we talked about at the big workshop we had in

1 Salinas in that big hall, essentially, this is the  
2 collaborative approach.

3           And so, the Board has had a couple of  
4 workshops, we have had this meeting, maybe four or five  
5 times that we've actually had a shot at hearing and  
6 commenting, and it just -- if you lined up all the days  
7 maybe it's been about five days for us to get our hands  
8 on this and comment on it. It just takes a long time  
9 when you stretch it out for us to get to the end result  
10 here.

11           But, the collaborative approach wasn't really  
12 working for whatever reasons, whether it was personality  
13 or what have you. But that's just the reality of where  
14 we're at. This is the approach that is the fall-back  
15 approach, it's the Board itself hearing information and  
16 getting feedback from staff and continuing this process  
17 until we kind of distill it down.

18           I will say this, I think we are getting  
19 closer, if not right there to where, you know, it's going  
20 to be. I mean, I'm in favor of the components of staff's  
21 proposal at this point. I think we have to get to the  
22 water quality issues, you know, sooner than later. I'm  
23 not very moved by any voluntary aspects of anybody's  
24 plan. I think this has to be a plan, an Order, that  
25 affects not everybody. I am concerned about some of the

1 criteria, some of the factors that go in, but I'll tell  
2 you something, I'm sure each of us up here and many of  
3 you would all come up with kind of different variations  
4 of this, and none of them would be perfect. Some would  
5 be better than others, but this is what's being  
6 developed. And I think it's very reasonable.

7           And I think that this is going to be a  
8 flexible enough approach that in the end it's going -- it  
9 should achieve what it does achieve. It should achieve  
10 what we want it to achieve.

11           I want to say one thing about the size of Ag  
12 as an industry. I continually hear how many billions of  
13 dollars it generates for the economy. And I think that  
14 is a great testament to its success. The flip side of  
15 that is it would appear to me that there's got to be some  
16 way to get the funds from this income stream. Instead of  
17 right at the farm level there should be some other effort  
18 employed to tap into that to make this work, and lighten  
19 the financial burden where it exists. And by that I  
20 mean, whether collectively people look at this in terms  
21 of assessing their cost contribution at the wholesale  
22 level or some other level, that's something for everybody  
23 to work out. And maybe that would be a response to what  
24 the Board ultimately adopts as an Order.

25           I can see that for an individual there's



1 going to be a cost that that individual has to bear and  
2 it doesn't seem to get reflected of the cost structure  
3 because of competition. Somehow with that much money  
4 flowing through this industry there's got to be a way for  
5 that creativity to be applied to get the funds to make  
6 this work.

7           We have to apply standards regardless of who  
8 the source of the pollutants are. We're not authorized  
9 to start making distinctions between one industry, one  
10 type of discharger and another kind of pollutant. It's  
11 just -- I don't see how we can do that under the law  
12 without violating it. What I do see, though, is that we  
13 have great discretion in timeframes for compliance. And  
14 it's always been my feeling that that's where we will  
15 exercise our discretion. Certainly, I hope as a Board,  
16 and I would hope the staff would do the same in terms of  
17 how his order eventually gets implemented and enforced.

18           But the time is here for us to start to do  
19 something and to get moving forward so we can see how it  
20 gets implemented and how it may need to be changed. So,  
21 I don't look at this as anything static whatsoever. I  
22 look at this as something of a starting point or actually  
23 the next starting point from where we were. We're now at  
24 the second base. We're currently at first base, we're  
25 trying to get to second base. And it's going to change

1 and modify as we move on with this.

2 But what I would propose, it depends on what  
3 the rest -- the three of you would like to do, this has  
4 to come back in anyway, what we need is another Board  
5 member. So, I would like to give the Farm Bureau's  
6 proposal staff's analysis and review.

7 MR. BRIGGS: Okay. That's what I was going to  
8 say.

9 MR. YOUNG: By doing that what it would mean is  
10 people would be able to comment again because that would  
11 be a change in -- potential change in what goes into  
12 staff's proposed Order. So --

13 MR. JEFFRIES: Can I ask a question before you go?

14 MR. YOUNG: Yes.

15 MR. JEFFRIES: You started out saying that we had  
16 several workshops, you mentioned we had one in Salinas,  
17 but I think you meant to say in San Luis Obispo at the  
18 Elks Club; is that correct?

19 MR. YOUNG: You're right.

20 MR. JEFFRIES: I thought maybe I missed one.

21 MR. YOUNG: Anything north of Santa Barbara I kind  
22 of lose a little perspective.

23 MR. JEFFRIES: I understand.

24 MR. YOUNG: You're right, Elks Club.

25 MR. JEFFRIES: I didn't want these folks to think

1 that we had a secret workshop and they weren't involved  
2 in it.

3 MR. YOUNG: You're right, San Luis Obispo.

4 MR. JEFFRIES: I didn't mean to interrupt your  
5 thought.

6 MR. YOUNG: That's okay.

7 MR. HODGIN: Okay. I can also support  
8 Mr. JEFFRIES with recommendations. I just want to make  
9 sure that everybody -- I think everybody already accepts  
10 the idea that we really have a serious problem and we got  
11 to start doing something about it. We're not going to  
12 put this thing, the solution off to our grand children or  
13 our great grand children or whatever it is. We got to  
14 get going.

15 I think maybe with this little bit of delay  
16 staff could look at the privacy issue and see if there's  
17 some way we can accommodate some of those concerns out  
18 there. And I think it might help if it's stated pretty  
19 clearly in the public meeting like this that if there are  
20 violations, then staff's response is to work with that  
21 discharger and resolve the issue. And as long as the  
22 discharger is, correct me if that's in not staff's view,  
23 but I think your view is that as long as that discharger  
24 is cooperative in trying to resolve the issue, that there  
25 is no enforcement action. Enforcement comes when

1 somebody is non-responsive, or there are repetitive  
2 problems, and there don't seem to be any other solutions  
3 and then it has to come back to this Board before there  
4 is any fine. Is that correct? I think, you know, that  
5 needs to be very clear to the Ag industry is that it's  
6 quite a process before there would be anything but  
7 positive reaction to a problem.

8 DR. HUNTER: Yeah, I can go along with respect to  
9 your views, Mr. Jeffries. So, I would ask staff in  
10 looking at that alternative Ag Program that you look  
11 carefully at the "may require", "may end up in", you  
12 know, the voluntary level of it versus "shall require"  
13 which comes with regulation and, like, see if the  
14 voluntary aspect of this rises to the level of what  
15 we're -- what we need -- what we think we need to see in  
16 a regulated program and then what the consequences are of  
17 noncompliance within that program structure.

18 Some of that concerns the way that they're  
19 going to work with a collaborative or cooperative kind of  
20 regional scale. If you could kind of characterize that  
21 for us so that we understand how small a scale is that.

22 And I'm also, again, concerned about  
23 aggregate data and not getting the characterization to  
24 the level that we really need it. So if you could help  
25 us to understand how that collaboration working within

1 the farm community, how we can begin to see if we could  
2 see, you know, similar level of data coming out of their  
3 process or designing or reporting program, then that's  
4 something to consider. But, you know, as Jeff said, I  
5 don't, I can't see it the little time that we have with  
6 the previous amount of information. So that's what I  
7 would be looking from staff.

8 MR. YOUNG: Staff did present a metrics at one  
9 point. In March, I don't know, but you've done that, so  
10 what we're looking at here is additional information that  
11 was presented to take that and to compare it and contrast  
12 it.

13 MR. JEFFRIES: Well, not only that, but also what  
14 they presented today.

15 MR. YOUNG: That's what I meant, March and today  
16 and to compare and contrast that to what you're proposing  
17 because what you proposed, also, there were some  
18 modifications that were put up in the end. So --

19 MR. BRIGGS: Are talking about the fact that  
20 the Ag folks made changes today and we made changes  
21 today, so the comparison -- how those end up.

22 MR. YOUNG: Right. Is staff able to do this so  
23 that we could take care of this in Watsonville in July?  
24 Is there enough time for that or not?

25 MR. BRIGGS: You may chime in. One of the things

1 I want to clarify getting to answer your question is that  
2 to just make a comparison of what we heard today in terms  
3 of their changes and the changes we made is not that big  
4 a deal because as you said, we have compared the  
5 alternatives before. What threw me for a loop is you  
6 said another round of comments. So, first of all, I  
7 don't really see why comparing the two sets of changes  
8 triggers another round of comments, so that's the one  
9 thing; why is that the case?

10 And secondly, if that is legitimate in a  
11 certain view, then of course, that takes a lot more time.  
12 But I don't see why comparing what we've heard today as  
13 far as changes triggers another round of comments.

14 MS. McCHESNEY: Well, here's the concern. My  
15 concern is that the Board set a January cutoff date to  
16 make comments. Now you propose to have staff review new  
17 information so that after the cutoff date it's not going  
18 to be available to all of the rest of the interested  
19 parties in this matter to -- they could have in their  
20 three minutes or their longer time grant them comment on  
21 these other proposals that they have not had that  
22 opportunity.

23 The staff reviewed what proposal was  
24 submitted by June 3rd and gave you comments and some of  
25 those were the proposal was not, some parts of the

1 information they made recommendations, they made changes  
2 based on the recommendations, but if you're proposing to  
3 allow additional comments, significant documents into the  
4 record, then I don't know if I could advise you at this  
5 point what public process should occur, but, it would  
6 require some additional public process because it hasn't  
7 been available to all the different wide range of  
8 interests in this matter, and it has not been made  
9 available to them.

10           And I know for now that some of their  
11 proposals are not legal. I mean not comply with the  
12 Water Code and the staff has already made those clear and  
13 I recommend that you not have a staff re-evaluate what's  
14 legal or not, but they look at the parts that would  
15 potentially comply with the law and could be  
16 incorporated.

17           MR. YOUNG: Are you saying you can't advise us  
18 right now what type of public process --

19           MS. McCHESNEY: I need to look at, for example, if  
20 you want the staff to come back with just comparing,  
21 okay, they submit these new documents, and it could be --  
22 the public process could just be a lot of people come and  
23 make oral comments, or it could be that the staff makes a  
24 written, you know, several page analysis and that goes  
25 out to the public and then people can respond to that

1 several page analysis with seeing these additional  
2 comments, you know, documents you're proposing to make to  
3 put into the record.

4 Now, it just depends, it's a little  
5 uncertain, unclear to me what you're asking the staff to  
6 do, but if what you're asking is to say evaluate this new  
7 information and give us a report about what aspects of it  
8 the staff would recommend incorporating into the Order or  
9 changes, that could be a subject to cover on and that  
10 would be okay.

11 MR. YOUNG: All right. And those parts of their  
12 submission which staff doesn't agree with and why.

13 MS. McCHESNEY: So, if that's what you're  
14 essentially asking for by July, some small report, or by  
15 whatever, of what -- of a further analysis of the  
16 proposal, and then people can comment on -- sort of an  
17 addendum to the staff report or something like that. Is  
18 that what you're asking for?

19 MR. YOUNG: Yes. Okay. That's what we're asking  
20 for.

21 MS. McCHESNEY: So the public process would then  
22 likely be an addendum to the staff report and these  
23 additional comments with the public comments.

24 MR. YOUNG: Would these additional comments then  
25 be limited to --



1 MS. McCHESNEY: Yes, to that.

2 MR. YOUNG: To the staff -- addendum to the staff  
3 report?

4 MS. McCHESNEY: Right.

5 MR. YOUNG: Okay. Any idea, Lisa, a how much time  
6 staff needs to really do this?

7 MS. McCANN: I agree with what Roger said to be  
8 able to do the analysis in writing and report it in an  
9 addendum to the staff report to meet the key dates in  
10 getting the staff report out to the public for the July  
11 Board Meeting is doable. The question I have is how long  
12 for public comments, because if it's more than the ten  
13 days between when we post our staff reports and when the  
14 Board meeting happens, then I'm not sure we can achieve  
15 July.

16 MS. McCHESNEY: Legally it will only be 10 days,  
17 but --

18 MS. McCANN: That was my assumption --

19 MS. McCHESNEY: More than ten days, it won't hurt  
20 for July, but I need to confirm that.

21 MR. BRIGGS: And the form of that public comment,  
22 I mean, that would not be an opportunity for any written  
23 comments, that would be just an opportunity to review it  
24 and then talk with the Board.

25 MR. THOMAS: That's my question. My concern is

1 what are we going to do with the comments that we get  
2 because you received how many hundreds of pages of  
3 comments in response from us that we responded to all the  
4 comments that were submitted by November 3rd, hundreds of  
5 pages.

6 MR. YOUNG: Is the staff required to comment on  
7 comments? To respond?

8 MS. McCHESNEY: Not on comments --

9 THE COURT: No?

10 MS. McCHESNEY: No.

11 MR. YOUNG: So people could just submit their  
12 comments and the Board will just read the comments.

13 MS. McCHESNEY: It's just that it doesn't make a  
14 good record if you don't have a response, but we're not  
15 legally obligated to have written responses to comments.

16 MR. BRIGGS: A big difference between getting  
17 something out to the public and enough time for them to  
18 review and then coming and commenting to the Board as  
19 opposed to enough time to review, write comments to us,  
20 for us to compile them and submit them to the Board, it's  
21 a whole different time period.

22 MR. THOMAS: I hate to complicate this, but I'm  
23 going to. What about the other folks that we're going to  
24 hear from who are going to say what about us and our view  
25 or our proposal?

1 MR. YOUNG: You mean the other proposals?

2 MR. THOMAS: The other proposals or other counties  
3 from the other side of the --

4 MR. YOUNG: Let me just throw this out here. This  
5 is my take on what we're doing. And, Francis, if it's  
6 wrong, let me know, of course.

7 But the Board is deciding what information it  
8 feels is important right now for consideration that want  
9 staff to comment on. I don't think that opens this up  
10 that now everyone gets to submit new information to us.  
11 Or that there may be other proposals out there that we  
12 kind of decided, okay, we've heard them, we're just not  
13 interested in having any further comments on them. This  
14 is what we've heard, we would like to hear more about it.  
15 And we're trying to narrow this down, and the Board's  
16 making the decision to do that. Is that okay?

17 MS. McCHESNEY: Yes, as long as there's a public  
18 comment period on the staff's response to your question.

19 MR. YOUNG: Okay.

20 MS. McCHESNEY: Which would include commenting on  
21 the agricultural proposal that has not been made  
22 available publicly.

23 MR. YOUNG: Okay. But I think what Michael was  
24 referring to is other proposals, other interested persons  
25 that have had proposals.

1 MS. McCHESNEY: You're not obligated to accept  
2 more proposals.

3 MR. YOUNG: Okay.

4 MR. THOMAS: And what Roger just said that is real  
5 important, Francis, you said as long as there's an  
6 opportunity to comment. Roger said that would be at the  
7 Board meeting.

8 MS. McCHESNEY: Right. And that's where I want to  
9 look. I can't say absolutely for sure that that's an  
10 appropriate process that may be making comments is  
11 appropriate. But I will need to --

12 MR. YOUNG: You mean staff's written comments?

13 MS. McCHESNEY: No. You're proposing to accept  
14 comments that were submitted after January 3rd, and all  
15 the other comments there were set for -- submitted in a  
16 timely manner, everybody got to come here and comment on  
17 everything. Now you're proposing to accept more written  
18 comments and have staff prepare the addendum to the staff  
19 report. So the question is should the rest of the public  
20 be allowed to have -- to submit written comments on this  
21 additional staff report and documents should be accepted  
22 in the record, or will oral comments be sufficient? And  
23 what I can't say for sure that if oral comments are  
24 sufficient, which is what Roger is trying to confirm.

25 MR. YOUNG: What if we allow the cutoff to be

1 period to be the Board meeting itself?

2 MS. McCHESENEY: Well, if you get 2,000 pages of  
3 written comments it's going to be difficult to read and  
4 evaluate those comments.

5 MR. BRIGGS: Mr. Chair, it seems like it would  
6 make sense to have an easier course here, and it's  
7 dependent on our counsel determining which procedure will  
8 work.

9 MR. YOUNG: Right.

10 MR. BRIGGS: So, if it's legal, and it's  
11 satisfactory for the Board to hear comments at the  
12 meeting as opposed to receiving written comments, I think  
13 that's doable for July.

14 MS. McCANN: Schedule-wise it's doable. I'm not  
15 sure what people's availability is.

16 MR. BRIGGS: Okay. But if our counsel determines  
17 that we have to have another round of written comments,  
18 then it's not doable.

19 MS. McCANN: Right.

20 MR. BRIGGS: So I think we may just have to leave  
21 it at that.

22 MR. YOUNG: What about then the September Board  
23 Meeting?

24 MR. BRIGGS: We can go to the next available --

25 MR. YOUNG: Which is down here in San Luis Obispo

1 county.

2 MR. JEFFRIES: Can I ask our counsel a question?  
3 What's the difference between oral comments and written  
4 comments?

5 MS. McCHESNEY: If you -- if there's a limited  
6 time period and people are submitting written comments to  
7 do the last minute, it's not possible for you and the  
8 staff and everybody to read those comments in a timely  
9 manner.

10 MR. JEFFRIES: I understand that, but --

11 MS. McCHESNEY: There's a time issue.

12 MR. JEFFRIES: There was oral comments made by a  
13 whole lot of people. There was oral comments made by the  
14 Ag Coalition, so, why is it different than submitting  
15 written comments?

16 MS. McCHESNEY: Because you're asking staff to  
17 prepare a new staff report, addendum to the staff report  
18 commenting on new information in the record, and I just  
19 can't tell you right now without researching the law  
20 whether there are obligations for you to provide an  
21 opportunity for written comments. And I'll have to let  
22 the staff know to schedule a meeting.

23 MR. BRIGGS: So the time would be dependent on  
24 results of that research?

25 MR. JEFFRIES: I will bow to that decision.

1           MR. YOUNG:  If we put this off to September does  
2 that supply -- offer enough time for written comments to  
3 come in and staff to reply on the written comments?

4           MS. McCANN:  I don't think time is the issue, I  
5 think clarity about the process is what we need to  
6 resolve for sure.

7           MR. YOUNG:  Well, the clarity would be that the  
8 people submit written comments, if they want to, and do  
9 this the normal way, which is staff comes out with a  
10 staff -- an addendum to the staff report, these items  
11 that we've identified dealing with the California Farm  
12 Bureau proposal, and the people have an opportunity to  
13 submit written comments by a certain date, and staff  
14 provides a reply.

15          MR. JEFFRIES:  On that addendum.

16          MR. YOUNG:  On that addendum.

17          MR. JEFFRIES:  Only.

18          MR. YOUNG:  Only.  Yeah.

19          MR. BRIGGS:  I think it would be September.

20          MR. YOUNG:  Is there an objection with the rest of  
21 you?

22          MR. HODGIN:  Are we giving up on July?

23          MR. YOUNG:  It looks like July we're forcing  
24 something that we may cut some things off that we should  
25 not be cutting off.  We don't know yet.  Francis has to

1 look at that.

2 I mean, does July versus September make that  
3 much difference in the long run? Because I think what  
4 we're going to have once this comes back we're going to  
5 be ready to vote. We're probably going to have a fifth  
6 board member.

7 MR. JEFFRIES: I would hope by September we would.

8 MR. YOUNG: Yeah.

9 MR. JEFFRIES: Would cancelling the June meeting  
10 and putting that information on the July meeting would we  
11 have adequate time even if staff could get it ready?

12 MR. BRIGGS: I don't think that's a factor.

13 MR. JEFFRIES: Okay. That's not a factor. All  
14 right.

15 MR. YOUNG: So that's our direction.

16 MR. BRIGGS: Yes.

17 MR. YOUNG: Is everyone kind of clear with what we  
18 want to do?

19 MR. SHIMEK: I just need you to restate what it is  
20 that you're doing.

21 MR. YOUNG: What we are directing staff to do is  
22 to take the California Farm Bureau written submission  
23 that was from March 17th and their submission today  
24 directing staff to compare and contrast and comment on  
25 what parts of that submission are doable, for what



1 reasons, which parts are not doable for what other  
2 reasons. So that we can get some further analysis of  
3 that.

4 And to have that done -- we would like the  
5 Board meeting to be in September where we can get an  
6 addendum to the staff report limited to those items for  
7 our consideration.

8 MR. BRIGGS: And compare it with the changes that  
9 we recommended today.

10 MR. YOUNG: Yes. It's essentially taking the  
11 matrix that staff put together a couple of board meetings  
12 ago, whenever it was, and to just update that. That  
13 approach is fine.

14 So is that clear, Mr. Shimek?

15 All right, folks, I think that that brings this  
16 meeting to a close.

17 Any further comments from the Board?

18

19 (No response.)

20

21 MR. YOUNG: We're done.

22 Thank you very much

23

24 (The meeting was concluded at 6:25 P.M.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA            )  
  ) Ss  
COUNTY OF SAN LUIS OBISPO)

I, Carol C. Coon, a Certified Shorthand Reporter Number 11701 and Registered Professional Reporter, do hereby certify:

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to computerized transcription under my direction.

I further certify that I am not of counsel nor attorney for nor related to the parties hereto, and that I have no interest in the event of the action.

WITNESS my hand this 16th day of May 2011.

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Carol C. Coon  
CSR 11701  
Registered Professional Reporter