

**North Coast Regional Water Quality Control Board (Regional Water Board)**  
**Agricultural Lands Discharge Program (Program)**  
**Advisory Group Meeting #2**  
**DRAFT Meeting Summary**  
**6/26/2012**

**Location**

Hilton Garden Inn  
5050 Bechelli Lane  
Redding, CA 96002

**Meeting Participants**

Amy Campbell, The Nature Conservancy (TNC)  
Julia Carrera, Third Party Inspector  
Ric Costales, Siskiyou County  
Linda Crockett, Del Norte Farm Bureau/  
Crockett United Lily Growers  
Sean Curtis, Modoc County  
Jeff Dolf, Humboldt County Ag Commissioner  
Ken Fetcho, Yurok Tribe  
Kari Fisher, California Farm Bureau Federation  
Pat Frost, Trinity County Resource Conservation  
District (RCD)  
Adriane Garayalde, Shasta Valley RCD  
Harry Harms, Grower (Del Norte)  
Vivian Helliwell, Pacific Coast Federation of  
Fishermen's Associations (PCFFA)  
Devon Jones, Mendocino County Farm Bureau  
Brad Kirby, Tulelake Irrigation District  
Don McEnhill, Russian Riverkeeper  
Chuck Morse, Mendocino County Ag  
Commissioner  
Kristin Nevedal, Emerald Growers Association  
Margo Parks, California Cattlemen's Association  
Ryan Pierce, E&J Gallo Winery

Lee Riddle, Easter Lily Research Foundation  
Jim Spear, NRCS  
Andrea Souther, Natural Resources  
Conservation Service (NRCS)  
Jane Vorpapel, Department of Fish and Game  
(DFG)  
Robert Walker, Upper Mid Klamath Watershed  
Council / Rancher  
Ryan Walker, Shasta Valley RCD Rancher  
Katherine Ziemer, Humboldt County Farm  
Bureau

**Regional Water Board Staff and Consultants**

Dave Ceppos, Center for Collaborative Policy  
Rebecca Fitzgerald, TMDL Unit Supervisor  
David Kuszmar, TMDL Unit Staff  
David Leland, Watershed Protection Division  
Chief  
William Massey, Board Member  
Samantha Olson, Office of Chief Counsel  
Jovita Pajarillo, Staff Volunteer  
Matt St. John, Executive Officer  
Ben Zabinsky, TMDL Unit Staff

**ACTION ITEMS AND KEY ISSUES FOR FURTHER DISCUSSION**

1. RWB staff will make audio recordings of the meeting available to meeting participants, those unable to make it, and any interested members of the public.
2. Following additional, detailed discussion with Advisory Group members, RWB Staff will clarify of the definition of tailwaters (i.e., the distinction between polluted and un-polluted tailwaters) and how it will be treated within the scope of the Program.
3. RWB staff will set a specific time and place for the July 26<sup>th</sup> monitoring webinar, and announce it to the group ASAP. Conference call options, webinar options, and copies of presentations slides will be made available.
4. Staff will update the DRAFT Program scope and framework to reflect all changes made between June 8<sup>th</sup> and June 26<sup>th</sup> and distribute it to Advisory Group members by July 6<sup>th</sup>. Advisory Group members will be given two weeks (until July 20<sup>th</sup>) to submit comments.

5. Robert and Ryan Walker will submit written citations for their comments regarding irrigated pasture. These citations will be used to change requirements related to irrigated pasture as appropriate.

## MEETING SUMMARY

**\*\*All Presentations Discussed Below are Available Online at [http://www.waterboards.ca.gov/northcoast/water\\_issues/programs/agricultural\\_lands/](http://www.waterboards.ca.gov/northcoast/water_issues/programs/agricultural_lands/) under "2nd Full Advisory Group Meeting in Redding"\*\***

### **Welcome, Introductions, Logistics and Agenda Review**

Matt St. John opened the meeting, thanking the members of the Advisory Group for their participation. Matt told the group that Regional Water Board staff (Staff) have been learning a lot through the Advisory Group process. As a result, Staff have made significant changes to the draft Program, and expect to make even more changes in the future as the Advisory Group process progresses.

Dave Ceppos introduced himself, and explained that Sam Magill wasn't able to make today's meeting. Mr. Ceppos also discussed meeting logistics and agenda revisions.

### **Presentation on Draft Program Framework: What has changed since May Sub-regional Meetings?**

Rebecca Fitzgerald and Ben Zabinsky provided the group with a Powerpoint presentation highlighting recent changes made to the Draft Program Scope and Framework. After the presentation, the following discussion was recorded:

- Harry Harms commented he didn't think groundwater was specifically discussed by the Del Norte / Trinity / Humboldt Advisory Sub-group. Mr. Zabinsky confirmed that groundwater has always been included within the scope of the Program. NOTE: This is evidenced in the first presentation delivered to the Advisory Group in December of 2011.
- Meeting participants discussed whether only "polluted" tailwater should be regulated, or whether all tailwater should be regulated by the Program. Samantha Olson noted that this requires further discussion by the Advisory Group, but the Regional Water Board generally holds that all tailwater is a potential waste, and tailwater discharges will be regulated.
- Mr. Harms asked for additional clarification on how a landowner can qualify for the Tier 1 Water Quality Stewardship (WQS) Category. The exact mechanism and requirements within each Tier will be discussed in detail by the Advisory group at a later date. Other specific issues for discussion at a future date include:
  - Definition of ground disturbance and cultivation
  - Definition of and distinction between polluted and unpolluted tailwaters
  - Specific time and logistical details for the July 26<sup>th</sup> monitoring webinar
  - Suggestions for slope-related Tier 1 criteria
  - Suggestions on what to include in the glossary
  - Clarification on how groundwater will be treated in the Program scope and framework
  - Clarification on Class I,II, and III watercourse definitions
  - Clarification on what baseline information will be used to define risk to water quality throughout the Region.
  - Clarification on how the Program will deal with the California Environmental Quality Act (CEQA).
- Ric Costales suggested that Staff should maximize the number of landowners out-of-scope of the Program. He raised a concern that once a landowner is in the Program, fees and requirements will increase over time.

- Mr. Costales asked if the Regional Water Board's mandate is to return all Waters of the State to a pristine condition. David Leland answered that the Regional Water Board works towards ensuring that Water Quality Objectives are met and that Beneficial Uses are supported in all Waters of the State. Ms. Olson added that maintaining high quality waters is also a mandate.
- Ryan Walker suggested that the program scope as proposed by staff is overly expansive and would result in virtually all growers in Region 1 being included in the Program. Mr. Leland responded that, as written, there are many thresholds for inclusion/exclusion from the Program and different requirements based on risk to water quality.
- Mr. Walker asked what the Program fee structure will look like for the lower risk tiers. Kari Fisher said that fees are set by the State Water Resources Control Board (State Board), and are unlikely to change in the near future. She cautioned the Regional Water Board against suggesting lower fees as an incentive, since it may not be allowed by the State Board.
- Participants asked whether growers who meet the requirements of the Scott and Shasta TMDLs will also be covered by the Program. Mr. St. John responded that this is the intention.
- Jeff Dolf suggested that the 1-acre threshold for exclusion from the Program is too low. Other participants agreed, and suggested that different acreage thresholds could be used depending on the land use in question (i.e., row crop, forage crop, grapes, etc.). Mr. Leland responded that in past meetings, three of the four sub groups agreed that a low acreage threshold was appropriate. Ryan Walker suggested that the density of animals and land use type are a better proxy for risk. Given the wide range of opinions on the subject, this issue will be discussed by Staff/stakeholders at a future Advisory Group meeting.
- Mr. Harms said that a stream buffer condition for Tier 1 coverage is over-reaching and not protective of water quality. Mr. Leland responded that stream buffers are proven to filter stormwater runoff. Buffers are not required by the Program to address tailwater discharges, and even without a buffer growers may still qualify for the Water Quality Stewardship category of Tier 1.
- Linda Crockett explained that in Del Norte County, beef farmers may irrigate once a year with no discharge. Under the current draft of the Program, these farmers will be required to prepare a plan and pay a fee and may get knocked out of Tier 1 coverage due to stream buffer requirements even though they pose a minimal risk to water quality. Mr. Zabinsky suggested that beef farmers may actually be out of the Program scope if their irrigation does not runoff.
- Ken Fetcho requested staff clarify when additional requirements would be needed to address groundwater concerns. Don McEnhill commented that impacts to groundwater is more of a concern in areas such as Alexander Valley, Ukiah Valley, Russian River Valley, and around Hopland that are alluvial floodplains that have low attenuation and high transmissivity compared to areas such as the Santa Rosa plain where a thick clay and soil mantle provide more protection from groundwater.
- Robert Walker mentioned that in the Klamath, the buffer requirements will prohibit landowners from getting Tier 1 coverage. Instead, recaptured tailwater should be considered an adequate mitigation for maintaining the buffers. Mr. Leland reminded Mr. Walker that the Tier 1 Water Quality Stewardship Category remains a viable option for landowners under such circumstances and allows growers into Tier 1 even without any buffer.
- Devon Jones requested that the Forest Service program along with the Dairy Permitting Program be explicitly excluded from the scope of the Program.
- Amy Campbell noted that as written, the Program framework/scope allows her operation into Tier 1 via the Water Quality Stewardship Category, even though it doesn't meet the Tier 1 Low Risk Category physical characteristics.
- Andrea Souther suggested that Program stream buffer conditions be referenced to NRCS practices.
- Harry Harms commented that if tailwater is included in the program then farmers will stop producing tailwater runoff.

- There were questions regarding the definition of a water conveyances and a Class III stream. Mrs. Fitzgerald referred to the Glossary which, in part, defines a Class III stream as being capable of sediment transport under normal high flow conditions.
- Vivian Helliwell asked staff to let the group know how CEQA will be handled – with an EIR or some other approach.

### **Program Framework: Developing Advisory Group DRAFT FINAL Recommendations**

Mr. Leland acknowledged that RWB Staff are getting the impression that members of the Advisory Group feel that the process is moving too fast. Mr. Leland reminded the group that the process schedule (and the pace of Staff's work) is dictated by current State mandates and by specific commitments to the Regional Water Board. Bill Massey noted that Staff is doing its best to satisfy the Regional Water Board's request for a region-wide Agricultural Lands Program. The State of California nonpoint source policy is driving this process for all regions.

Mrs. Fitzgerald reiterated that Tier 1 under the Program as currently proposed includes both the Low Risk Category AND the Water Quality Stewardship Category of coverage. Landowners may apply for Tier 1 coverage under EITHER category. After reviewing key elements of the Program scope/framework, the following discussion was recorded:

- Ms. Fisher asked what a Farm Water Quality Management Plan (Plan) is and what third party certification programs are likely to be pre-approved for this Program? Mrs. Fitzgerald directed the group to the Program glossary for Staff's current draft definition of a Farm Water Quality Management Plan. Definitions for these items are still under construction, and will be the subject of further Advisory Group discussion.
- Ms. Fisher noted that in some of the other regions, third party group develop the plan templates, which are then approved by the Regional Board. Individual growers then complete the plans, specific to their operation. As written in this draft, the Farm Bureau cannot support this provision of the scope/framework which state that Farm Plans are released since Plans contain proprietary information that could harm growers if released to the public. Other members of the farming community agreed, raising concerns that growers could be sued for perceived Endangered Species Act (ESA) violations. One member noted discoverable written products could compromise the safety of legitimate medical marijuana farmers. Mr. McEnhill noted that many other programs throughout the state require dischargers to prepare written products similar to Plans and make them available to the public. Agricultural programs are the sole outlier, and should include some verification process that Plans are being implemented. Staff noted that they are not opposed to finding a way for proprietary information to be protected.
- Vivian Helliwell referred to case law that requires Plans to be publicly available. Mrs. Fitzgerald emphasized that staff still need to research the legal requirements and the Advisory Group will discuss this issue at a future meeting.
- Mr. Ceppos asked the Advisory Group what is missing from the "out of scope" category. The following suggestions were made:
  - Mr. Costales asked that agricultural operations with monitoring data to show they pose no threat to water quality be excluded from the Program
  - Ms. Ziemer said that some farm groups such as academic research groups, agency lands, and non-profit farm groups should be excluded. Mrs. Fitzgerald said that academic research groups are currently listed as excluded, but others would be included in the scope.
- Kristen Nevedal commented that square footage is the only appropriate threshold for medical marijuana growers. She suggested a quarter-acre threshold could be appropriate for this crop type.
- Ms. Jones asked Staff to update the current Program scope/framework document to include all changes discussed in the presentation as of 10am on June 26<sup>th</sup> (i.e., the start of the meeting).

This document should be sent to the Advisory Group for comment by July 6<sup>th</sup>. Comments should be due to Staff by July 20<sup>th</sup> (see Action Item #4).

- Mr. Ryan Walker asked what the Regional Water Board's authority is, as described in the Porter Cologne Water Quality Control Act, regarding the ability to require landowners to comply with regulations that use physical characteristics (i.e., scope, acreage, etc.) as surrogates for risk to water quality instead of overall impact to beneficial uses. Ms. Olson responded that the state of beneficial uses in receiving waters will be taken into account in the Program.
- Chuck Morse suggested that "cultivation" be defined in the Program glossary as the "physical turning of soils". Other definitions to be added included:
  - Agronomic rates
  - Hydrologic connectivity
  - Waste
- Ms. Ziemer noted that growers are concerned that the requirements of the Program are not clearly defined yet. Without explicit requirements, many growers mistakenly think things like stream buffers are required.
- Robert Walker provided written comments to the Advisory Group regarding irrigated pasture and suggested that irrigated pasture should be removed from the scope of the Program. Ms. Olson asked for specific citations within the comments so Staff can use them to change language regarding irrigated pasture as appropriate (**see Action Item #5**). He also suggested that the tier system be revised to provide different tiers for each of the major crop types within the Region. This could allow each set of tiers to respond directly to the problems posed by each crop type.
- Mrs. Fitzgerald asked if there were any additional suggestions or recommendations on the tier structure. There were no suggestions or recommendations given.
- Pat Frost suggested a threshold based on the percentage of land being used for agriculture in a particular watershed so that certain watersheds with less acreage than the threshold would be exempt from the program.

### **Mid-Process Evaluation: Is the Advisory Group process meeting your needs?**

Mr. Ceppos acknowledged that the Program is still being developed, and reaffirmed Staff's commitment to the stakeholder process. He opened the final agenda item by asking Advisory Group members how the stakeholder process can be improved to meet member's needs. In particular, he noted that some stakeholders have highlighted the need for more interaction between the various sub groups. After introductory remarks, the following comments were recorded:

- Ms. Helliwell asked that all documents be given to the Advisory Group in track changes format.
- Robert Walker asked that Staff organize tours to the various landscapes throughout the Region to provide Staff and other stakeholders with real information on the existing risk to water quality.
- Ms. Fisher noted that the sub-regional group format may not be as beneficial as anticipated, and said that it makes it difficult to know what is being discussed and changed in each of those groups. A group member commented that it is helpful to have the broader, regional perspective that the full group meetings provide. Other participants felt the sub-regional format was indeed beneficial as it allows more time to focus on issues relevant to a particular subset of the region's agriculture and the sub-regional meetings are more convenient for members to attend. One participant suggested that interest-based groups could be an alternative to sub-regional groups.
- Ms. Fisher commented that certain portions of the Program's components appear to be being developed out of order, and that things like monitoring and the general plan structure need to be discussed sooner rather than later. Several participants agreed, and noted that one solution could be to leave the option open to revise the scope/framework later based on how the monitoring program and other specific Program requirements are developed. Mrs. Fitzgerald responded that Advisory Group members will have the opportunity to review the entire Program as a full package in draft form before it is released for the public comment period and before the public workshops.

- Ryan Walker asked that all written comments be shared with the entire Advisory Group. Mrs. Fitzgerald responded that comments received to date are posted online (at the web address listed in the opening).
- Brad Kirby asked for more information on the agriculture coalition concept, and whether the Program could be structured to allow groups like Tulelake Irrigation District to file a single Plan (instead of Plans for each individual grower). Mr. Zabinsky responded favorably and stated that third party, coalition-based Farm Plans are welcomed by staff.
- Jane Vorpapel suggested that WebEx or some type of conferencing system be opened to all participants.
- Mr. McEnhill noted that some grape producers have very good management practices in place to deal with water quality issues.
- Margo Parks stressed that different thresholds be developed for each major crop type.

### **Closing Remarks**

Mr. St. John delivered closing remarks and thanked participants for attending. Mrs. Fitzgerald reiterated that the next webinar on monitoring types will be held July 26 from 10am to noon.

### **Adjourn**