

Appendix G

Transcript of
June 14, 2006
Water Board Hearing

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1 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
2 OAKLAND, CALIFORNIA

3
4 **EXCERPT OF PROCEEDINGS**

5
6 **ITEM 8:**

7 Proposed Amendment to the Water Quality Control Plan
8 (Basin Plan) for the San Francisco Bay Region to
9 Establish a Sonoma Creek Watershed Pathogen Total
10 Maximum Daily Load (TMDL) and Implementation Plan

11
12 **ITEM 9:**

13 Proposed Amendment to the Water Quality Control Plan
14 (Basin Plan) for the San Francisco Bay Region to
15 Establish a Napa River Watershed Pathogen Total Maximum
16 Daily Load (TMDL) and Implementation Plan

17 JUNE 14, 2006

18
19 **LOCATION:**

20 1515 CLAY STREET, SUITE 1400
21 OAKLAND, CALIFORNIA

22
23
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1 CHAIRMAN MULLER: And now we move to Item 8. And we
2 have a supplemental, also, on Item 8.

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5 MR. WOLFE: Correct. This will obviously be the fun part
6 of the meeting, is addressing the TMDLs that we have.
7 The first two items, 8 and 9, for Sonoma Creek, and
8 Item 9 for Napa River, these are both hearings to
9 consider adoption of the proposed Basin Plan Amendments
10 for TMDLs for pathogens in Sonoma Creek, and pathogens
11 in Napa River. And this will be the second hearing,
12 and the initial hearing on this in April.
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16 So I'd like to ask Peter Krottje and Tina Lowe to do,
17 much as they did back in April, do a little tag-team on
18 presentation. Since these are similar, we'll have the
19 Staff presentation cover both items. But then we will
20 take each item individually for comment and for voting.
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24 MR. KROTTJE: Good morning, I'm Peter Krottje, and
25 Environmental Scientist with the TMDL Section. At the

1 April Board meeting we presented proposed Pathogen
2 TMDLs for Sonoma Creek and the Napa River. We
3 described our water quality targets, identified primary
4 pathogen source categories, proposed load allocations
5 and implementation actions for each of these
6 categories.
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10 Today I'll be focusing -- or we'll be focusing on
11 changes we made since the April Board meeting. Changes
12 were made in response to comments from stakeholders,
13 Board members and our scientific peer reviewer, and
14 also in response to recent developments at the State
15 Board. Your Board packages for these two items contain
16 copies of written comments, or responses to comments,
17 revised Staff Reports and revised Basin Plan
18 Amendments.
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21
22 The primary revisions we've made are to water quality
23 targets, pollutants load allocations and implementation
24 actions. I'll be describing the changes to targets and
25

1 allocations in the next few slides. Following my
2 presentation, Tina Lowe will review implementation
3 plans for these TMDLs, highlighting the changes that
4 have occurred since April.
5

6
7 Before presenting the changes we've made to our water
8 quality targets, I'd like to give you a little
9 background on indicator bacteria. As you recall, we
10 don't monitor directly for pathogens, but rather look
11 at indicator bacteria as indicators of fecal
12 contamination and attendant health risk. There are
13 basically three types of indicator bacteria that are
14 relevant to these TMDLs.
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18 Total coliforms are the broadest group. They're a very
19 diverse group, and they can come from a variety of non-
20 fecal sources. For this reason they're generally
21 regarded as obsolete for use as water quality targets.
22
23 Our Basin Plan contains total coliform objectives for
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1 contact recreation, but these objectives are
2 essentially relics.

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4
5 Fecal coliform are a subset of total coliforms, and are
6 a considerably better indicator. We also have water
7 quality objectives for fecal coliforms, but these two
8 are being supplanted in many jurisdictions by more
9 effective indicators.
10

11
12 E.coli are a subset of fecal coliforms, and are the
13 best indicator of contamination among these three
14 groups. U.S. EPA has set e.coli criteria, and has been
15 encouraging the states to adopt them since 1986.
16

17
18 Our earlier versions of these TMDLs contained only
19 e.coli targets, because these are the most
20 scientifically valid indicators. However, U.S. EPA has
21 recommend that we also include fecal and total coliform
22 targets in order to be fully consistent with our
23 current Basin Plan objectives. In response, we have
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25

1 incorporated our objectives for total and fecal
2 coliforms as TMDL water quality targets, along with the
3 e.coli targets.
4

5
6 As it turns out, the total and fecal coliform targets
7 are essentially moot. And that's because the State
8 Board is developing new e.coli criteria or objectives
9 based on the EPA criteria. The State Board assures us
10 that when the new objectives are adopted -- probably
11 sometime in 2007 -- they will automatically supersede
12 our existing Basin Plan objectives for total and fecal
13 coliforms. We've included language in the Proposed
14 Basin Plan Amendments to sunset the total and fecal
15 coliform targets when the new objectives are adopted.
16 This approach is similar to Southern California's
17 Middle Santa Ana River TMDL, which was recently
18 approved by the State Board.
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22
23 We've also adjusted our load allocations to be
24 consistent with the changes and targets that I just
25

1 described. In addition, on the recommendation of both
2 U.S. EPA and our peer reviewer, we've incorporated a 10
3 percent margin of safety to allocations for municipal
4 runoff, grazing and confined animals. What this means
5 is that allocations for these sources, rather than
6 being equal to the targets, are 10 percent below the
7 water quality targets. These margins of safety are
8 intended to account for uncertainties in loadings, BMP
9 effectiveness and related factors.
10
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12
13 Well, that sums it up for our targets and allocations,
14 the revisions to them. We've had to devote quite a lot
15 of ink in your Board packages to these revisions, but
16 the important things to note are that they are
17 primarily for the purpose of complying with federal
18 requirements, and they trigger no additional
19 implementation actions. And with that, I'll turn it
20 over to Tina, who will review our Implementation Plan.
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1 MS. LOWE: Good morning, Board Members. I'm Tina Lowe,
2 a Water Resources Control Engineer in the TMDL Section.
3
4 In April, we presented our plans to solve the pathogen
5 problems in the Napa River and Sonoma Creek watersheds.
6 Specifically, we presented trackable implementation
7 measures expected to achieve water quality targets. I
8 will briefly recap those measures.
9

10
11 In general, the plans -- meaning the implementation
12 plans for the Napa River and Sonoma Creek watersheds --
13 require all source categories to evaluate potential
14 pathogen sources and address pathogen problems by
15 implementing appropriate management practices.
16

17 Starting off with dairies, they're regulated by
18 existing programs and here, they're required to comply
19 with waste discharge requirements or waiver conditions.
20

21
22 Grazing lands are to implement site-specific management
23 measures as part of complying with WDR's waste
24 discharge requirements, or waiver conditions that are
25

1 currently being developed. And municipal runoff
2 entities are to implement their approved storm water
3 management plans with specific pathogen-reducing
4 measures as needed.
5

6
7 Municipal waste water dischargers are to continue to
8 comply with their NPDES permits. And septic system
9 permitting entities -- in this case, Napa and Sonoma
10 Counties -- are to evaluate system performance and
11 correct problems, with the first step of submitting a
12 plan to do so by January 2008.
13
14

15
16 Sanitary sewer system agencies, with regard to
17 overflows, are required to develop and implement
18 sanitary sewer system management plans. And, as we've
19 discussed and as Bruce has mentioned earlier, these are
20 certainly efforts that are already underway.
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1 The State Board recently adopted general WDRs for
2 sanitary sewer systems, and we've revised the Basin
3 Plan Amendments and Staff Reports accordingly.
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6 Just a little bit of background on regulation of
7 sanitary sewer overflows. In October of 2003, the
8 Water Board adopted a resolution to establish a
9 collaborative program to reduce sanitary sewer
10 overflows, which are instances where raw sewage is not
11 contained within the collection system.
12

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15 The Water Board and the Bay Area Clean Water Agencies
16 (BACWA) completed the Sanitary Sewer Management Plan
17 Development Guide in 2005, and these guidelines direct
18 waste water agencies to develop an overflow emergency
19 response plan to contain overflows, and prioritize
20 preventative maintenance activities such as sewer line
21 cleaning, root control and investigation of customer
22 complaints.
23
24
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1 Then, in May of 2006 -- just last month -- the State
2 Board adopted general WDRs for collection system
3 agencies, and entities are required to apply for
4 coverage under these WDRs by this November. The WDRs
5 contain provisions for overflow reduction measures, and
6 are consistent with the developed guidelines for
7 sanitary sewer management plans.
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11 So this recent State Board action creates a mechanism
12 for regulating sewer collection systems, but does not
13 really change the required implementation measures.
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16 Many of the comments we received from stakeholders and
17 Board Members focused on implementation, and a common
18 concern was how to meet the requirements given limited
19 funds and resources. In response, we have made
20 revisions to the Staff Reports and have met with
21 stakeholders to further clarify our expectations. In
22 these revisions and meetings, we emphasized strategies
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1 that will help make the implementation measures
2 feasible and cost-effective.
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5 These strategies include getting more bang for the buck
6 by utilizing opportunities to address multiple
7 pollutants, taking a watershed approach and
8 prioritizing to address high-risk areas first. And I'll
9 go into these strategies in more detail.
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12 The Napa River and Sonoma Creek are also impaired by
13 nutrients and sediment. Because these pollutants --
14 meaning pathogens, nutrients and sediment -- have
15 common sources, they also have common solutions. As
16 examples, faulty septic systems and sewer lines are
17 sources of both pathogens and nutrients, and grazing
18 lands are pathogen, nutrient and sediment sources.
19

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21 Therefore, many implementation actions required by
22 these TMDLs will also likely satisfy requirements of
23 upcoming nutrient and sediment TMDLs.
24
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1 As a strategy for successful implementation, we
2 encourage a watershed-based approach in which groups
3 coordinate with the ultimate goal of achieving water
4 quality targets. In fact, the state's non-point source
5 implementation policy recognizes third-party programs.
6 Active groups in these watersheds include the Friends
7 of the Napa River and the Sonoma Ecology Center. In
8 addition, the resource conservation districts, or RCDs,
9 the Farm Bureau, the Watershed Information Center
10 Conservancy, and the UC Cooperative Extension also
11 promote information sharing among the agricultural
12 industry.
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17 However, it's important to note that individual
18 dischargers must do their part and are responsible for
19 complying with water quality requirements. And
20 individual dischargers' responsibility to comply is
21 necessary, given that, for example, one leaking septic
22 system can cause public health risks.
23
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1 Another important approach to successful implementation
2 is prioritization. The implementation plans emphasize
3 efforts in high priority areas, and provide flexibility
4 to allow prioritization. It is certainly not expected
5 that all pathogen sources will be eliminated
6 immediately. Rather, we proposed a phased approach
7 that continuously moves forward in reducing pathogen
8 loads.
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12 For example, for faulty septic systems, the counties
13 should focus first on identified hot spots, which we
14 presented at the Board hearing in April. In the Sonoma
15 Creek watershed, the major hot spot is the Kenwood
16 area. In the Napa River watershed, the major hot spot
17 areas are Brown's Valley and Murphy Creeks.
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21 These Basin Plan Amendments, with the revisions we
22 propose respond to stakeholder concerns, meet federal
23 and state requirements and protect water quality. We
24 worked in these watersheds for several years, and know
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1 that these waters are highly valued and enjoyed by
2 local residents and visitors alike. We also know that
3 there are water quality problems here, and that there
4 are solutions.
5

6
7 By adopting these resolutions, you will be taking a key
8 step in assuring that these waters are safe for people
9 to swim and play in. And with that, I'll take a seat.
10 We're here to answer your questions individually on
11 these items. Thank you.
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15 CHAIRMAN MULLER: Any questions of Staff this time at
16 the podium? We are gathering some cards, I think.
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19 MS. DELUCA: Yes, I do have a question. Dairy farms are
20 mentioned here, and the waste discharge requirements
21 that are necessary to control the contaminations that
22 are generated. I would just like to hear, knowing what
23 a difficult problem that is, what the practical
24 continuum is for the farmer from the time he
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1 establishes a dairy farm on a daily routine; what the
2 daily routine is for controlling that contamination,
3 which is obviously something that is continuously
4 generated. It's, I think, imperative that we do what
5 we're doing by developing programs and regulations.
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8 But I'm wondering, you know, if someone is overseeing a
9 herd of, let's say, five or six hundred cows, how does
10 this really play out in real life on a dairy farm?
11

12
13 MR. WOLFE: Right. I guess there's two points here.
14 One is the dairy operation itself, and the other is the
15 grazing of the animals. We've brought to you, and
16 you've adopted a couple years ago, a program where we
17 have a combination of waste discharge requirements and
18 waivers of waste discharge requirements that are based
19 on the state's guidelines for handling animal waste; or
20 the state's animal waste guidelines. And those
21 guidelines were developed some years back in
22 cooperation with Farm Bureau and other groups, that
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1 basically spell out keeping waste out of places where
2 they could reach waters of the state. It definitely is
3 a challenge, because the big issue is during the wet
4 times of the year -- and we know very well that these
5 areas in the North Bay are very wet -- that the
6 challenge is to manage the collection of the manure and
7 be able to hold that during the wet time of year.
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11 So the general practice is that all dairies, during the
12 dry time of year, collect the manure and tend then to
13 put it out on the hillsides to dry, and actually become
14 soil amendment. And during the wet times of year, we
15 don't want them necessarily to do that, because it's
16 wet and it's just going to potentially flow back in the
17 creek. So then they need to have capacity in their
18 ponds that will hold that waste throughout the wet
19 period, to ensure that when it dries out, then they can
20 pump the ponds out.
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1 So that's a challenge to manage those ponds, including
2 that at the end of the dry season, the beginning of the
3 fall, that all dairies should be cleaning out their
4 ponds to ensure they have the capacity to carry that --
5 hold that waste throughout the winter. And that's --
6 there's a number of parties in the North Bay that work
7 with the dairies on that. Now, more and more, they're
8 becoming programs that are looking at how do we use
9 that dairy waste, that manure as a potential product.
10 Can it generate energy, methane and such. And so
11 that's still taking shape, that's still evolving.
12 There's no real steadfast program there.

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17 So it comes down to a diligent management process, and
18 the approach we took in our waiver and WDR program was
19 that those dairies that were by and large in compliance
20 with the state's animal waste guidelines, were given
21 the waiver with the assumption that they would continue
22 to comply with the animal waste guidelines. There were
23 about six or seven dairies that did not fully comply.
24
25

1 We issued waste discharge requirements, or required
2 them to get coverage on the general waste discharge
3 requirements, with the idea that they would come up
4 with ranch plans as to how they would address this
5 waste. And so we're continuing to work with them, to
6 bring them into compliance, with the idea that as they
7 come into compliance with the state's animal waste
8 guidelines, then they could come under the waiver
9 program rather than the more stringent waste discharge
10 requirements.
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15 So this is a program that's been underway, and it
16 really ties into what we're talking about today. Now,
17 pragmatically, there are fewer dairies in these
18 watersheds, because the economics are such that the
19 smaller dairies in the North Bay cannot -- they're not
20 all that large in terms of area. They can't have
21 enough head to keep going. Others have looked at 'do
22 we continue as a dairy operation, do we focus more on
23 just grazing?'

1 And that gets to the second point, the grazing. This
2 is something we don't have an existing program under,
3 and we do want to do what's necessary to keep cows,
4 animals out of the creek, in effect. Or out of areas
5 where their waste may impact the creeks. And that's
6 going to be more of a long-term program, and as Tina
7 commented, that our expected implementation is by
8 developing essentially a similar program, that we have
9 with the dairies, more of a waiver program and a waste
10 discharge requirement program.
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15 This was something we brought up on the Tomales Bay
16 Pathogen TMDL last year. And one of the comments was
17 on that one, that we said we would do this and
18 implement all of this by 2009. The community felt that
19 was a bit too quick, so we took out that date. So here
20 in this one, we are saying 'we're going to develop this
21 program, but we're going to continue to work with the
22 community on how best to implement this program.'
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1 Because we recognize it is going to be a change, as to
2 how many of the ranchers currently operate.

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4
5 CHAIRMAN MULLER: We do have a card later on here, from
6 the Napa County Farm Bureau, who might be able to
7 comment on that briefly. I'll give her some time on
8 that, and that way we can get that clarified for Ms.
9 Deluca a little from their perspective also.
10

11
12 So, any questions on Item 8? I don't have a -- I do not
13 have any cards on 8, I have them on 9. So --
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15
16 MR. WOLFE: Okay, I'd then recommend going ahead and
17 considering Item 8. As you noted, there is a
18 supplemental for Item 8 that, by and large, just
19 essentially correct some formatting errors. So we make
20 sure that we have the page numbers right, and that we
21 have the underlying for all text be inserted into the
22 Basin Plan. And with that, I would recommend adoption
23 of Item 8 for the Sonoma Creek watershed.
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1 CHAIRMAN MULLER: Clifford?

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4 MR. WALDECK: I think the public might have not known
5 that -- I'd just like to give them a chance, if anyone
6 does want to comment on 8, because they might have
7 thought that they could still send a card in for 8 or
8 something like that. So --
9

10
11 CHAIRMAN MULLER: Okay, they're welcome, if anyone would
12 like to submit a card for Item 8. We've got a couple
13 moments here, if there's some concerns here. Michael,
14 right? You have it for Item 9, do you want to speak
15 for 8, or 9? Sure. Come forward, please.
16
17

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19 MR. ABRAMSON: Thank you. My name is Michael Abramson,
20 I'm the General Manager at the Napa Sanitation
21 District. I do have a card in for Item 9. I
22 understood that both items were going to be considered
23 together. We have some fairly significant comments on
24 Item 9 that I think are going to -- would apply also to
25

1 Item 8. I wasn't prepared to talk about Item 8, nor do
2 I represent anybody in Item 8. But I guess my request
3 would be maybe that you consider all the comments for
4 Item 9 before taking action on Item 8, so it doesn't
5 form precedent for Item 9. Thank you.
6
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9 CHAIRMAN MULLER: Staff, a little guidance here?
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11 MR. WOLFE: I think that's reasonable. I think the list
12 of commenters for Item 9 isn't all that extensive, and
13 that it may be useful to --
14
15

16 CHAIRMAN MULLER: No, I think the way we've presented it
17 in our Staff presentation as Sonoma and Napa, so I
18 think it's a great suggestion. Thank you.
19
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21 MR. WOLFE: Yes. But nonetheless, the main point is we
22 have to vote on them separately.
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1 CHAIRMAN MULLER: Okay, so what we'll do is hear the
2 testimony for Item 9.

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5 MR. WOLFE: Right. And then we can come back and
6 consider --

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8 CHAIRMAN MULLER: Okay, agreed. Thank you, Clifford.

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11 MR. WALDECK: You're welcome.

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13 CHAIRMAN MULLER: So, we will move on to Item 9. Any
14 questions of Staff regarding Item 9? There's not
15 another Staff presentation, because we had it. But we
16 do have cards, and so we will go ahead and start; and
17 we're getting more cards here. Thank you.

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20
21 So, I think we'll go ahead -- Michael, we'll go ahead
22 with you, and if you're prepared to get started. And
23 then we will go with U.S. EPA. They have cards for 8,
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1 9 and 10, so remind me to keep this, Dyan, wherever you
2 are.

3
4
5 MR. ABRAMSON: Thank you, Mr. Chairman and members of
6 the Board. My name is Michael Abramson, I'm the
7 General Manager at the Napa Sanitation District. My
8 address is Post Office Box 2480, Napa, California,
9 94558. And I want to thank you for the opportunity to
10 speak today.
11

12
13 You asked if I was prepared, that's a really big
14 question today. We are not prepared, frankly, to
15 address the changes since I was here last with you in
16 these two documents. I have not read either of these
17 in full. The website material was not available until
18
19 sometime after Thursday.
20

21
22 More importantly, my understanding is -- and I can't
23 verify this myself, but I think that there are more
24 than just formatting changes to the proposed TMDLs,
25

1 from when I was here before. I have a prepared
2 statement, I'd like to read that at this time.
3
4

5 We understand that although the Regional Water Board's
6 Staff has been working on this, Staff has changed only
7 very recently the TMDL to add two additional bacteria
8 indicators, total coliform and fecal coliform as waste
9 load allocations from municipal waste water treatment
10 plants.
11

12
13 We understand that this is in response to the U.S. EPA
14 comments. However, the addition of these two new waste
15 load allocations is a very significant change to the
16 TMDL. Because a year ago this Board adopted a renewed
17 NPDES for our district -- as I know you're aware --
18 with a new bacteria indicator interrococcus (phonetic),
19 which was based on a comprehensive study of bacteria in
20 both the effluent and the Napa River.
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1 The intent was to update the bacteria effluent limit in
2 the district's NPDES permit from total coliform to
3 interococcus, as recommended by U.S. EPA and the
4 Regional Water Board, and as stated in the NPDES
5 permit.
6

7
8 Now, interococcus, as you probably know, is a more
9 specific human pathogen than total coliform; it's more
10 representative of human waste being present. And
11 therefore it requires significantly less chlorine to be
12 used in the treatment process. We have two issues
13 about this.
14
15

16
17 The first is that chlorine is a very toxic chemical, as
18 we all know. And its use can result in carcinogenic
19 byproducts. By reducing chlorine in the treatment
20 process, we also reduce exposure to chlorine by the
21 general public in the transportation of chlorine in
22 trucks along our roads and highways.
23
24
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1 It's important, I'd like to add a comment here, that
2 chlorine is not made in Napa, it's not made in
3 Piedmont, it's not made in San Francisco. This is an
4 environmental justice question.
5

6
7 Chlorine is made in places like Richmond and Martinez,
8 and industrial communities. And the more chlorine that
9 society uses, the more these facilities produce. I
10 think there's a question of environmental justice
11 there, and we're trying to reduce it.
12

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14
15 The second is one of cost. Again, I don't have the
16 calculations at this point to justify this. I only
17 recently got back from back East at midnight last
18 night, so I just have not had time to go through
19 everything I would like to do. But it looks to be a
20 \$100,000 addition to our budget, to increase the
21 chlorine to the levels to meet the new bacterial
22 indicators.
23
24
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1 So everyone that we talked to agrees that chlorine
2 should be avoided in our society wherever possible.
3
4 And following the district's water quality studies, the
5 Regional Board approved the district's use of
6 interrococcus as the specified bacteria indicator, with
7 adoption of the district's permit just a year ago, in
8 April of 2005.
9

10
11 Now, by adopting the TMDL in its current form, the
12 clock will be turned back on the initiative that the
13 district has taken, both to reduce the use of chlorine
14 and to reduce our cost, as well as to have a more
15 reliable indicator of human waste in the effluent. And
16 the blanket addition of the new bacteria indicators
17 into the TMDL ignores the water quality studies
18 conducted to date.
19
20

21
22 And one of the comments we made last time was how much
23 we had appreciated moving, frankly, in the other
24 direction of recognizing these kinds of studies. We
25

1 understand the U.S. EPA is claiming that these outdated
2 bacteria indicators exist in the Basin Plan, and
3 therefore, for that reason alone they must be part of
4 the waste load allocations. And we disagree with that
5 statement.
6

7
8 Accommodations have been made in NPDES permits to use
9 alternative limits, if it can be shown that total
10 and/or fecal coliform water quality objectives are
11 being met in the receiving waters near the discharge.
12

13 I'm almost finished.
14

15
16 It feels like, frankly, to talk about human feelings
17 here -- it feels like we're being held hostage while
18 the EPA tries to, frankly, force the Regional Board's
19 hand to adopt updated bacterial water quality
20 objectives. And it's an inappropriate use of the
21 governmental process, and we think it's unfair. We
22 think that the sensible approach to this problem is to
23 remove the total and fecal coliform from the TMDL
24
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1 implementation plan, because the use of best
2 professional judgment allows you to do this.
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5 If this approach is not used, then the district's
6 previous efforts, as recognized by the Regional Board
7 previously, must -- should be recognized again, and the
8 district be given an exemption from e.coli total
9 coliform and fecal coliform, all of which are redundant
10 with the current interrococcus effluent limit, based on
11 the studies that have been done to date.
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14
15 Again, I want to say that this information, we received
16 no phone calls, we received no indication that the
17 proposed TMDL was moving in this direction. We left
18 the meeting before, frankly, acknowledging that we were
19 going to be part of the pathogen TMDL. We supported
20 it, we praised your staff for leveraging the SSMP to
21 accommodate more than just sewer management plans, but
22 actually to meet the goals of the Board.
23
24
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1 And now it looks like this is just not -- it's really
2 not sound. And I guess I'm a little bit -- I'm just a
3 little concerned that nobody picked up the phone or
4 called us and said, "Hey, this is coming. It's not just
5 a formatting change." So I would like to request that
6 if you agree with what we said, I would like to go back
7 to the way it was proposed before. And let's get the
8 TMDL adopted in that manner so we can move forward with
9 this.
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14 If you feel that you need to adopt this request, we
15 think that there are other changes that need to be
16 made. And we would request that a new public comment
17 period be put out, so that we can present the
18 scientific and organizational information to support
19 our position. We don't think that having this material
20 on the website sometime after Thursday -- and I don't
21 know the exact time, but basically that's Friday,
22 Saturday, Sunday, Monday, Tuesday, and then we're here
23 today. We don't think that's sufficient time, really,
24
25

1 for the public to comment it, and for the Staff to have
2 taken into account those comments. So I think that the
3 purpose was kind of defeated, there.
4

5
6 I want to thank you for listening to me; I probably
7 went over my three minutes. But I appreciate your
8 time. Thank you very much.
9

10
11 CHAIRMAN MULLER: Thank you, Mike. We'll respond to
12 your comments. Maybe U.S. EPA could make a couple
13 brief comments, too. Or would you rather make your
14 comments --
15

16
17 MS. WHYTE: I'd like to respond to that --
18

19
20 CHAIRMAN MULLER: Come on down, Dyan, please.
21

22 MS. WHYTE: -- right away, and make some clarification.
23 Dyan Whyte, Water Quality Control Board. There's a
24
25

1 misunderstanding here, and so let me try to clarify
2 that for you.

3
4
5 Tina noted, with these new targets that we're adding to
6 the TMDL, that there are no changes to the
7 implementation plan. And that is absolutely true. We
8 are not proposing that Napa's permit be changed,
9 whatsoever. The water quality effluent limits in the
10 NPDES permits must be consistent with the TMDL. The
11 effluent limits in that permit, as it was issued last
12 year, are indeed consistent with the TMDL as it was
13 proposed and as it is proposed now.
14
15

16
17 So what we have done is we've cleaned up the TMDL just
18 to meet the federal requirements, but it has no effect
19 on the implementation plan, whatsoever. And it is for
20 that reason that we felt that this was essentially a
21 non-issue in terms of the NPDES permits. We reviewed
22 the permits, we've reviewed the effluent limits in
23 those permits, and I think that's fine.
24
25

1 So we didn't get a phone call on this, and so we did
2 not have a chance to discuss it. But I'd be happy to
3 answer any more questions you have along those lines.
4 They do have a more restrictive value, which is their
5 effluent limit, that is more restrictive than the
6 values that we proposed within this TMDL. And the
7 values in the TMDL are consistent with the Basin Plan.
8
9

10
11 So when you adopted that permit, you adopted it
12 recognizing that those effluent limits were indeed
13 going to meet the water quality objectives. And so,
14 again, that requirement or that assessment was
15 essentially done when that permit was reissued last
16 year.
17

18
19
20 MR. ELIAHU: Well, is it correct that you need more
21 chlorine?
22

23
24 MS. WHYTE: No. We're not asking them -- we're not
25 changing the effluent limits that are currently in

1 their permit. We're not asking them to monitor for
2 these other constituents, because they're already
3 monitoring and treating for something that is deemed to
4 be more restrictive or more protective than what's
5 currently in the TMDL.
6

7
8 MR. MUMLEY: This is Tom Mumley, head of the planning
9 and TMDL. To be really clear, the implementation
10 requirements do not change. This is strictly sort of a
11 quasi-legal action, to make sure that this TMDL can be
12 accrued by EPA, as implementing all applicable
13 objectives, even though it's understood by all that the
14 objectives in question are outdated.
15
16

17
18 There is an effort underway by the State Board to
19 establish new objectives. That action is fairly
20 certain, and it -- and we also have in our Basin Plan,
21 as alluded to, implementation requirements, general
22 implementation requirements regarding pathogen limits.
23
24 And we actually have as a high priority as part of the
25

1 tri-annual (phonetic) review, a plan to revisit that
2 effluent section as well. So that's another certainty.
3

4
5 So the bottom line is there will be no expected change,
6 or the record reflects that as we've written into the
7 Staff Report and responding to these comments by EPA,
8 in justifying these changes, to make it really clear
9 that there will be no consequence on permit holders as
10 a result of this action.
11

12
13 So I'll take responsibility for a communication
14 problem, but there is not a real problem for the waste
15 water dischargers. And we respect their concerns, but
16 I want to assure you that there is not a consequence.
17 The consequence, though, if we did public notice this,
18 does add considerable time and work to getting closure
19 on what I hope to get your confidence is a non-
20 technical issue. But that's your call.
21
22
23
24
25

1 MR. ELIAHU: So where does this \$100,000 increase in the
2 use of chlorine come from?
3

4
5 MR. MUMLEY: Well, respecting his concern that if, as a
6 consequence of this change, they would have to resort
7 to meeting total or fecal coliform limits, consistent
8 with those objectives, they would have to implement use
9 of more chlorine to meet coliform limits, instead of
10 their current scheme which doesn't require them to use
11 that much chlorine. What we're saying is that will not
12 have to happen.
13

14
15
16 It's a perceived problem, not a real problem, and it's
17 understandable why that perception exists. And, again,
18 it's back to a communications failure on our part, but
19 I hope it doesn't come across as undermining the
20 integrity of the package that we've presented to you.
21

22
23
24 MR. WOLFF: May I ask a question? Tom, or Dyan, when
25 the Napa permit is revised in approximately four years

1 from now, will these requirements still be -- the new
2 ones, the newly-added ones, still be in effect at that
3 time? Is there any risk that Napa will be subject to
4 those additional requirements, additional chlorine
5 costs at that time?
6

7
8 Mr. MUMLEY: No risk. And there's two failsafe measures
9 to supplement that. It's the pending State Board
10 action to establish new objectives, and an action that
11 we intend to present to this Board to deal with
12 effluent limits. But even without those two actions,
13 as designed, this TMDL would be implemented by
14 sustaining the existing permit requirements when they
15 come up for reissuance. And I'm pretty certain the
16 record, the supporting documents for this proposed
17 change reflect that. And we certainly are making that
18 clear into the record as we speak.
19
20
21

22
23 CHAIRMAN MULLER: Okay, maybe we'll have U.S. EPA
24 respond to it. Ms. Fleck, please? Engineer.
25

1
2 MS. FLECK: Good morning, my name is Diane Fleck. I'm
3 with U.S. EPA Region 9 in San Francisco. EPA wants to
4 thank Regional Board Staff for all their very hard work
5 in developing these TMDLs. We reviewed both the Napa
6 River watershed and the Sonoma Creek watershed TMDLs,
7 and recommend their adoption today. We reviewed them
8 very carefully, and we recommend their adoption today.
9 When they come to us, we will support -- we can support
10 their approval.
11
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13
14

15 We also want to thank Staff for their thoughtful
16 responses to our comments, and we're pleased to see the
17 changes. We are pleased to see the addition of both
18 the total and fecal coliform targets, loads and
19 allocations. The current water quality standards for
20 bacteria are in total and fecal coliform. The addition
21 of total and fecal coliform to these targets, loads and
22 allocations will make it clear that the TMDL will meet
23
24
25

1 water quality standards. So we want to make sure that
2 the TMDL meets water quality standards.

3
4
5 We respect the concerns of the dischargers and we agree
6 with your Staff's analysis on implementation. Thank
7 you.

8
9
10 CHAIRMAN MULLER: Okay. I have one more card, and I'm
11 not -- Napa County Farm Bureau, would you like to speak
12 on this?

13
14
15 SPEAKER: Good morning, Mr. Chairman, Members of the
16 Board. Thank you for the opportunity to comment, and
17 thank you for the response to comments from our last
18 commentary two months ago. We are supportive of moving
19 forward with working with the Regional Board on an ag
20 waiver program for our grazing operators. We want to
21 acknowledge that we are very different from Sonoma or
22 Marin in our grazing operations, and you need to
23
24
25

1 understand that as you create an ag waiver program for
2 each of these watersheds.

3
4
5 Again, we have only a few grazers. They are marginally
6 sustainable with their profit margin. And, again, the
7 cost of implementation, which are in your plan, are
8 extremely high for these types of operations. In the
9 response to comments, Staff does recognize that even
10 the lowest may be too high to sustain these operations.
11 We believe there's a way to make this work.

12
13
14
15 I have taken the time in the last month and a half to
16 meet with UC Cooperative Extension and the Rangeland
17 Consultant, and with the Natural Resources Conservation
18 Division, and we have developed what we think is a
19 proposal that meets the objectives. So we look forward
20 to this collaboration, but my admonition and my comment
21 today is really that we need to make sure that we are
22 keeping these grazing operators in business, that the
23 program achieves the water quality objectives. And I
24
25

1 think in working together we can achieve that, those
2 dual goals.

3
4
5 They're sustainable goals, we already operate with a
6 sustainable purpose and practices. The report shows
7 one operator on Sheehy Creek that had levels of
8 exceedence, and obviously there is a significant
9 problem that can be addressed, site-specific. And then
10 beyond that, we can develop an educational program that
11 does work for rangeland management, farm plans and for
12 education and outreach.
13
14

15
16 I also want to make the comment that on the heels of
17 this TMDL we will be looking at sediment TMDL
18 requirements for grazers. And we hope to coordinate
19 both of those implementation processes so we're not
20 confusing the cattle grazers, and they can really
21 concentrate on their businesses instead of their
22 bureaucracies. So I know there is a way to mesh that
23
24
25

1 and make it a package program that is coordinated and
2 not layered one on top of the other.
3

4
5 So, with that, we thank the Staff for their comments.

6 I think they did thoroughly understand what we were
7 saying. And I think that after learning from the
8 experience of working with the irrigated lands ag
9 waiver program from Region 5, that we can learn from
10 that experience and do it better. And we look forward
11 to that. Thank you.
12
13

14
15 CHAIRMAN MULLER: Thank you, I appreciate that. That
16 was the only card, the last card I have left. I would
17 like us to thoroughly address Napa's concern, Mr.
18 Abramson's concerns, particularly if it was very
19 significant changes, and we've addressed that. And the
20 comment about being held hostage, I think we need to
21 comment -- I'll let you come back for a minute,
22 Michael.
23
24
25

1 MR. ABRAMSON: Thank you. I just want to take 60
2 seconds, in the interest of saving you some time. We
3 heard very clearly that there's no change now to our --
4 and we heard that very clearly. No change to our NPDES
5 permit, no change to the TMDL implementation plan. We
6 do not have a huge monitoring program being added,
7 we're not having new numerical limits put on us. We
8 didn't know that, I want to just make that clear.
9
10 And based on that assumption, also to one of the
11 members' questions, not only no additional monitoring
12 but no risk for increased monitoring. I heard the term
13 'no risk.' There's always a little risk, but no risk
14 for increased monitoring or including these
15 bacteriological indicators in our next permit.
16
17
18
19

20 Based on all of that, we are supportive of going
21 forward. And I also kind of made some comments about
22 the communication. I guess I thought that no news was
23 good news, but usually no news is never good news. So
24 I probably should have picked up the phone and said,
25

1 'hey, confirming that nothing's changing,' and I'm
2 sorry I didn't do that. And I just hope that both of
3 us don't do that in the future.
4

5
6 But I thank you for the second comment. Based on all
7 of what we've heard today, and what's in the record,
8 then we're supportive of going forward. Thank you.
9

10
11 CHAIRMAN MULLER: Well, I think that this is a classic
12 example of we are all working with such technical
13 information, that really information is the key to
14 this. And I appreciate you clarifying it, and I
15 appreciate the patience of Napa to get this settled
16 here. And so I think we all learned that we have to
17 have as much or more communication as possible.
18
19

20
21 So if that -- questions? Yes, Ms. Deluca?
22

23
24 MS. DELUCA: It's a tangential question, but I can't
25 help reading or learning about the Napa River or Sonoma

1 Creek without asking this question, because it's been
2 so much in the news of late during the rainy season,
3 regarding the flooding that took place and the
4 management systems that have been aborted because of
5 lack of funds. I understand that there are some
6 federal funds coming. The governor's been much involved
7 in discussing the problems in those two counties.
8
9

10
11 And I'm wondering if there's any comment you can make
12 now considering the status of those programs, or if you
13 would consider perhaps doing a presentation for us at a
14 later meeting when we can gather more material, more
15 information.
16
17

18
19 MR. WOLFE: Right. We can report back to you, especially
20 on the Napa River flood control project, which we like
21 to consider as sort of our real poster child for a fine
22 project. But nonetheless, as we reported to you, that
23 there had been some funding issues. And we can report
24 back, both on where that is after last winter's floods,
25

1 and where the funding stands. So we'll come back to
2 you. There are also projects in the Sonoma area that
3 we can touch on.
4

5
6 CHAIRMAN MULLER: Okay, so we'll take Staff's
7 recommendation for Item 8.
8

9
10 MR. WOLFE: Well, and just before doing so, just one
11 final comment. As we heard on the commentors, really
12 what the TMDLs boil down to is the actual
13 implementation of what we put in the TMDL. And on one
14 hand, in this instance, what we have in the TMDL for
15 the two new waste load allocations -- bacteria does not
16 change the implementation plan. And it's clear that
17 the Napa Sanitary District now understands that.
18

19
20
21 And also, the representative from the Farm Bureau
22 talking about the grazing. And again, this comes down
23 to the implementation, and we would definitely want to
24 work with the Farm Bureau. And we fully recognize it's
25

1 not a one size fits all, and so I'm pleased to hear
2 that they have been thinking about some solutions that
3 are specific to Napa that we can work with them on.
4

5
6 I also recognize, we fully recognize that we don't want
7 to make the coming TMDLs for both Napa and Sonoma
8 watersheds for sediments and nutrients be considered
9 additive. That there are going to be a number of
10 actions that are taken here, that can complement
11 implementation for the sediment and nutrient TMDL. So
12 we definitely want to work with the parties to see
13 where are those -- as Gary likes to say, the economies
14 of scope that we can do as many actions to address the
15 multiple TMDLs, and not have to reinvent the wheel with
16 each TMDL as we go through.
17
18
19
20

21 So, really, the key is the implementation. And I think
22 the message is getting out to the community that we'll
23 work with them on the implementation. And in some
24 respects, as we talked about on the NPDES side, in this
25

1 instance we expect no change in the actual
2 implementation. They're already doing what is needed
3 to be done to implement the TMDL.
4

5
6 This will be a bit of a theme as we talk on the next
7 item, about mercury. But it's both the TMDL and then
8 what are we going to do to implement the TMDL.
9

10 CHAIRMAN MULLER: Well, along that line, in the
11 comments, I think we have to remind ourselves as Board
12 members, that we should never be up here in the
13 business to try to put people out of business.
14

15
16 MR. WOLFE: Correct.
17

18 CHAIRMAN MULLER: Or relocate. I think we're here to
19 make them better, you know. If we can do a better job
20 in sustainability with individuals on their operations
21 or businesses, that should be part of our role, too.
22
23

24
25 MR. WOLFE: Right. The sustainability is key.

1
2 CHAIRMAN MULLER: I don't like to hear that word that
3 we're out there to put people out of business, because
4 that definitely is not my intent, ever.
5

6
7 MR. WOLFE: With that, I'd again recommend adoption of,
8 first, the TMDL and implementation plan for the Sonoma
9 Creek watershed pathogen TMDL, and implementation plan.
10 And, as I say, I should not that there is the
11 supplemental, so I'd say as supplemented -- you have
12 that supplemental in front of you.
13
14

15
16 CHAIRMAN MULLER: Gary, please?
17

18
19 MR. WOLFF: I have three concerns, if you will, about
20 both the Sonoma Creek and the Napa TMDL. These are
21 concerns I raised last month. And the Staff responses
22 in the Staff Report were generally quite good on these,
23 but nothing changed in the TMDLs themselves. And I
24
25

1 wanted to see some of the responses incorporated in the
2 TMDLs.

3
4
5 I sent some suggestive wording to the Staff on Monday,
6 and they've responded that the wording that I sent
7 wasn't exactly appropriate for various reasons. So
8 we're going to need to work through these issues a
9 little bit here.

10
11 Let me just tell you what the three issues are. The
12 first was how to encourage and reward group efforts in
13 watershed, watershed-level efforts. And this goes
14 specifically to the comment made from the
15 representative of the Farm Bureau in Napa, and she made
16 the similar comment two months ago.

17
18
19
20 There may be some individual landowner who can't comply
21 with the specific requirements in here. But if they
22 were to participate in group-wide or county-wide
23 efforts, and the problem were solved, then we wouldn't
24 want to hold them accountable for failing on their
25

1 property when the overall problem has been solved. And
2 I crafted some language to that effect, but the
3 language doesn't work, according to Staff, specifically
4 because of two State Board policies.
5

6
7 So at this point, perhaps we don't need to include any
8 wording in the document. But I wanted to flag this for
9 the Board, that the ability to use as enforcement
10 criteria whether someone is participating in solving
11 the problem, whether they're able to do everything
12 possible on their own property or not, in my mind
13 should be a criteria for enforcement. If they're
14 participating in solving the program, and the problem
15 gets solved, that should be good enough.
16
17

18
19
20 But the legal structure that we're under holds each
21 discharger accountable on their own property, period,
22 end of story. And the State Board enforcement guidance
23 doesn't include participation in stakeholder groups or
24 watershed efforts as a criteria for enforcement.
25

1
2 So I don't see any really good way of sort of
3 addressing this problem at this time. I'll go work on
4 it at the State Board. But I wanted to call it to your
5 attention. I think there is a desire to support
6 watershed level efforts by the Staff and probably by
7 the Board.
8
9

10
11 The Staff did suggest we add some language specifically
12 about 'the Water Board encourages but does not require
13 watershed groups and stakeholder partnerships to work
14 toward achieving water quality targets.' We could add
15 such language, but I'm not sure how effective or
16 helpful it is. You know, we encourage but don't
17 require.
18
19

20
21 MR. WOLFE: Just a quick comment. We do have that
22 language in the Staff Report, because that's where
23 you'd flagged it and noted it. But I think, as you also
24 note, based on the Farm Bureau rep's comments, that we
25

1 should definitely consider this as we move forward,
2 especially on something such as grazing, that where it
3 may be difficult given the specific setting of a
4 facility or something, how can we look at a more
5 watershed-based approach.
6

7
8 And I think that's the general timbre of your message
9 here, is that while our implementation structure tends
10 to look at individual waste discharge requirements, or
11 individual permits, that we should look at how we could
12 do that more watershed. And I'm encouraged, as you
13 say, that you're going to keep pushing this up to the
14 State Board. Because we've been talking this for 10
15 years at least, and we're still back to looking at each
16 individual discharger.
17
18
19
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21 MR. WOLFF: And we're actually going to be talking this
22 again under the Mercury TMDL, because there is an
23 effort to create a group compliance structure, or a
24 group cooperative structure. Which is problematic
25

1 because of the legal history and background of how we
2 do these things.

3
4
5 So I wanted to bring that up. There isn't really a
6 need to change the wording in the TMDL. I had hoped
7 that we could, but I find no easy solution at this
8 point.

9
10
11 The second point has to do with the water quality
12 numeric targets and objectives. I asked two months
13 ago, where do those apply? You know, if I'm a
14 landowner, where am I being required to meet these
15 pathogen numeric targets and objectives?

16
17
18 And the Staff response, both at that time and in the
19 Staff Report is, "Oh, we're going to use a balance of
20 evidence approach." There was, you know, a bunch of
21 factors and they're listed in a paragraph in the Staff
22 Report. We use a balance of evidence approach to
23 determine whether you're complying or not.
24
25

1
2 I think that's unfair to a discharger. I mean, the
3 discharger needs to know if I do this, I've complied
4 with the numeric targets and objectives. The way it
5 stands now we're telling dischargers whether you comply
6 or not is a decision by a state employee. And every
7 different employee might give you a different decision,
8 because they might balance the evidence differently.
9
10

11 I think it's -- I don't think it's appropriate or fair
12 to the discharger. So I would like to see us include
13 some specific wording here about where the points of
14 compliance are. The language I proposed was simply
15 "the location of points of compliance for numeric
16 targets and water quality standards will be specified
17 in WDRs and waivers of WDRs."
18
19
20

21 So it says when the permit instruments occur, we'll
22 specify where the points of compliance are. For some
23 reason that was problematic to Staff, and I'd like to
24 know why that's problematic.
25

1
2 MR. MUMLEY: This is Tom Mumley. Gary, I fully
3 appreciate what you're saying. We're getting into sort
4 of some language challenges, how to say it. Because
5 you're just using the term 'point of compliance.' The
6 term 'compliance' has a lot of weight to it.
7

8
9
10 What we're -- our response to your concern was not that
11 it would be Staff discretion, it would be within
12 subsequent regulatory actions by this Board. Waste
13 discharge requirements or waiver conditions, or waste
14 discharge requirements that would be really, you know,
15 clarify what is required of any and all dischargers
16 relative to their responsibility to meet their
17 allocation. So it can only be done through the Board
18 action, not by Staff action.
19
20

21
22 The concern I would express for what you just said, by
23 including the concept of points of compliance in
24 subsequent waste discharge requirements or as part of a
25

1 conditional waiver, there's an implication that those
2 points of -- there's an enforcement of those points
3 relative to those points of compliance. So it's,
4 rather than providing comfort, you may be suggesting
5 something that would be welcomed as discomfort.
6

7
8 The literal interpretation, I know it's not your
9 intent. But, so the -- I guess, not to complicate
10 things, but I fully understand what you're saying.
11 It's just we struggled to try to find a solution to
12 make changes to the Basin Plan amendment to clarify
13 this, other than to continue to say we will certainly
14 have to clarify this via subsequent regulatory action.
15
16
17

18 MR. WOLFE: I would say we have an example in the dairy
19 program, where we have issued both waste discharge
20 requirements, general waste discharge requirements and
21 waiver of waste discharge requirements. Essentially
22 saying in the waiver that as long as you're complying
23 with the state animal waste guidelines, you're in
24
25

1 compliance with the waiver. And here we're saying, as
2 long as you're implementing that waiver, or as
3 appropriate, the general waste discharge requirements,
4 you're in compliance with the Basin Plan amendment.
5

6
7 So, again, as I commented earlier, we're looking at the
8 TMDL provides the framework of saying how we're going
9 to implement, it's the individual regulatory actions.
10 And here we don't see that it's necessarily saying that
11 it's the numeric limit, as it were, for instance, for
12 somebody who's grazing who's going to have to go out
13 and sample at their property line to say whether or not
14 there's a certain level of bacteria that's leaving
15 their property.
16
17
18
19

20 We're going to work to develop waste discharge
21 requirements that are manageable, getting back to Ms.
22 Deluca's earlier question, which was how does this play
23 out in somebody who is a dairy owner or a grazer. What
24
25

1 do they really have to do. And I think that's what
2 ultimately you're getting at.

3
4
5 MR. WOLFF: It is.

6
7 MR. WOLFE: Is to how do they comply, how do they use
8 this as a vehicle to comply?
9

10
11 MR. WOLFF: Let me introduce just briefly a distinction
12 that came up in the discussion, between a condition of
13 compliance and what I'm calling a point of compliance.
14 Conditions of compliance are going to be specified in
15 the permits. You know, septic system owner has got to
16 operate their septic system in a certain functional
17 way, or pump it out with a certain frequency, or
18 whatever that is. That's a condition of compliance.
19
20

21
22 One type of condition of compliance is measuring water
23 quality somewhere.
24
25

1 MR. WOLFE: Right.

2
3
4 MR. WOLFF: Pathogens somewhere, and seeing whether it
5 satisfies the standard. And I'm trying to figure out
6 where that measurement is supposed to take place. But
7 not today, I don't need to know today. But I think
8 when a discharger gets a permit or has a waiver, if
9 they're responsible for complying with any kind of
10 numeric target or water quality objective, they need to
11 be told where.
12

13
14
15 And so I'm asking that the plan say that when those
16 later documents are issued, it'll say where. Now,
17 maybe it should say where, if appropriate, because
18 sometimes it won't be appropriate. Maybe that's the
19 piece missing here. But if anyone is responsible later
20 on for complying with a numeric target or water quality
21 objective, I think it's only fair to tell them where
22 they're supposed to achieve that compliance. That's
23 what I'm getting at.
24
25

1
2 MR. WOLFE: And I think that's why we're saying the term
3 'compliance' may be at issue here. That maybe it's
4 using the term such as 'the points of applicability,'
5 or something. Because I think our focus here is much
6 more on what we classically call the non-point
7 dischargers, or for --

8
9
10
11 MR. WOLFF: I'm sorry, but --

12
13
14 MR. WOLFE: -- an NPDES discharger, there is something
15 numeric.

16
17 MR. WOLFF: But haven't we said that, you know, there
18 are certain standards that are going to apply
19 everywhere in -- I don't know.

20
21
22 MR. WOLFE: In the water body. And our goal here is --

23
24
25 MR. WOLFF: In the water body, but where's the --

1
2 MR. WOLFE: -- to ensure that the water body attains
3 those standards. So we will be periodically measuring
4 the water body, trying to demonstrate whether or not
5 we're making progress on reaching the goal of
6 attainment.
7

8
9
10 MR. WOLFF: Maybe that's the clarification that, you
11 know, has to be made. Because, you know, where does
12 the water body end? I'm thinking about, you know,
13 streams that flow across some ranching land once or
14 twice a year. There's water in the stream. If I go
15 grab a grab sample from there, and it violates these
16 pathogen standards, is that a violation or not? Or do
17 you only mean the main stem of the Sonoma Creek or the
18 Napa River? I'm not clear on that, that's what I'm
19 working on. I'm sorry, others maybe have things to say
20 here.
21
22
23
24
25

1 MS. WHYTE: Just to add to that, in terms of our
2 interpretation of where we evaluate targets, it has to
3 do with where the beneficial use is indeed taking
4 place. So you'll recall with the Tomales Bay Pathogen
5 TMDL, we specifically established that there was a
6 certain level that needed to be met. Now, we don't use
7 the term 'compliance' there, but we say we will
8 evaluate whether allocations are going to be met at the
9 mouth of this creek because it directly relates to the
10 shellfish growing areas.
11
12

13
14 Likewise, when we look at this, we will also evaluate
15 where recreational uses are taking place. So there's
16 sort of two aspects of it. What the discharge looks
17 like, but then in the receiving water body, what the
18 conditions are in the receiving water body. And again,
19 we just use different terms in terms of how we frame
20 that and where we look for that. And usually that's
21 specified within the monitoring programs as well, so we
22 talk about where we would monitor and where we will
23
24
25

1 evaluate water quality in terms of attainment of
2 targets.

3
4
5 MR. WOLFF: Okay.

6
7 CHAIRMAN MULLER: Did you have one more, Gary?

8
9
10 MR. WOLFF: I think Margaret had one.

11
12 MS. BRUCE: That answered my question.

13
14
15 CHAIRMAN MULLER: Okay.

16
17 MR. WOLFF: Yeah, I have one more, if I can find it
18 here. The cost data, and I think we're fine on this. I
19 thought it was important because a number of
20 dischargers two months ago came in and said this is
21 going to be very costly. A realtor said this could,
22 you know, force people out of their homes, et cetera.
23
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1 That the efforts to gather data and information include
2 some cost data.

3
4
5 So that is someone comes before the Board five years
6 from now and says, "This is way too costly, I couldn't
7 do it and you shouldn't enforce against me," the Board
8 and the Staff have some information.

9
10
11 So I proposed, and the Staff agreed, that on what is
12 now in the revised page numbering, it would be Page A-
13 17, and the bullet list we add a fifth bullet that
14 would say, "Collect sufficient data to evaluate the
15 costs." I've changed the wording slightly from the
16 Staff proposal. But, "Collect sufficient data to
17 evaluate the costs of pathogen source control measures
18 and the existence of other pollutant reduction
19 benefits," parenthetically, "e.g., nutrients or
20 sediments," end parenthesis, "if any."

1 So that the notion of costs and the notion of whether
2 there are these other benefits in nutrients and
3 sediments would be addressed in the data-gathering
4 efforts over the next five years. So the Board can best
5 deal with any complaints essentially in the future of
6 people saying we couldn't afford to do this.
7

8 So that language, I'm seeing the nod on the part of
9 Staff. I think what I'll do, then, is I'll move the
10 item, if it's okay, but with this last point added. A
11 fifth bullet added on Page A-17, just as I stated.
12
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15 MS. DELUCA: I do have a question about that, Gary.

16 Does that require the discharger to comply with that
17 cost figure, if and when he or she is engaged in
18 whatever the cleanup operation is? The reason I asked
19 the question is because it has been historically the
20 position of the Board in dealing with issues where cost
21 came up, to disengage from costs.
22
23
24

25 MR. WOLFF: Yes.

1
2 MS. DELUCA: Because if we get too involved in cost
3 measurements, then we are no longer completely
4 committed to the environmental issues. So that's my
5 question.
6

7
8 MR. WOLFF: Yes. The bullet point would be added in a
9 section where it's describing the monitoring program
10 and the subsequent data efforts of our own Staff for
11 the next five years. So it simply says, "collect
12 sufficient data to evaluate the cost of pathogen source
13 control measures," et cetera, so we would have the data
14 available. It doesn't state that costs would be an
15 excuse for not complying, it doesn't say anything like
16 that.
17
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20
21 In fact, some people will come in and claim that cost
22 is an excuse, and I'm just trying to have some
23 information available at that time. I don't think it in
24
25

1 any way introduces a cost element into a decision where
2 it doesn't belong.

3
4
5 MR. WOLFE: And I'd consider this a useful component of
6 our adaptive management approach, that we want to use
7 the monitoring, including costs, to try to work with
8 all parties on how most efficiently they can work to
9 attain water quality standards.
10

11
12 MS. DELUCA: Bruce, I'm just not -- my only question
13 goes to the fact that we've heard so many times, you
14 know, dischargers wishing to exculpate themselves on
15 the basis of cost.
16

17
18 MR. WOLFE: Right.
19

20
21 MS. DELUCA: And their inability to pay the costs that
22 are necessary to remediate. So, but you don't see that
23 as a problem?
24
25

1 MR. WOLFE: No, and I think -- and in fact, this area
2 says that "Water Board Staff in collaboration with
3 stakeholders will conduct monitoring," that we'd like
4 to get this information so we can disseminate the
5 information on how most effectively this can be done.
6 And ideally, achieve the goal -- with, again being
7 sustainable to parties' operations and not break their
8 back over this.
9
10

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12 CHAIRMAN MULLER: Tom?
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14

15 MR. MUMLEY: I just want to be -- clarify it for the
16 record, so it's very clear what you'll be approving
17 relative to Board Member Wolff's suggestion. For
18 Sonoma, for the Sonoma Creek pathogen TMDL, the motion
19 is to add a fifth bullet, what would be Page 17 of the
20 supplemental to this item. Which is the evaluation and
21 monitoring section of the implementation plan, wherein
22 the second paragraph of that section, there's a
23 statement as to "the main objectives of the monitoring
24
25

1 program are to --" we'll add a fifth bullet to those
2 objectives that reflect the gathering of cost
3 information, per your --
4

5
6 MR. WOLFF: Language. Would you like me to read the
7 language again?

8 MR. WOLFE: Yeah, please.
9

10
11 MR. WOLFF: The statement would read, "collect
12 sufficient data to evaluate the costs of pathogen
13 source control measures, and the existence of other
14 pollutant reduction benefits --" parenthetically,
15 "e.g., nutrients or sediments, if any."
16
17

18 CHAIRMAN MULLER: Understood? Tom?
19

20
21 MR. MUMLEY: Yes, and at the appropriate time we'll have
22 to make for the record -- relative to Napa.
23

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25 MR. WOLFE: If we're doing the same for Napa, yes.

1
2 MR. WOLFF: For Napa, yes. Exactly.
3

4
5 CHAIRMAN MULLER: Okay, so we're going to continue on
6 with Item 8 here. Just a quick comment on your first
7 point, Gary, down there. Monday night I brought it up.
8 I think in your new position in Sacramento, I would
9 like to see us do a better job streamlining and
10 triaging the grant program. And that would help us in
11 the watersheds that really want to do the right things
12 out there, to get the grants to the people that are
13 going to do them.
14
15

16
17 MR. WOLFF: That's right.
18
19

20 CHAIRMAN MULLER: I mean, we have grants in our
21 watershed that we ask for every year, and it just gets
22 pushed around, pushed around. And so, it was just a
23 little sidebar here. So, if you can take care of
24 Region 2 grant program for us.
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Okay, so we can move on here on Item 8, with the change that is understood by Staff and hopefully all parties? And you have moved, Gary?

MR. WOLFF: I moved that, yes.

MS. BRUCE: Second.

CHAIRMAN MULLER: Any further discussion? If not, roll call vote, please, Mary?

CLERK: Mrs. Brouhard?

MS. BROUHARD: Aye.

CLERK: Mrs. Bruce?

MS. BRUCE: Aye.

CLERK: Mrs. Deluca?

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MS. DELUCA: Yes.

CLERK: Mr. Eliahu?

MR. ELIAHU: Aye.

CLERK: Mr. Waldeck?

MR. WALDECK: Aye.

CLERK: Mrs. Warren?

MS. WARREN: Aye.

CLERK: Dr. Wolff?

MR. WOLFF: Aye.

CLERK: Mr. Muller?

1 CHAIRMAN MULLER: Aye. So ordered. And now we'll go on
2 to Item 9?

3
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5 MR. WOLFE: Correct. So Item 9, we've heard comments.
6 But Item 9 is adoption of the Napa River watershed
7 pathogen TMDL and implementation plan. And there is no
8 supplemental on this. I think we got the pagination
9 correct and the underlying correct. So I do want to
10 take a moment here just to see if we can identify the
11 spot where similar wording that Gary just recommended
12 would be -- and it's on Page 12, I think I have,
13 looking at my version. That's Sonoma. Oh, here it is.
14 Different version.

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19 MR. MUMLEY: So the appropriate place to recognize what
20 the anticipated recommendation from Board Member Wolff
21 would be --

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24 MR. WOLFE: In the resolutions, Exhibit A.
25

1 MR. MUMLEY: It's Appendix A, Resolution, which is the
2 mechanism by which you would -- you're adopting the
3 Basin Plan amendment. Exhibit A to that resolution is
4 the proposed Basin Plan amendment, and Page 10 of
5 Exhibit A to the resolution is where the monitoring
6 objective bullets appear. So we would be adding a
7 fifth monitoring objective bullet at that point, that
8 reflects the language suggested by Board Member Wolff.
9
10

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12 CHAIRMAN MULLER: Is that right, Gary?
13

14
15 MR. WOLFF: Yes, that's right.
16

17 CHAIRMAN MULLER: Okay.
18
19

20 MR. WOLFE: So with the addition of the language, the
21 fifth bullet to say 'collect sufficient data to
22 evaluate the costs of pathogen source control measures
23 and existence of other pollutant reduction benefits,
24
25

1 e.g., nutrients or sediments, if any.' And with that,
2 I'd recommend adoption of the resolution.
3

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5 MR. WOLFF: So moved.
6

7 CHAIRMAN MULLER: Well, I think Margaret was going to
8 move.
9

10 MR. WOLFF: Oh, I'm sorry.
11

12 CHAIRMAN MULLER: You can't move on all of them. I
13 mean,, you know.
14

15
16 MS. BRUCE: But he beat me to it, so --
17

18 MR. WOLFE: No, no, you go ahead.
19

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21 CHAIRMAN MULLER: I was just teasing.
22

23
24 MR. ELIAHU: Second.
25

1 CHAIRMAN MULLER: Moved and seconded by that end of the
2 table down there. Dr. Wolff and Margaret, and seconded
3 by Shalom. Any further discussion? Roll call vote,
4 Mary, please?
5

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7 CLERK: Mrs. Brouhard?
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10 MS. BROUHARD: Aye.
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12 CLERK: Mrs. Bruce?
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15 MS. BRUCE: Aye.
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17 CLERK: Mrs. Deluca?
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20 MS. DELUCA: Yes.
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22 CLERK: Mr. Eliahu?
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25 MR. ELIAHU: Yes.

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CLERK: Mr. Waldeck?

MR. WALDECK: Aye.

CLERK: Mrs. Warren?

MS. WARREN: Yes.

CLERK: Dr. Wolff?

MR. WOLFF: Yes.

CLERK: Mr. Muller?

CHAIRMAN MULLER: Aye. So ordered. I think at this time we have a number of cards on Item 10, and I'm going to call for a quick break, as quick as possible. And then we will get back into this thing here.

[END OF ITEMS 8 AND 9.]

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