

**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 **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, as an individual not on behalf of any group.
3. Date of meeting, phone call or other communication: Time: 2/25/21 ~4:30 pm
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.
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.
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 webposting.

Steve Shimek
(as an individual)
Santa Cruz, CA
Mancos, CO

February 25, 2021

Central Coast Regional Board Members (name@ca.waterboards.gov)
Executive Officer Matthew Keeling
Sent via email as an ex parte communication

The Regional Board will likely adopt Ag Order 4.0 on April 16th, I will retire on April 17th. Work on Ag Order 4.0 will continue after I leave of course, led by a new Monterey Coastkeeper, the California Coastkeeper Alliance, Stanford and Golden Gate law clinics, and I will continue to participate as called upon.

The very first time I spoke before the Central Coast Regional Water Quality Control Board was in 2004 at the adoption hearing for Ag Order 1.0, I spoke in favor. At the time everyone – board members, staff, stakeholders, and board counsel – knew that Ag Order 1.0 was a half-measure and failed to address the requirements of Porter-Cologne, Nonpoint Source Policy and most importantly, the serious problem of agricultural pollution impacting our people and environment. The stakeholders I have talked with both before and after adoption of Ag Order 1.0 expected the next Order (2.0) to fill in the gaps.

I consider our collective efforts to manage and control this critical problem a failure and embarrassment.

You likely have good reason to stop reading here, I hope you will indulge me and continue. I'll be concise.

The failure predates the Regional Board's or my involvement. In 1972 the Clean Water Act was adopted (congress had to override President Nixon's veto). The Act states that return flows [discharges] from irrigated agriculture are exempt from federal regulation: "The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit." This exclusion was no accident, agriculture has a powerful lobby. Further, the Clean Water Act focused on point source discharges until 1987 when Section 319 of the Act was amended to require states to create and implement a nonpoint source policy.

In 1988, California created its first Nonpoint Source Pollution Management Program but the plan failed to produce meaningful reductions in pollution. In 1994, prodded by US EPA to act by 1998, the state convened an expert panel to provide a comprehensive review of ten categories of nonpoint source pollution, five were agriculture-related: irrigated agriculture, nutrient applications, pesticide application, confined animal facilities, and grazing. This new effort stalled

as well. In 1999 Earthjustice (founded by Stanford Law School graduates) sued the State Board to compel them to implement a plan and comply with Section 319 and Porter-Cologne.

In 2000, the State Board issued a Nonpoint Source Program Strategy and Implementation Plan. Notably, the plan showed that agricultural activity is by far the largest contributor to nonpoint source pollution for those surface water bodies and groundwater aquifers that are not meeting water quality standards in California. The plan also acknowledged federal findings that agriculture contributes more than half of the pollution entering the nation's water bodies and that studies have identified agriculture as the greatest source of water pollution in the United States. The plan adopted a fifteen-year strategy, from 1998 through 2013, to fully implement nonpoint source control through 61 management measures addressing agricultural and urban nonpoint source pollution. The plan's measures were to be administered in three sequential five-year implementation periods. Quoted from the plan:

- Self-determined Implementation of Management Practices;
- Regulatory Based Encouragement of Management Practices;
- Effluent Limitations and Enforcement Actions.

According to the State Board's own words, by 2008, we should have been enforcing effluent limitations. Are we doing that or has the public trust been broken with endless litigation the only public interest option?

From the beginning, it has been litigation that has pushed nonpoint source regulations into existence and even then, the state and regions have ignored their own policies and regulations. Judges, unsurprisingly, have ruled that laws and regulations must be followed. But the State and Regional Board's resistance to following the law persists to this very day.

Pressures to ignore law and policy are systemic; all water board members are appointed by the governor and when the Appointments Secretary asks prospective board members "will you listen to agriculture?" there is an implied political intent. The statement, "We all know that the governor wants us to listen to agriculture" has been said by board members, at board meetings, into the microphone.

"Listening" cannot mean, "listening until they get their way," or they never will stop talking and opposing stakeholders will never stop responding. "Listening" cannot supplant the process of decision making. Listening to agricultural stakeholders has gotten in the way of listening to the laws of our state.

The board has no responsibility to protect industry or agriculture; the Regional Board is the frontline agency responsible for protecting water quality and the politics of water cannot displace or subvert the board's clear responsibilities, nor can the board deflect their primary responsibility to another agency such as the Department of Pesticide Regulation or SGMA. The board has the mandate and authority to require change and innovation. Only one board member has consistently acknowledged the board's responsibility to protect water quality, but even that board member has succumbed to the false premise of always acting by 100%

consensus, a premise that has dragged decisions to the lowest common denominator within the board. I remember many split votes during earlier days, what happened? Boardmembers must stand up for what they believe.

A quick glance at the long list of “opportunities to comment” and “ex parte communications” clearly shows that “listening” has not led to a legal or practical permit. The Order could have been far simpler and thus better protect water quality. Three quick examples:

- The current draft includes multiple “pathways for compliance” for every category of discharge and pathways within the same category of discharge often have disparate measurement metrics. It would be far simpler for the board to discuss and decide a single measurement metric and timeline within a category that the board wants to achieve and then require all pathways to include that same metric and timeline. Any *proposed* pathway would be required to include and conform to the measurement metric and timeline. Approval of alternatives and evaluation of success would be far easier and the Order far less complicated.
- TMDL and non-TMDL areas were never brought together. For a given constituent or category, how can a non-TMDL watershed segment ever achieve compliance if it is down-watershed of a TMDL segment? Again, carefully choosing a measurement metric that broadly applies to both TMDL and non-TMDL areas would have been helpful, as was done by agreeing to general toxicity and applying it to all surface waters, TMDL and non. Note: while staff presented and board agreed that toxicity would apply to TMDL and non TMDL waters, the latest staff revision appears to require compliance for only non-TMDL waters only.
- Technical consultants have counselled the board to add various factors to the draft’s discharge equations. These complex changes (sequestration is delay not removal) plus the addition of a third equation have made compliance a math test (we offered our single equation as a replacement for the other two). The board is essentially saying that the grower will be out of compliance unless they can hire a consultant. How does the board expect a grower to find their way? A single equation, $A - R$, would be far simpler and more precise (I’d be happy to explain).

The Order should be more thorough and complete. Two quick examples include:

- The Order fails to even mention the impact, monitoring, and control of tile drain discharges. Tiledrains are a major discharge source in the regions two most polluted areas, the lower Salinas and Santa Maria river watersheds.
- The Order fails to address water-dependent vegetation and the entire suite of aquatic life beneficial uses. It is important to remember that the board stripped away the photo monitoring requirement with the staff promising to replace it with aerial monitoring, a promise that was never kept. Failing to address aquatic life beneficial uses means that on April 16th the board will be submitting to the court an incomplete plan with an invalid CEQA document (the CEQA document, as staff alerted you, heavily depends on riparian protection).

The failed process and product have dire real-world consequences: Recent scientific and

popular papers have highlighted the role of intensive chemical-dependent agriculture: A [75% decline in insect biomass](#) with a [40% loss of insect species predicted](#); a United Nations [warning of the imminent extinction of 1 million species worldwide](#); a [3 billion loss of birds](#) in the United States and Canada over the past half-century; the [growth of dead zones on our coasts and the decline in the oxygen held by the world's oceans](#). Climate change will only worsen these environmental problems and at the same time, climate change cannot be addressed without changes in agricultural practices.

I support the board's focus on environmental justice and the human right to water. But a just future also requires protecting the water system that we all depend on. All environmental problems are disproportionately born by disadvantaged communities, and this injustice will persist in the near and distant futures as the effects of pollution accrue. Externalities of agriculture have been and will be unjustly dispersed. This regional board should have intervened sooner and is now choosing to focus narrowly on one egregious injustice, unsafe drinking water, to the exclusion of the range of injustices that flow from industrial farming. No one should have to choose between clean water and a clean environment.

And what of the future? While it is easy to deflect our responsibilities and point towards third world countries or the burning rainforests of Brazil, the reality is that our Central Coast may be the heart of the problem, when we could lead the solution. The United States ranks number two in the world in terms of agricultural production (China is number one) and California ranks number one in the United States. Monterey County is the number four agricultural county (the top three counties all focus on livestock and tree fruits and nuts). While I found no statistics, it may be safe to believe that the Central Coast is the most intensively farmed and most dependent on synthetic pesticides and fertilizers region in California. We, on the Central Coast, are holding the proverbial smoking gun.

The scientific effort predicting a 40% loss of insect species concluded: "The main drivers of species declines appear to be in order of importance: i) habitat loss and conversion to intensive agriculture and urbanization; ii) pollution, mainly that by synthetic pesticides and fertilizers." In turn, this insect loss is a major factor in the loss of billions of North American birds.

The study about plummeting ocean oxygen levels states: "Nutrient run-off from agriculture and from both treated and untreated sewage effluent are major contributors to oxygen depletion in coastal waters, driving the over-enrichment of waters with nutrients." There is a large and growing body of research supporting this assertion focused on the Central Coast, including research measuring groundwater nitrogen discharges offshore the Salinas river mouth as a possible contributing source for marine toxic algal blooms that die-off and deplete oxygen levels.

I'll end with a hyper-local and specific example of the impacts of agriculture on the Central Coast. The Central Coast steelhead population is critically endangered, and the Salinas River is one of the most important remaining populations and habitats. Monterey County Water Resources Agency has been monitoring the steelhead population as a requirement of a

Biological Opinion. Monitoring has found steelhead in the single digits in the bad years to the low double digits in the good. The National Marine Fisheries Service has pointed to lack of migration opportunities including toxic barriers where the Blanco Drain (solely agricultural discharge and primarily from tile drains) enters the Salinas River and a gauntlet of predators and pollution along the defoliated Old Salinas River Channel (solely on agricultural property). These are exactly the types of problems that can and should be addressed by the Order but are not.

History demonstrates that the Regional and State Board has a pattern and practice of failing to control agricultural pollution and protect beneficial uses. Collectively, we have failed to fix the problems we have created, and we continue to fail current and future generations of Californians. What we have done should be illegal, and I believe it is.

Board members, please stand up, even if alone, to protect our water, people, and environment.

Sincerely,

Steve Shimek
Santa Cruz, CA
Mancos, CO

From: [JP Wolff](#)
To: exec@otterproject.org
Cc: Keeling, Matt@Waterboards; Yu, Stephanie@Waterboards
Subject: Mr. Shimek retirement email response from Dr. Wolff sent as an individual
Date: Tuesday, March 9, 2021 11:41:07 AM

This email is sent as an ex parte communication

Dear Mr. Shimek,

Thank you for your email dated February 25, 2021 sent as an individual and addressed to each Region 3 RWQCB Board member.

Having known each other for close to a decade I have reflected on your latest email which included individual's comments. Over the years in my life as an engineer, manager, farmer, parent and organizations volunteer I often look at others to inspire myself, be a continuous learner and validate who I am. I will ask in advance for forgiveness regarding the philosophical approach to my comments.

Reflection on the past versus the future:

"The secret of change is to focus all of your energy not on fighting the old, but on building the new."
Socrates 470 – 399 BC Greek Philosopher

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Reflection on organizational leadership:

"The challenge of leadership is to be strong but not rude; be kind but not weak; be bold but not bully; be humble but not timid; be proud but not arrogant; have humor but without folly."
Jim Rohn 1930 – 2009 Business Philosopher

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Reflection on how to be remembered:

"I've learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel."
Maya Angelou 1928 – 2014 Women Poet and Civil Rights Activist

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Reflection on Mr. Shimek core beliefs being at the right place:

"What after all has maintained the human race on this globe, despite all the calamities of nature and all the tragic failings of mankind, if not the faith in new possibilities and the courage to advocate them."
Jane Addams 1860 – 1935 First American woman to be awarded the Nobel Peace Prize and ACLU co-founder

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Respectfully submitted,

Jean-Pierre Wolff Ph.D.

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