

**CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD**

**DISCLOSURE FORM  
EX PARTE COMMUNICATIONS REGARDING PENDING GENERAL ORDERS**

*Note: This form is intended to assist the public in providing the disclosure required by law. It is designed to document meetings and phone calls. Written communications may be disclosed by providing a complete copy of the written document, with attachments. Unless the board member(s) provided you with a different contact person, please send your materials to: [stacy.denney@waterboards.ca.gov](mailto:stacy.denney@waterboards.ca.gov)*

***Use of this form is not mandatory.***

1. Pending General Order that the communication concerned: Ag Order 4.0
2. Name, title and contact information of person completing this form:  
*Note: Contact information is not mandatory, but will allow the Water Board to assist you if additional information is required. If your contact information includes your personal residence address, personal telephone number or personal email address, please use a separate sheet of paper if you do not want that information posted on our website. However, this information may be provided to members of the public under the Public Records Act.*  
Steve Shimek, The Otter Project/Monterey Coastkeeper
3. Date of meeting, phone call or other communication:  
  
Time: 5 pm, 11/29/20  
  
Location: Via email
4. Type of communication (written, oral or both): written
5. Names of all participants in the communication, including all board members who participated: All Regional Board members (Wolff, Gray, Hunter, Johnston, Young) plus EO Keeling, board attorney Yu, Mr. Program manager Rose
6. Name of person(s) who initiated the communication: Steve Shimek
7. Describe the communication and the content of the communication. *Include a brief list or summary of topics discussed at the meeting, any legal or policy positions advocated at the meeting, any factual matters discussed, and any other disclosure you believe relevant. The Office of Chief Counsel recommends that any persons requesting an ex parte meeting prepare an agenda to make it easier to document the discussion properly. Attach additional pages, if necessary.*  
  
*A complete copy of the email is attached. Each board member's name was substituted for "board Member"*
8. **Attach a copy of handouts, PowerPoint presentations and other materials any person used or distributed at the meeting. If you have electronic copies, please email them to facilitate web posting.**

11/29/2020

Ex parte communication

Dear Board Member,

I hope the decision by Judge Arguelles was not a complete surprise to you; I had communicated, at least to some of the board, that I expected the judge to grant only a single extension. I can understand why some of the board would prefer more time, and I certainly respect your opinions.

So, here we are. The judge's decision gives the board until April 16<sup>th</sup> to complete and pass Ag Order 4.0. The following is my opinion, and you should certainly follow the lead of your attorney, Ms. Yu.

I believe, that with the judge's decision come three linked consequences:

- 1) You do not have time for additional comment before final comment on the proposed Order;
- 2) You cannot make "substantive" changes that would necessitate going out for additional comment;
- 3) Additional comment on substantive changes triggers new responses to comments and changes/delays to the CEQA document.

I believe, you have no time. Your safest course is to advise the staff to move ahead with the original draft and pass Ag Order 4.0 as soon as possible (ideally before your most experienced staff member, Mr. Chris Rose, leaves, January 31). According to the *Citizen's Guide to working with the California Water Boards*, "The Boards typically provide a comment period of anywhere from 10 to 45 days." If there are no changes to the staff draft, a comment period as short as ten days is possible because the public and stakeholder groups have already provided written comment.

That said, with some risk, you can make non-substantive changes. I have heard two definitions of "substantive" change. The first, a conservative view, suggests that the only changes you can make are spelling, vocabulary, and clarity. The second, I believe was made by your counsel, and suggests that changes that could be "anticipated" could be entertained (changes such as adjusting the numeric thresholds in an existing table). Please note, I have not gone back to listen to the tape of counsel's guidance.

In my opinion (and I am a biologist and not a lawyer), your safest course is to move ahead with the original draft, followed by making spelling and clarity changes, and with more risk, making changes that could be anticipated to existing content.

If you were to pursue the higher risk option, there seems one change that could be lower risk, acceptable to most stakeholders, and address some concerns of the agricultural community:

Changes to the operational setback and riparian buffers could be justified as an appropriate "response to comments." Our suggestion:

Order of stream	Minimum Operational No-Spray Set Back (ft). Stubble or low dense vegetation, 80% cover.	Riparian Setback (ft) Native vegetation	Setback distance that can be offset by qualifying 3 <sup>rd</sup> party project (ft)
Ditches and Order 1	35	0	0
Order 2	50	0	15
Order 3 & 4	50	75	25
Order 5+	50	150	50
Wetland area < 10 acres	50	0	15
Wetland 10-50	50	75	25
Wetland 50-200	50	150	50
Wetland 200 or greater	50	200	75

Please stay healthy and safe and protect the health of others,

Steve Shimek  
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Monterey Coastkeeper, a program of The Otter Project  
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