



California Regional Water Quality Control Board Central Coast Region



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Arnold Schwarzenegger
Governor

MINUTES REGULAR MEETING Thursday February 5, 2009 Central Coast Regional Water Board

Chairman Jeffrey Young called the meeting of the Central Coast Water Board to order at 8:35 a.m. on Thursday, February 5, 2009, at the Central Coast Water Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California.

Thursday, February 5, 2009

1. Roll Call Executive Assistant Carol Hewitt

Board Members Present:

Chairman Jeffrey Young
Vice Chair, Russell Jeffries
Monica Hunter
David Hodgins
John Hayashi

Absent: Gary Shallcross

2. Introductions Executive Officer Roger Briggs

Executive Officer Briggs introduced staff and asked parties who wished to speak to complete testimony cards and turn them in. Supplemental sheets that were prepared after the agenda was sent out are as follows: Items 10 (Q&A doc), 11, 12, 13, 14, 20 (Q&A doc).

3. Approval of December 4-5, 2008 Minutes Board Motion

MOTION: Russell Jeffries moved to approve the December 4-5, 2008 minutes.

SECOND: Monica Hunter

CARRIED: Unanimously (5-0)

4. Regional Board Chair and Vice Chair Elections Board Motion

Board Chair:

MOTION: John Hayashi moved to elect Jeffrey Young as Board Chair.

SECOND: Russell Jeffries

CARRIED: Unanimously (5-0)

Board Vice-Chair:

MOTION: Monica Hunter moved to elect Russell Jeffries as Board Vice-Chair.

SECOND: John Hayash

CARRIED: Unanimously (5-0)



5. Report by State Water Resources Control Board Liaison Status Report

No report - Executive Officer Briggs said our new State Board Liaison Frances Spivy-Weber will not be able to attend the meeting today due to a scheduling conflict.

6. Uncontested Items Calendar Board Motion

Executive Officer Briggs noted Item 15/Chicago Grade Class III Landfill and Item 16/Moore Residence of Santa Barbara as the items on the uncontested items calendar. There was no discussion.

MOTION: Russell Jeffries moved to approve the uncontested items calendar.

SECOND: David Hodgkin

CARRIED: Unanimously (5-0)

7. Low Threat and General Discharge Cases Status Reports

Executive Officer Briggs noted the contents of the report and asked the Board if they had questions.

8. Recommended Case Closure Board Approval

Executive Officer Briggs noted the contents of the report and asked the Board if they had questions. The Board thanked staff Engineering Geologist Corey Walsh for his work on the case.

9. Staff Closure Information

Executive Officer Briggs noted the good news that the cleanup site met water quality objectives and the case was closed. The Board had no questions on this item.

10. Enforcement Report Status Report

A written report was submitted for this item. One Board question was addressed about spills to waterbodies in the Q & A document. Section Manager Harvey Packard clarified time periods for violations. Recent sewer overflows in Santa Barbara were discussed. Staff Engineer Ryan Lodge noted the increase in the City's overflows and explained that the City's collection system is aged. He also said that the City has implemented an updated sewer system management plan. A lateral inspection plan (which may be responsible for a portion of the spills) has also been implemented and the City is actively working with local plumbers to resolve issues as they arise. Chair Young asked that Executive Officer Briggs invite the City to present its management plan status to the Board at the October board meeting in Santa Barbara.

11. California Men's Colony MMP Order No. RB3-2009-0028

Central Coast Water Board staff David LaCaro presented the item. The Discharger's attorney, Chris Swanberg, provided testimony indicating no objections to the proposed Order and staff's proposed modifications.

Water Board members asked staff questions regarding the State Water Board's Supplemental Environmental Projects (SEP) policy, which, Water Board counsel explained was not finalized. Board member Hunter made note of the typographical error on the technical memorandum explaining that the penalty amount is \$126,000 not \$120,000. Water Board members also provided comments regarding the proposed modifications. These modifications include the following items:

- Delete the last sentence in proposed Finding #15 referring to the California Conservation Corps conducting the SEP construction activities.
- Extending the payment of the SEP to 90 days after the adoption of the Order.
- Modifying a reference to the Water Board having the authority to extend the date of the SEP as necessary.
- Modifying the Order number to Mandatory Minimum Penalty Order No. R3-2009-0028.
- Add "Attachment A," which includes a description of the SEP.

The Discharger had no objection to the MMP Order and the proposed modifications.

MOTION: David Hodgin moved to approve Order No. RB3-2009-0028 with the proposed modifications.

SECOND: John Hayashi

CARRIED: Unanimously (5-0)

12. California Men's Colony ACL..... Order No. RB3-2009-0027

Central Coast Water Board staff David LaCaro presented the item.

Chairman Young asked questions regarding a fish kill that occurred on August 21, 2008, and how the Department of Fish and Game was notified. Staff stated that the chlorine concentration leading to the fish kill was 4.2 milligrams per liter, and that the Department of Fish and Game was notified by the Morro Bay National Estuary Program. Staff also is modifying the California Men's Colony's Monitoring and Reporting Program to include notification requirements for releases of chlorine that exceed the effluent limitations. Board member Hayashi asked for clarification regarding the Discharger's opposition to the proposed Order stating that the penalty amount was based on "unsupported statements" made by staff. Staff explained that the Discharger would have a better explanation; however, staff believed that the Discharger meant that the penalty assessment did not take into account creek flows at the time of each chlorine exceedance.

The Discharger's attorney, Chris Swanberg, objected to the ACL Order and the amount of the penalty based on the Discharger's efforts to optimize the disinfection system and current compliance with chlorine effluent limitations based on the Discharger's "tweaks to the system," noting that there have been no chlorine releases since August 2008. The Discharger also added that they are trying to obtain approximately \$7 million to convert the chlorination disinfection system with an ultraviolet disinfection system. The status of the state's economy limits the ability of the Discharger to quickly fund this rehabilitation project.

Mr. Gordon Hensley of SLO CoastKeeper provided public comment explaining that each violation should be assessed the maximum amount of \$10,000. Mr. Dan Berman, Director of the Morro Bay National Estuary Program, explained that he was pleased to hear that the Discharger's Monitoring and Reporting Program will be modified to include notification requires for releases of chlorine that exceed effluent limitations. Furthermore, Mr. Berman said that since chlorine is toxic to aquatic life, it is good progress that the Discharger plans to replace the current disinfection system with an ultraviolet disinfection system.

Mr. Dennis Michniuk, biologist from Department of Fish and Game, provided an explanation of his fish kill inspection on August 21, 2008. He observed live fish immediately upstream of the effluent pipe and approximately 100 dead fish as far as 300-feet downstream of the effluent pipe.

Based on the testimony provided by staff, the Discharger, the public and current efforts of the Discharger, the Executive Officer recommended lowering each chlorine violation resulting in a total penalty amount of \$76,000. Water Board members discussed the factors to be considered in setting a penalty amount.

MOTION: Monica Hunter moved to approve Order No. RB3-2009-0027 with the revised penalty amount of \$76,000.

SECOND: Russell Jeffries

CARRIED: (4-1) Note: John Hayashi voted no.

(Chairman Young announced a break at 11:00 a.m. The meeting reconvened at 11:14 a.m.)

13. Cuyama Community Services District MMPOrder No. RB3-2009-0005

Chairman Young introduced the item and also agreed to allow into evidence a February 4, 2009 letter from Dudek (the consulting firm representing Cuyama CSD) responding to the Water Board's February 2, 2009, letter.

Water Board prosecution team member Sorrel Marks made a brief presentation describing the Cuyama wastewater facility, discharge violations, and the basis for the proposed Mandatory Minimum Penalty Order. Ms. Marks concluded that if the Water Board chose to allow the penalty to be used toward the discharger's compliance project, that a specific schedule should be incorporated into the Order. Also, the Order should include authorization for the Water Board Executive Officer to modify the schedule for delays beyond the discharger's ability to control. Responding to questions from Board member Hunter, Ms. Marks described the criteria for allowing the penalty to be directed to a compliance project.

Mr. U.S. Wilson, Cuyama Community Service District Manager, briefly described the District's size (800 population) and median income, which meet qualifications for small, low-income community provisions for using penalties toward compliance projects. Mr. Wilson also briefly described the compliance project, a State Water Board grant-funded conversion to ultraviolet disinfection of its wastewater.

Mr. Tom Evans, Dudek engineering consultant to Cuyama CSD, described the compliance project. The project is proceeding with design; however, construction will not proceed until the (currently frozen) Proposition 50 grant funding is released.

No public comments were presented, and there was no rebuttal testimony by Cuyama CSD representatives or Water Board enforcement team.

Mr. Wilson made a brief closing statement, indicating his desire to work with Water Board staff and utilize the penalty for the compliance project.

Water Board prosecution team member Harvey Packard made brief closing comments indicating support of the compliance project.

Water Board members discussed the available options for directing the penalty toward the compliance project, to be used as the CSD's match funding provided as in-kind services. Based

upon questions regarding limitations for such uses of penalty funds, discussion on the item was delayed until further information could be obtained by counsel. The Water Board returned to its discussion of this item after Public Forum. At that time Water Board prosecution team counsel Jorge Leon and Water Board advisory team counsel Frances McChesney summarized proposed language to be incorporated into the Order to allow the CSD to direct the \$6,000 penalty toward its compliance project.

MOTION: Russell Jeffries moved to approve Order No. RB2-2009-0005 to allow the direction of the penalty amount toward the compliance project.

SECOND: John Hayashi

CARRIED: Unanimously (5-0)

(Chairman Young announced a break for lunch and closed session at 1:00 p.m. The meeting reconvened at 1:52 p.m.)

14. Outreach Options Board Direction

Executive Officer Briggs summarized the staff report and supplemental sheet, which recommend outreach efforts with Board members on a pilot basis with a focus on one-on one meetings (as opposed to general workshops) with agency representatives that have linked water quality issues, e.g., a County Supervisor, a discharger and a water district that are all from the same basin.

Board member Jeffries discussed the meeting he, the Chair, Executive Officer Briggs, and Senior Engineer Matt Thompson had with the Salinas City Council, and discussed how beneficial it was, as evidenced by feedback Mr. Jeffries received, about the Board members themselves attending.

Dr. Hunter recognized limits in being able to staff every situation in every town. However, she pointed out that better understanding in some cases will actually allow greater efficiency in our staff time. She was glad to see a range of options listed and volunteered to participate.

Mr. Briggs pointed out that we shouldn't be focusing solely on dischargers, but we should include the broader issue of land use, for example how multiple Scotts Valley agencies could do a better job coordinating to accomplish groundwater basin recharge protection and augmentation. Board member Hodgin said the Santa Margarita Aquifer Committee includes everyone except for sewerage agencies, so that would be a good starting point and he volunteers to participate. John Robertson pointed out that in addition to sustainable land management, our goals of riparian area protection and clean groundwater are also closely linked with land use that we should be working with the decision makers in land use planning and permitting.

Chair Young mentioned an initial target of two outreach events a year.

17. Public Forum Board Direction

The individuals listed below had comments:

- Gwynn Taylor, resident Los Osos
- Keith Wimer, Los Osos Sustainability Group
- Piper Reilly, resident Los Osos
- Bruce Payne, resident Los Osos
- Chris Allebe, resident Los Osos

- Jeff Edwards, resident/developer Los Osos
- Richard Margetson, resident Los Osos
- Julie Tacker, resident Los Osos
- Dave Duggan, resident Los Osos
- Daniel Diaz, resident Nipomo
- Ralph Bishop, resident Nipomo
- Bill Moylan, resident Los Osos
- Beverley DeWitt-Moylan, resident Los Osos

18. Reports by Central Coast Water Board Members..... Status Report

Chair Young noted that the Board has already discussed the meeting he and Board member Jeffries attended with the City of Salinas which focused on Development Standards. Board member Jeffries added that it was amazing that the ag community wants to know what we are doing to address urban runoff problems and the City wants to know what we're doing about ag problems.

19. 2009 Revised Board Calendar Board Motion

The Board discussed proposed dates and decided on the dates below:

- March 19-20 – Watsonville
- May 8 – San Luis Obispo
- June 3 – San Luis Obispo
- July 10 – Watsonville
- September 11 – San Luis Obispo
- October 23 – Santa Barbara
- December 11 – San Luis Obispo

MOTION: John Hayashi moved to approve the discussed dates for the 2009 revised calendar.
SECOND: Monica Hunter
CARRIED: Unanimously (5-0)

20. Executive Officer’s Report.....Information/Discussion

Executive Officer Roger Briggs summarized staff’s plans to present a draft Irrigated Agriculture Order (Irrigated Ag Order) to the Water Board in July 2009. The Irrigated Ag Order will directly address and resolve (over time) the major water quality issues associated with irrigated agriculture in our Region. Accordingly, the Irrigated Ag Order renewal is a major undertaking that will include revised language and new requirements, including a description of the water quality problems that must be resolved, schedules for achieving compliance, milestones to measure progress, and a tiered monitoring program to verify compliance. In addition to reconvening the Agricultural Advisory Panel, staff is currently doing outreach to several interest groups. Staff’s approach is based on accountability and achieving tangible results per a defined schedule, and is similar to the approach the Water Board has directed on our other programs, such as Timber Harvesting, Stormwater, Core Regulatory Permitting, and Total Maximum Daily Loads.

Several members of the Agricultural Advisory Panel spoke and expressed concern that the current renewal process is a “top down” management approach and is not like the collaborative approach used to develop the existing Order. The Panel members urged the Board to allow a collaborative approach, and to take the riparian protection issue out of the process.

Speakers:

Traci Roberts, Monterey County Farm Bureau

Kirk Schmidt, CCWQP, Inc.

Richard S. Quandt, Grower-Shipper Association

Joy Fitzhugh, Legislative Analyst for SLO Co. Farm Bureau

Morgan Rafferty, Executive Director for Environmental Center of San Luis Obispo

Kay Mercer, Executive Director for Central Coast Ag Water Coalition

Alon Perlman, Resident, Los Osos

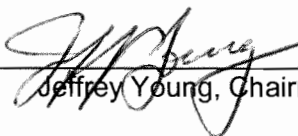
Roger Briggs explained that staff is evaluating all water quality issues, will not avoid these issues, and will consider all input from the Panel (including what comes out of a collaborative process by the panel) and other stakeholders such as municipalities and water purveyors who are not on the Panel.

He said it is staff's job to provide recommendations as well as options on all irrigated ag water quality issues, including the riparian protection issue, and it is up to the Board to then decide among the options. Michael Thomas, Assistant Executive Officer, stated that the renewal process is driven by the need to address the significant water quality issues associated with irrigated agriculture, and is not driven by consensus.

The Water Board acknowledged the Panel's previous work on the existing Order, and stated they did not want to lose or abandon the progress that has been made. The Board said they wanted an economic evaluation regarding additional requirements that may be proposed. The Board said they do not expect a consensus outcome, and that the Panel or other stakeholders should provide recommendations that resolve the water quality and aquatic habitat issues, and not simply ask that certain issues be avoided.

Chairman Young adjourned the meeting at 4:10 p.m. The next Board meeting will be held on March 19-20, 2009 in Watsonville.

The meeting was audio recorded and the minutes were reviewed by management and approved by the Board at its March 19-20, 2009 meeting in Watsonville, California.



Jeffrey Young, Chairman

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