

MINUTES OF MEETING
June 26, 2003
Regional Board Meeting
Regional Water Board Hearing Room
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Chairman William Massey called the Regional Water Board meeting to order at 9:05 A.M.

1. Pledge of Allegiance

Gerald Cochran led the Pledge of Allegiance

2. Roll Call and Introductions

Board Members present: William Massey, Richard Grundy, John Corbett, Shawn Harmon, Bev Wasson, and Gerald Cochran

Board Members absent: Dina Moore

Regional Water Board staff: Executive Officer, Susan Warner; Assistant Executive Officer, Frank Reichmuth, Interim Division Chief, Ranjit Gill, Nathan Quarles; Senior staff: John Short and Mark Bartson, Diane Henry-Henriouille; Technical staff: Rebecca Fitzgerald, Lauren Clyde, Joan Fleck
Administrative staff: Kathleen Daly, Cathleen Hudson, Jean Lockett, and State Board Liaison: Gary Carlson; Counsels Sheryl Schaffner and Erik Spiess. Future Executive Officer Catherine Kuhlman was in attendance as an observer.

Chairman Massey acknowledged Susan Warner's retirement effective August 15, 2003, by expressing his appreciation and gratitude for her leadership as the Executive Officer of the North Coast Regional Water Board. He stated that although she will not be on the payroll, she has offered to make herself available to the Board as needed.

v. Ex Parte Communication

Sheryl Schaffner explained that this part of the meeting provides an opportunity for Board members to report any contacts outside of the Board meeting. These contacts would include contacts related to items that may be scheduled now or in the future before the board of a regulatory or adjudicatory nature. It also includes non-adjudicatory actions. There are reporting requirements and prohibitions involved in those kinds of contacts. She stated that there are items before our Board that are adjudicatory in nature and any contact with a Board member may compromise that item or ultimately affect the legitimacy of the decision.

Chairman Massey called for ex parte communication, if any.

John Corbett stated that he called EPA to request a citation to the Federal Water Pollution Control Act regarding certification procedures for Indian tribes.

5. Minutes of Board Meeting

This item was moved to the latter part of the agenda, in order to give several Board members an opportunity to review the minutes.

6. Reports of the Chairman, Board Members, State Board liaison and Executive Officer:

Chairman Massey announced that he will be attending the Regional Water Board Chairs' meeting in Sacramento during the week of June 30, 2003.

Gary Carlton, State Water Board liaison, reported on the fee increases due to the Governors' budget that reduced the State general fund amount by \$16 million. Fee increase reports are scheduled to be released in the near future. There will be substantial increase in all areas including stormwater, NPDES permits, WDR, water quality certifications. The State Board will hold public hearing workshops on July 28 and August 11, 2003, to present the proposed new fee structure. These steps are moving toward adoption of the new fee schedule around October 2003.

The State Board held a joint meeting with Department of Forestry in Sonora. Frank Reichmuth, Assistant Executive Officer of Region 1, attended the meeting. Sierra Pacific Industry conducted a tour of a clearcut in a sensitive watershed near Calaveras Big Trees. The tour was well attended and informative. Following the tour, a joint meeting was held to discuss how the State Water Board, Regional Water Boards and Department of Forestry could work more closely and more effectively together to ensure that both of the Regional Water Board and the Department of Forestry's statutory responsibilities are met. Further discussions were held on how to move forward on updating the Management Agency Agreement (MAA). A committee was formed that included Art Baggett and Gary Carlton and members of the Board of Forestry to discuss the next steps that needed to review the MAA. Mr. Carlton announced the Management Agency Agreement meeting that is scheduled for July 2, 2003.

Petitions on waivers for timber harvest plans for Region 1, 5 and 6 were filed with the State Water Board. The State Water Board has combined the waivers. A pre-hearing conference was held to discuss the structure and ground rules of the hearing scheduled for August 2003.

An agricultural waiver hearing for Region 5 will be held on July 11 to receive oral testimony and or comments.

Mr. Corbett asked whether it would be appropriate for the North Coast Regional Water Board to have their own agricultural waiver instead of waiting for a statewide solution. Mr. Carlton agreed and noted that agricultural waivers in the Central Valley Region are a huge issue that involves tens of thousands discharges that are different than those in Region 1. Mr. Carlton stated that a regional approach would be desirable.

Mr. Corbett asked for clarification of procedures to make comments on the MAA. Ms. Warner stated that there are a couple of ways the Board could make comments. If an individual Board member has comments on the MAA, they can convey those comments to Frank Reichmuth. If the Board as a whole want to make comments and take a position on the issues of the MAA, then a discussion should take place at a Board meeting. Then the Board can take a position as a whole.

Mr. Corbett stated that he believed that there were mixed feelings about what role the State Water Board wanted the Regional Water Board to play in the Klamath Basin. Mr. Carlton addressed Mr. Corbett by saying that he and Art Baggett have made a commitment to look at the Klamath Basin as a statewide issue.

Mr. Carlton concluded by stating that there will be two draft guidance documents to assist Regional Water Boards with the preparation of TMDL reports and that will give guidance on listing policy.

4. Public Forum

Dwayne Dewitt addressed the Board by requesting help in preserving the Roseland Creek. He voiced his concerns for the preservation of Roseland Creek during construction of the new housing near the area.

Lorraine Dickey, a resident of the West College/Clover Drive area, displayed her appreciation to the Regional Water Board and Susan Warner for assisting with the resolution of the groundwater contamination problem. Ms. Dickey read a statement thanking Ms. Warner for all of her work and efforts.

Sharon Marchetti gave a brief history of how she got involved in the Regional Water Board that led her to work with Susan Warner on several difficult issues to bring dischargers into compliance. She expressed her appreciation to Ms. Warner for her leadership in writing grants and her hard work in developing procedures on how the community and staff could better work together. Ms. Marchetti stated that she would continue to look to the Board for the leadership that Ms. Warner upheld.

Brenda Adelman also thanked Susan Warner for her work efforts and leadership in protecting water quality. Ms. Adelman stated that the bacteria levels in the Russian River are high. She observed that there was some sort of matter in the Russian River and notified the Russian River Fire Department, who stated that they were unable to detect anything. Ms. Adelman requested that the Board direct staff to investigate the Russian River in case there may be serious health problems.

Ms. Warner stated that the Regional Water Board staff is also concerned and have been working with the Department of Public Health on the bacteria data. She requested that the Board allow staff to report back to the Board on the issue in the late part of the year.

Robert Tancreto noted that later in the board meeting a MS4 Permit will be considered by the Board. The MS4 is a non-point source permit for the community that will address many of the concerns that directly affect the Russian River. Mr. Tancreto stated that the Board's staff will request that representatives of the Health Departments of Sonoma and Mendocino come to a future board meeting to address the Board on decision making in response to the bacterial data from the river.

Gerald Cochran expressed his concern that the level of bacteria and E. coli in the Russian River brings a health risk to children during summer swimming activities. Mr. Tancreto stated that the Regional Water Board staff has a cooperative agreement with the local health department. The agreement is that the health department will evaluate bacterial quality data to determine whether there is a risk to the public health. The local health department would make decision and take steps to close beaches as necessary. The health department has the authority to act on decisions to close beaches in the Russian River when there are health issues.

Richard Grundy stated that the Board is aware that health concerns exist. He noted that the river is listed on the 303(d) list. Mr. Grundy suggested that when items of this nature come before the Board at future board meetings, the Board should provide the staff with guidelines on what type of public disclosure the Board expects. He stated that the Board has an obligation to post information upon becoming aware of a public health hazard.

Ms. Warner stated that as soon as the Regional Water Board staff has concerns of any type of water contamination, confirmed data is posted on the web site. The Health Officers of the

Sonoma and Mendocino County Department of Health Services has the responsibility of opening and closing beaches.

There was further discussion on the efforts of Regional Water Board staff to inform the public of health concerns of water contamination. It was noted that the Regional Water Board post data on Region 1's web site. There was also a discussion on ways that the Regional Water Board staff could be proactive in addressing water contamination.

Don McInhill stated that he is out on the river quite a bit and the sources of bacteria are defused, urban runoff is a huge problem, and an excess of homeless people in the area adds to the complexity of the problem. One problem is that the readings do not identify the source of the bacteria so that it can be controlled. He stated that he had talked to some swimmers of the river and asked them if they have been ill. The consistent response has been that the swimmers have not noted illnesses they believe to be related to the river.

7. Employee Recognition - Andrew Baker

Dan Torquemada with The National Oceanic and Atmospheric Administration Office for Law Enforcement presented an award to Andy Baker, Regional Water Board staff for his excellent work and leadership in working with the community and other coordinating agencies to save steelhead trout and salmonids. This work is done under the authority of the Endangered Species Act.

Mr. Baker thanked Mr. Torquemada and expressed his pleasure in working with the NOAA office.

CONSENT CALENDAR

8. *Order No. R1-2003-0068* **Sonoma County Humane Society**, Sonoma County, New Waste Discharge Requirements
9. *Order No. R1-2003-0064* **Samoa Class III Solid Waste Disposal Site, Samoa Pacific Cellulose, LLC. Louisiana Pacific Corporation**, Humboldt County, Post-Closure Waste Discharge Requirements

MOTION: Bev Wasson moved to adopt order No. R1-2003-0068 and Order No. R1-2003-0064 with its Errata sheet. John Corbett seconded the motion. The motion passed unanimously.

Non-Consent Items

10. **PUBLIC HEARING:** *Order No. R1-2003-0023* to consider whether to affirm, reject, or modify a Complaint for Administrative Civil Liability served on January 31, 2003 and/or take other enforcement action in the Matter of **Carl Boyett, Carol Boyett and Boyett Petroleum**, 171 Santa Rosa Avenue, Santa Rosa, Sonoma County:

Chairman Massey read the hearing procedure and administered the oath to all those who expected to participate in this hearing by giving testimony.

Mark Bartson, Senior Engineer of the Cleanup Unit, stated that Joan Fleck will present important background information and details on issues of the Administrative Civil Liability Complaint and the violations that lead to the issuance of the complaint to Boyett Petroleum. Mr. Bartson stated

that staff takes a cooperative approach as long as it works. However; in this case, staff has had to resort to several enforcement actions spanning many years. This is a rare occasion to resort to this level of enforcement to achieve a site cleanup.

Joan Fleck entered the Carl Boyett, Carol Boyett and Boyett Petroleum, 171 Santa Rosa Avenue, Santa Rosa, administrative file and her presentation into the record. Ms. Fleck stated that the purpose of the day's hearing was for the Board to consider violations of Time Schedule Order No. 98-114 and the adoption of Administrative Civil Liability Order R1-2003-0075. An aerial photo was displayed to show the geographic location of the Boyett Petroleum site. Ms. Fleck stated that over the course of 18 years, from 1985 to the present, the Regional Water Board staff has worked with the discharger regarding site remediation, ground and surface water protection, and compliance.

The history of the Cleanup and Abatement Orders No. 85-86; No. 97-120; and No. 98-114 and a Time Scheduled Order were briefly covered. Ms. Fleck stated that the property had been a gas station since 1954. Gas was discovered seeping in the creek in 1985. The Regional Water Board staff took immediate action and issued a Cleanup and Abatement Order that required Boyett Petroleum to cease the discharge to waters of the state to find the extent and to cleanup the effect of the discharge.

Ms. Fleck covered in detail the three Cleanup and Abatement Orders and the Time Schedule Order and the events from 1985 to present, that lead up to a violation of the present revised Time Schedule Order 98-114. The site has a history of enforcement including three Cleanup and Abatement Orders and a Time Schedule Order due to the threat of non-compliance. Since 1985, little progress has been made due to delays, inaccurate and incomplete technical documentation concerning site remediation activities, and incomplete corrective action plans.

There were numerous delays in submitting information requested by the Regional Water Board staff, incomplete Corrective Action Plan and phone conversations that consisted of the discharger requesting time extensions. In 1998, staff issued a letter to Mr. Boyett informing him that he was in violation of the Cleanup and Abatement Order and that a Public Hearing was being scheduled to consider an Administrative Civil Liability, Issuance of a Time Schedule Order (TSO) and other enforcement. A hearing was scheduled before the North Coast Regional Water Quality Control Board for October 22, 1998. Prior to the hearing, the Dischargers offered to not contest the TSO provided the Order include a compliance schedule proposed by the Dischargers and that the administrative civil liability and other enforcement actions not be pursued at that time. The TSO was adopted by the Regional Water Board. The proposed compliance schedule included the completion of on- and off-site cleanup work separately. Staff concurred with the compliance schedule and revised the proposed TSO. The TSO was adopted at the October 22, 1998, Regional Water Board Hearing.

In August 2001 the Executive Officer revised the TSO that required the discharger to submit an acceptable CAP by October 2001, implement the CAP by November 15, 2001, and submit a report by January 15, 2002. Ms. Fleck stated that the discharger violated the TSO and gave details of the violation.

On January 31, 2003, the Executive Officer issued Administrative Civil Liability Complaint No. R1-2003-0023 for violations of TSO No. 98-114. The proposed Administrative Civil Liability was in the amount of \$1,305,000.00. The Executive Officer proposed that the Dischargers collectively pay \$100,000.00 of the total Administrative Civil Liability immediately and the remaining \$1,205,000.00 of the Administrative Civil Liability would be permanently suspended contingent upon compliance with Time Schedule Order No. 98-114 according to a specified schedule identified in ACLC No. R1-2003-0023. The Complaint was later reserved on March 21, 2003.

On February 28, 2003, the "Draft 2003 Corrective Action Plan" was submitted on behalf of the Discharger prior to the compliance date of March 1, 2003, established by the time schedule proposed by the Complaint. The CAP is conceptually acceptable, but some additional information is required.

In February 2003, the Dischargers' attorney requested a hearing concerning Civil Liability Complaint No. R1-2003-0023 to contest the allegations and the amount of civil liability. The discharger submitted a document titled "Response to Administrative Civil Liability Complaint" that focused on three main issues: 1) the North Coast Regional Water Board staff failed to issue agency directives; 2) there is an inequity of treatment of cleanup allocation among responsible parties; and 3) cleanup delays caused by the City's creek restoration.

Ms. Fleck covered the purpose of the day's hearing by stating that the discharger violated the Agency directive in the Time Schedule Order. She gave steps of the written and verbal action that the Regional Water Board staff took to assist the discharger to be in compliance. Ms. Fleck displayed an aerial photo to show the location of other dischargers (Pacific Gas and Electric, Clark's Auto Parts, and Empire Cleaners) and to discuss their status in the cleanup.

Mr. Grundy discussed the soil extraction and asked if the Board received information on the soil vapor extraction from the discharger. Ms. Fleck stated that the discharger did not submit documentation regarding the installation, operation and system effectiveness regarding the soil vapor extraction system.

Ron Rives, attorney for the Dischargers, introduced various speakers. Mr. Rives stated that Mr. Boyett has been puzzled and frustrated in his attempts to conclude the almost-completed cleanup of his site. He stated that Regional Water Board staff has provide unclear and contradictory statements, plans, and the finish line was moved by staff that resulted in delays and unwarranted expense and an inability to complete the job.

Mr. Rives stated that they were there to address two different allegations that Boyett Petroleum failed to submit an acceptable CAP by October 15, 2001, as required by the TSO; and that the Regional Water Board staff has experienced profound difficulty in persuading the Dischargers to comply with the directives. Mr. Rives covered the dates that Mr. Boyett submitted his CAP. He alleged that it was the Regional Water Board staff that was not happy with the CAP. He stated that staff did not provide specific instructions to modify the CAP so that it would be acceptable. Mr. Rives concluded by requesting that the Regional Water Board dismiss the Complaint. He also requested an opportunity to address the Board if the presentation by the City of Santa Rosa today seemed damaging to the Dischargers.

Carl Boyett, president of Boyett Petroleum, addressed the Board by stating that in 1984 it became apparent that Boyett Petroleum was losing product. It was discovered that there was a piping leak and that the leak was repaired in 1984. Mr. Boyett gave dates and steps that he took to comply with the occurrences of the violations and the steps he took to correct the problem. He covered what actions took place to tear down the gas station with the idea of rebuilding another business. Mr. Boyett indicated that the vandalism of the soil vapor extraction pump motors caused a delay. He mentioned a meeting with the Regional Water Board staff and at that meeting he stated that he received verbal instructions that if the soil was removed there would be no other requests to cleanup the site except to monitor the area. He stated that there is no reason why Boyett Petroleum would want to delay the project.

Steve Walker, Project Manager for Kleinfelder Engineering, working with Boyett Petroleum since early 1998, suggested that he responded to the Corrective Action Plans that had been submitted. He stated that they have complied with title 23 of the California Code of Regulations and have looked at the effectiveness, feasibility implementation and the cost effectiveness of a number of remedial actions. He gave an account of the steps taken to comply with the regulations of the Regional Water Board in the absence of written directives from the staff. Mr. Walker stated that Boyett did not receive clear directives from the Regional Water Board staff until January 31, 2003, when the Executive Officer issued an Administrative Civil Liability Complaint No. R1-2003-0023 for violations of the TSO No. 98-114.

Sid Israels, general counsel for Boyett Petroleum, stated that Boyett Petroleum would like to conclude this issue. Mr. Israels requested that the Board direct their staff to tell Boyett what to do to correct the site. He stated that he had asked staff for directions, but staff indicated that they could not give specific directions to a discharger on how to correct a problem. Mr. Israels concluded his presentation by discussing various steps he took to try to bring everyone together to resolve the issue for the Boyetts and other dischargers related to the contamination.

Ron Rives concluded the Dischargers' presentation by stating that it is unfair to expect Boyett Petroleum to clean up the site alone. He stated that the dischargers should coordinate their efforts to get the site cleaned up.

Louis Schofield, attorney for discharger, stated that the Boyetts had received unclear directives from the Regional Water Board staff. Staff made requests of Boyett Petroleum that delayed the completion of the directives. Mr. Schofield requested that the board dismiss the Complaint. Mr. Schofield indicated that it is the off-site plume that is the problem and to look to Boyett to clean it up is not fair. He stated that there is no economic incentive to hold off cleaning up the site. Mr. Schofield indicated that he received a notice two days before the board meeting that the City of Santa Rosa was going to present a powerpoint presentation to the Board. He requested that he be allowed to address the Board if the City's presentation or statements were made that would sway the Board against Boyett Petroleum.

Erik Spiess stated that in the event that the Boyett has some objections on the City of Santa Rosa participation, he has some communication for the chairman to consider. The Boyett party received information in a letter that he (Mr. Spiess) wrote that indicated that the City of Santa Rosa would attend the ACL hearing for Boyett and would likely express how the delayed cleanup has adversely affected the design, construct, cost, and scheduling of the Prince Memorial Greenway Project (PMGP). The notice was sent on June 10, 2003. Mr. Spiess stated that the City of Santa Rosa's issue is the completion of the PMGP project and should be allowed to participate.

Mike Shepherd, with the City Santa Rosa, stated that the purpose is to give a background of the project that started about 14 years ago. He stated that the PMGP covers about 2/3 of a mile and he gave a description of Phases I, II, and III of the construction. The PMGP gets its name from a family who left two million dollars for the project. He displayed a sketch/design of the project pointing out areas of the Boyett Park and to show the phases of the project. He also displayed photos of the job sites phases. He gave descriptions of the construction of each phase and displayed "before and after" photos. He stated that Phase 3-B is scheduled to be completed in 2004. He displayed photos of the site that the City hopes to purchase from Mr. Boyett to complete the project.

Rick Mosher stated that the City of Santa Rosa intends to complete the project. The last phase requires removing the existing concrete wall, however, the contamination behind the wall must be resolved first.

Mr. Schofield requested that the Board help rather than punish the Boyetts. He asked that the Board direct staff to involve and bring PG&E, Clark's Auto Part, and others to the table so that the issues can be resolved. Boyett is committed to resolving the issues but need the Board's assistance. He referred the Board to the written response they filed. He requested that the Board dismiss the Complaint.

Ms. Fleck responded to the testimony that had been submitted by giving details of the administrative record that showed Boyett to be out of compliance. She stated that her job is to check any reports that she receives by the regulation code. Ms. Fleck invited the Board to visit the Creek to witness firsthand the on going discharge to the creek.

Mr. Spiess reviewed the basis of the Complaint and referenced paragraph 19 of the Complaint. Boyett did not submit an adequate CAP on October 15, 2001. He stated that Title 23, Section 2725 lays out a process for the discharger to submit an adequate CAP. He reviewed all the agency directives that were sent to Boyett Petroleum that had provided ample directives to provide the Regional Water Board with an acceptable CAP.

Mr. Cochran asked about the amount of cleanup funds available for the site. Joan stated that currently Mr. Boyett has received approximately \$600,000 and have pending claims of \$400,000.

Richard Grundy asked about the status of the enforcement actions for the other two sites. Ms. Fleck stated that PG&E is out of compliance and an enforcement order has been issued, and that Clark's Auto Parts site has complied with informal staff enforcement letters.

The Board discussed the site and the dischargers involved.

Susan Warner suggested that there are many different solutions that could be applied to different hydrogeological settings and each solution can be specific to that setting, and there are many EPA documents on remediation for underground tank sites, and other technical documents. Ms. Warner stated that the Regional Water Board is looking for some mechanism that will prevent the ongoing discharge to the creek and remediate the ongoing sources at the site so that there is not additional migration towards the creek.

Shawn Harmon asked about how the Regional Water Board staff will evaluate Clark's Auto Parts' CAP based on the off-site contamination. He asked about how a discharger would comply with something that is unknown and how the staff would evaluate this issue. Ms. Warner stated that it is always site specific. She stated that if contamination from one site is moving on to another site at some point a cleanup design for one site will begin to remediate some of the area of the second site. It is the Regional Water Board staff hope that the parties will coordinate with each other, but staff can not require it. So generally, the area between two sites will be remediated by both parties.

The Board observed a lunch break at 12:45 p.m.

10. Continued public hearing on **Carl Boyett, Carol Boyett and Boyett Petroleum**. The Chair closed the public session for this item.

The Chairman proposed to reduce the liability of \$100,000 to \$50,000 with the remaining \$50,000 held to a time schedule agreement. Ms. Warner directed the Board to pages 8 and 9 of the Administrated Civil Liability Order to assist the Board with the framework on what they seemed to want to accomplish. Mr. Cochran concurred with the chairman's reduction of the \$100,000 to \$50,000 and each of the five orders on page 9, with each penalty amount changing from \$241,000 to \$251,000.

MOTION: Gerald Cochran moved to adopt Order R1-2003-0075. John Corbett seconded the motion for the point of discussion.

The Board discussed the calculation of the minimum penalty. Mr. Grundy stated that he would like to see a revised TSO when the PG & E, and Clark Auto sites have been assisted by the Regional Water Board staff.

Shawn Harmon suggested amending the motion to provide additional flexibility to the Executive Officer. This would be accomplished by changing page 9 as follows: "... except that the Regional Water Board reserves jurisdiction to itself and the Executive Officer to extend any or all of the above deadlines by up to 60 calendar days upon finding that the delay is beyond the reasonable control of the Discharger."

Susan Warner recapped the Board's changes in the order as: moving the July 26 date to August 15, leaving the changes previously made in the amount on page 9 of the order and specifying that the Executive Officer has discretion to grant an extension of the deadlines in the time schedule of up to 60 calendar days".

MOTION: Mr. Cochran stated he would accept the 60-day extension and John Corbett agreed to the amendment. Keeping the same time frame and extend the date to August 15. Motion passed unanimously.

5. Minutes of Board Meeting

The minutes of the December 10, 2003, January 23 and 24, February 27, and March 27, 2003 board meetings were presented for review and adoption. Mr. Cochran stated that he had a couple of clarification for the meeting minutes of January 23 and 24, 2003. Specifically, page 16 a paragraph above Susan Warner, states that " Bob Klamt state that at this point Region 1 still have its funding but there will some shifts" add "there will be some shifts". Minutes of March 27 page 5 after "Mr. Thompson stated that those violations had been address and yes there are new violations that coming up". Correct the sentence by adding, "that are coming up". Mr. Grundy stated that he had not had an opportunity to review the February and March minutes. The Board chose to set aside the review of the February and March minutes.

Mr. Grundy stated that he had a few changes for the December 10 minutes. Specifically, on page 8 the minutes state that the Board had a clarification from Mr. Staab from the Department of Forest Services and that the Board had concluded that there were no final changes required. Mr. Grundy stated that he would like the record to show what was the clarification by Mr. Staub. Otherwise he would like it to show the basis for not making an amendment. The Board decided to pull the December 10 minutes and adopt them at the upcoming August board meeting. Mr. Grundy stated that he had not reviewed the February minutes. Ms. Warner gave Mr. Grundy a copy of the minutes for his review. After reviewing the February minutes, Mr. Grundy stated that he had no objections to the minutes being presented for adoption.

MOTION: John Corbett moved to adopt the January 23, and 24 and Feb 03 minutes. Gerald Cochran seconded the motion. Motion passed unanimously.

MOTION: John Corbett moved to adopt the March 2003 minutes with amendments, Cochran seconded the motion. Motion passed with five votes. Mr. Grundy abstained.

Mr. Corbett proposed an amendment in the March 2003 Board meeting minutes on page 3 in the third paragraph. Correct the spelling in Del Norte and add the following "He stated that names were not introduced, but there seemed to be representatives of governmental entities of Del Norte, Siskiyou, Trinity, and Humboldt County, and major engineering firms of special districts."

11. City of Santa Rosa, County of Sonoma, Sonoma County Water Agency, Municipal Separate Storm Sewer System, NPDES Permit Renewal, NPDES No. CA0025054

Chairman Massey administered the oath to those who expected to give testimony for this item.

Paul Kieran stated that the purpose of the hearing was to present to the Board the proposed renewal of the Santa Rosa Municipal Separate Storm Sewer System known as the MS4 Permit. Mr. Kieran entered the administrative file into the record. He stated that in 1990, EPA published MS4 permit application regulations, affecting cities with populations of more than 100,000. This provided that MS4 permits must "require controls to reduce the discharge of pollutants to the Maximum Extent Practicable" (MEP)

MEP incorporates technical feasibility, cost and benefit derived. Mr. Kieran indicated that the Santa Rosa MS4 Permit Program includes the County of Sonoma and the Sonoma County Water Agency as co-permittees. The first five-year term ended March 2002. The Permit renewal includes a greatly expanded county area, and post construction storm water treatment requirements.

Mr. Kieran stated that the initial Permit term stressed water quality education in grade and high schools, stressed education of regulated facilities in lieu of enforcement, included the hiring of an environmental crimes peace officer, included an efficient spill response team, and included Santa Rosa erosion control inspectors. He displayed slides to demonstrate the efforts of last year's program.

During the second Permit term, the permittees are committed to address pollutants of concern (such as sediments, pathogens, bacteria, nutrients, temperature and oxygen demanding substances) increased attention to failing septic tanks, increased attention to reducing pollutant loading at food facilities and retail gasoline outlets.

Mr. Kieran summarized the following expectation and goals of the second term of the permit:

- Increased enforcement activity in order to discourage illegal disposal to storm drain system
- Reduced sewage system overflows from private laterals
- Adoption of an approved county grading ordinance by the end of 2003,
- More consistent erosion/sediment control oversight,
- Elimination of avoidable discharges from contractors working on public works projects,
- Continue to expand pet waste pickup postings, and
- Encourage permittees to assist local Phase II cities in establishing their programs

Colleen Ferguson, with the City of Santa Rosa, expressed appreciation for the Regional Water Board staff and stated that the City of Santa Rosa supports the renewal of the Permit. The Regional Water Board staff had worked with the City and County for many months developing the language for the MS4 Permit.

MOTION: John Corbett moved to adopt MS4 Permit R1-2003-0062. Gerald Cochran seconded the motion.

Don McEnhill, representing Russian Riverkeeper, stated that he supports using a cooperative approach with the City of Santa Rosa. Unlike other permits, MS4 require the cooperation of other cities and the more citizen involvement will make the permit a success. He urged the Board to adopt the permit.

MOTION: Motion passed unanimously.

13. **CONTINUED PUBLIC HEARING** (continued from the May 15, 2003 board meeting): to Consider Adoption of the **Beneficial Use Basin Plan Amendment Resolution No. R1-2003-0052**

Chairman Massey administered the oath to those who expected to give testimony for this item.

Lauren Clyde gave an overview of her presentation package and entered the administrative file into the record. Ms. Clyde provided the Board with an overview of the federal and state requirements for Basin Plans and the highlights of the Beneficial Use Chapter update, and the Response to Comments that were received immediately before and during the May 2003 hearing.

Ms. Clyde stated that the development of a comprehensive Basin Plan is mandated by the both Federal Clean Water Act and the State Porter Cologne Act. Both the California Water Code and the Clean Water Act also require the review and update of the Basin Plan at least every 3-years.

In the current Basin Plan, wetlands and groundwater are not recognized as waters of the State. With this update, both wetlands and groundwater gain this recognition. While we currently protect the beneficial uses of groundwater, a definition of groundwater is not stated in the Basin Plan. For clarity, the three wetland Beneficial Uses are Wetland Habitat, Flood Peak Attenuation/Flood Water Storage, and Water Quality Enhancement. Ms. Clyde indicated that staff is also proposing to recognize and define the Native American Culture beneficial use.

Ms. Clyde explained that staff is proposing to update the definitions for the Commercial and Sport Fishing (COMM) and the Preservation of Areas of Special Biological Significance (BIOL) beneficial uses. The current definition of the Commercial and Sport Fishing (COMM) beneficial use is revised as shown in the slide presented at the meeting. The revisions are in response to EPA's 2002 release of revised human health criteria for priority pollutants, which acknowledges the use of subsistence fishing.

The revision recognizes the existing subsistence use in this Region by both Native Americans and **non**-native American communities. Staff also proposes to add a modified version of the statewide-adopted definition of the Preservation of Areas of Special Biological Significance (BIOL) beneficial use. This modified definition recognizes terrestrial areas of "biological significance" that have been officially designated as such by State and Federal agencies.

Dr. Ranjit Gill summarized the key comments for the Beneficial Use Amendment that had been received by staff. He explained that staff had met with members of the public to discuss concern related to the recognition of the Warm Freshwater Habitat (WARM) beneficial use in the Laguna. He explained that this will not lessen the protection for the most sensitive uses including the Cold Freshwater Habitat (COLD) use, which must be protected. COLD is the most sensitive use as defined in the Basin Plan.

Dr. Gill explained that the water quality necessary for COLD protects WARM, as WARM species have a wider range for adaptation to temperature. Dr. Gill stated that the Federal law also requires the designation of instream uses and the level of water quality necessary to protect the existing uses to be maintained. Under the Antidegradation Policy, no activity is allowable that would partially or completely eliminate any existing use, whether or not that use is designated in a State's water quality standards. If the waters are not supporting the existing uses, we are required to restore the waters to meet the current standards. Therefore there should not be any concern about the inability to de-designate an existing use.

Suesan Saucerman, EPA Region 9, stated that EPA Region 9 fully supports the Board in adopting the Beneficial Use Amendment. Ms. Saucerman stated that one of the goals in the Clean Water Act is to restore the chemical and biological integrity of the nation's waters and wetlands. She stated that the downstream uses of water bodies are important and recommend adoption of the cultural use of downstream waters.

MOTION: Richard Grundy moved to adopt the Beneficial Use Amendment Resolution R1-2003-0052 with the verbal and written erratas. Bev Wasson seconded the motion. Motion passed unanimously.

14. **PUBLIC HEARING** *Order No. R1-2003-0067*, to consider modification of a Cease and Desist Order issued on March 28, 2002, in the Matter of the **City of Fort Bragg Wastewater Treatment and Disposal Facilities**, Mendocino County

Chairman Massey administered the oath to those who expected to give testimony for this item.

Charles Reed addressed the Board by entering the administrative file into the record. He stated that the Fort Bragg Municipal Improvement District No.1 Wastewater treatment facility is located in the City of Fort Bragg.

Mr. Reed stated that the treatment facility is located on the western boundaries of the City of Fort Bragg. The facility discharges treated wastewater directly to the Pacific Ocean. The facility is designed to treat up to 2.2 million gallons per day of wet weather design flow. That translates to an estimated average of one million gallons per day of dry weather flow. In 1979 the treatment facility was upgraded to meet Federal secondary treatment standards prior to the discharge of wastewater to the Ocean.

Mr. Reed indicated that by the mid 1990's the facility had degraded to non-compliance. Mr. Reed referred to the Cease and Desist Orders No. 97-02 (adopted in 1997) that required the City of Fort Bragg to repair the bio filter. He also referred to Cease and Desist Order No. 98-126 that required the City to address inflow and infiltration (I/I) problems and or construct additional treatment facilities to bring the treatment plant into full compliance. The City determined that I/I correction would not be cost effective. The City instead proposed a project to construct mixed media filters to meet effluent limitations. The preliminary design has been completed. However, the City is waiting for the renewal of its NPDES Permit to finalize the design. Due to technical delays involving legal issues in the renewal of the city's NPDES Permit, the Regional Water Board staff has agreed to twice extend the time schedule to complete the project. The extensions were granted in 2001 with Cease and Desist Order No. R1-2001-23, and in 2002 with Cease and Desist Order No. R1-2002-0025.

Mr. Reed stated that the Regional Water Board staff again recommends that the Cease and Desist Order be extended to accommodate the delay in the adoption of the permit. Mr. Reed stated that staff received comments from the City of Fort Bragg requesting that the Time Schedule Order be tied to the effective date of the NPDES Permit rather than the permit's adoption date. Given that the Time Schedule Order provides adequate time, staff did not recommend that the Board grant the request. Mr. Reed concluded by stating that staff recommend that the Board adopt the Cease and Desist Order.

Connie Jackson, City Manager of the City of Fort Bragg, stated that the City requests modification of its current Cease and Desist Order by tying the compliance schedule to the effective date rather than the adopted date. Ms Jackson stated the reason for the request is that it's in everyone's best interest to be assured that the final action on the Permit is finally resolved in order to avoid any further delay or need to extend the compliance schedule.

Mayor Jerry Melo, Mayor of the City of Fort Bragg, read a letter that he sent to the Regional Water Board on June 16, 2003. He referred to his letter that addressed the Cease and Desist Order. On page 2 of that letter, the last sentence in item 4 that stated that, "the Regional Board

staff has sent a written response to the permittee and other interested parties". Mayor Melo stated that in his letter he stated that the City had not received a response to the June 2001 comment on the proposed permit. He requested that the Board remove that statement from the Order. He then read his letter and concluded by requesting that the Board adopt the modified Cease and Desist Order based on an effective date of a renewed NPDES Permit. He requested that the Board drop the word *adoption* and insert the word *effective* on page 3 of the proposed order. Mayor Melo requested that the Board direct Regional Water Board staff to meet with the City to create the new NPDES Permit.

Ms. Cochran asked Ms. Warner to respond to:

- Mayor's Jerry Melo's statement that they received a response to their letter to Chairman Massey dated June 19, 2003, and
- The issue regarding the change of adopted date or effective date of the Cease and Desist Order.

Susan Warner stated that NPDES Permit is not before the Board for adoption at this time. Ms. Warner requested that Mr. Spiess respond to the issue regarding the time frame of the letter. Ms. Warner stated that in terms of the effective date, it is better to have a fixed date and not a date that is floating and uncertain to all parties. Rather than have a time frame tied to a date that has different meaning it would be better to have a specific time frame {confusing sentence}.

Erik Spiess stated that to tie the order to an effective date creates ambiguity because the effective date is floating until the level of public comments and the level of concerns from EPA can be determined. On the other hand, there can only be two possible dates, as follows:

- the date of adoption or
- 50-days following that date of adoption.

The Cease and Desist date is clearer than if it would be the effective of the Permit date.

The Board discussed in depth the effective date of the permit verses the fixed date in the Cease and Desist Order. There were concerns that the design may change as a result of the comments and EPA comments.

MOTION: John Corbett moved to rescind Cease and Desist Order R1-2002-0025 and adopt Cease and Desist Order R1-2003-0067 with change on page 3 removing the word *adoption* and replacing it with *the effective date*. Gerald Cochran seconded the motion. John Corbett moved to make it based upon the effective date. Gerald Cochran seconded that motion.

Roll: Grundy – Yes
 Corbett – Yes
 Cochran - Yes
 Massey - Yes
 Wasson – Yes
 Harmon – Yes

15. Consideration of a Sensitive Watershed Nomination to the Board of Forestry for the Elk River Watershed pursuant to Section 916.8 of the Forest Practice Rules

The Chairman read a letter related to item 15 on the Sensitive Watershed Nomination that he received from Andrea Tuttle. The letter requested that the Board not act on the Sensitive Watershed Nomination issue until the August Board meeting. Chairman Massey deferred the item to the August 2003 Board meeting.

16. Consideration of a Resolution on Delegation of Authority to the Executive Officer

Susan Warner introduced the resolution to delegate authority to the incoming Executive Officer, Catherine Kuhlman, effective August 15, 2003.

MOTION: Gerald Cochran moved to adopt Resolution R1-2003-0073. John Corbett seconded the motion. Motion passed unanimously.

Although he voted for the Resolution to Delegate Authority to the Executive Officer, Richard Grundy requested that the record indicated that he is disturbed by the Board not having the ability to bring back priority items for Board approval. For example, Mr. Grundy indicated that the MOU between agencies (the MOU signed with CDF) are policy statements. Therefore, he was disturbed that the Board did not have the opportunity to approve the MOU but only had the opportunity to make comments. He requested that the record show that it was a mistake that the MOU was signed.

17. **Executive Officer Administrative Civil Liabilities**

Ms Warner reported that there were two Civil Administrative Liability Orders issued. One was issued to Pacific Gas and Electric Company; and the second to Sierra Pacific Industries.

18 **Violation and Enforcement Report**

Ms. Warner reported that the Regional Water Board recently received payment from the Humboldt County Superior Court from the settlement of the Arcadia Ready Mix case. The Figus case was settled in the amount of \$25,000 that will go into the Cleanup and Abatement Account and an additional \$25,000 to be held in abeyance.

19 **Board Member Requests for Future Agenda Items**

MOTION: Gerald Cochran moved that the August board meeting be held in Santa Rosa. John Corbett seconded. Motion passed unanimously.

Gerald Cochran requested to see Fort Bragg NPDES Permit on the September agenda.

19. **Monthly Report to the Board (*Written*)**

20. **Leaking Underground Storage Tanks/Sewage Spills (*Written*)**

21. **Proposition 65 Notifications (*Written*)**

22. **Other Items of Interest**

Items 25 to 30 were closed session items.

There being no other business to bring before the Board, the meeting adjourned at 4:42 p.m.

The Secretary, Jean Lockett recorded the minutes of the June 26, 2003, Board meeting of the North Coast Water Quality Control Board, to be approved by the Board at its next meeting.

_____ Chair

_____ Date