



California Regional Water Quality Control Board Central Coast Region



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Arnold Schwarzenegger
Governor

MINUTES REGULAR MEETING Friday, July 10, 2009 Central Coast Regional Water Board

Vice-Chairman Russell Jeffries called the meeting of the Central Coast Water Board to order at 8:45 a.m. on Friday, July 10, 2009, at the Watsonville City Council Chambers, 275 Main Street, Watsonville, California.

Friday, July 10, 2009

1. Roll Call..... Executive Assistant Carol Hewitt

Board Members Present:
Vice Chair, Russell Jeffries
Monica Hunter
David Hodgkin
Tom O'Malley
Gary Shallcross

Absent:
Chairman Jeffrey Young
John Hayashi

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. Mr. Briggs introduced and welcomed our State Board Liaison, Frances Spivy-Weber. Supplemental sheets that were prepared after the agenda was sent out are as follows: Item 6, 10, 11, 12, 13, 15, and 19.

3. Approval of May 8, 2009 and June 3, 2009 Minutes..... Board Motion

FIRST MOTION: David Hodgkin moved to approve the May 8, 2009 minutes.

SECOND MOTION: Gary Shallcross

CARRIED: Unanimously (5-0)

FIRST MOTION: Tom O'Malley moved to approve the June 3, 2009 minutes.

SECOND: David Hodgkin

CARRIED: (4-0) Note: Gary Shallcross abstained.

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

State Board Liaison Frances Spivy-Weber reported on the State budget, once-through cooling policy for power plants, irrigation with recycled water, low impact development, Cal-Am, and the next Water Quality Coordinating Committee (WQCC) meeting. She noted that it is difficult to predict when the State budget will be approved and that everything is on the table at this time, i.e., agency



structure, activities with operations, etc. The once-through cooling policy for power plants is now available on the State Board website and there will be changes but the grid will not be threatened. A permit for irrigation with recycled water is now available on the State Board website. The request for Phase II for LID activities will be addressed at the next State Board meeting. The Cal-Am order should be available very soon. The WQCC meeting will be held in Sacramento at the Cal-EPA building on October 26-27, 2009. Topics to be addressed will include enforcement, sustainability, funding, and budgets. Dr. Hunter asked about online web-based meetings or local airing of our Board meetings so the public has easy access. She asked Ms. Spivy-Weber to take the issue back to Sacramento and put us high on the list for the services. Board member O'Malley noted that the Low Impact Development (LID) program has brought cities and counties closer together and the Central Coast Region's proposal to the State Board for a pilot program has great statewide significance.

5. Uncontested Items Calendar Board Motion

Executive Officer Briggs noted Item 11/Agricultural Regulatory Program. There was one speaker card submitted for Item 11, so the item was removed from the calendar.

6. Low Threat and General Discharge Cases Status Reports

Executive Officer Briggs noted that this is a written report and supplemental sheet and asked the Board if they had questions. The Board had no questions.

7. Staff Closures Board Approval

Executive Officer Briggs noted that the sites were taken to clean closure and asked the Board if they had questions. The Board had no questions.

8. Perchlorate Cases Status Report

Ms. Andria Ventura, representing the Perchlorate Community Advisory Group (PCAG) and Clean Water Action, expressed her concerns regarding the delay in implementing offsite groundwater cleanup due to elevated nitrate concentrations. Ms. Ventura indicated that it is unfair to the community to have a delay and that the nitrate issue should have been dealt with more proactively. Ms. Ventura also expressed her concerns that a municipal reuse option may not be viable due to the political climate between Olin and the City of Morgan Hill.

Ms. Sylvia Hamilton, representing the PCAG, also expressed her concerns regarding the delay in implementing offsite groundwater cleanup. Ms. Hamilton also indicated her fear that by not starting the intermediate aquifer extraction well that perchlorate will not attenuate as quickly as it should.

Central Coast Water Board staff Section Manager John Robertson thanked Ms. Ventura for her support on PCAG over the past few months by taking over the role that the Santa Clara Valley Water District provided in the past. Mr. Robertson acknowledged the community's frustration with the delay in groundwater cleanup and explained that Water Board staff is also frustrated by the delay. Mr. Robertson explained that the elevated nitrate concentrations at the intermediate extraction well are not intuitive considering that the shallow aquifer typically has higher nitrate concentrations compared to the intermediate aquifer, but the reverse is true in this situation. Mr. Robertson explained that because the groundwater extracted from the intermediate aquifer has higher nitrate concentrations than the shallow aquifer, Olin will need to treat nitrate concentrations by either conventional treatment technologies or by blending with lower nitrate water in order to re-inject the treated water at the site. However, Mr. Robertson explained that Water Board staff's

preferred alternative is for Olin to provide the treated water to the City of Morgan Hill for potable water, as this is the most energy sustainable solution for the Llagas Subbasin.

9. Enforcement ReportStatus Report

A written report was provided. Board member Shallcross asked about the status of the Bernardus Lodge. Section Manager Harvey Packard sent a letter to the discharger recently indicating that their initial investigation was inadequate and must be augmented.

10. Greka Energy Resolution No. R3-2009-0054

Vice Chairman Jeffries read an opening statement, described the protocol for the hearing, introduced Prosecution and Advisory Staff, and swore in those involved in the matter.

Prosecution Enforcement Staff Counsel, Cris Carrigan, summarized the three elements of staff's rationale that the Board adopt a resolution requesting that the Attorney General prosecute Greka Oil & Gas, Inc. (Greka), for alleged waste discharges to state and federal waters. Mr. Carrigan then reported that Greka's counsel, Jim Meeder, had submitted the previous day a written response regarding the proposed resolution, which indicated Greka's agreement that a superior court proceeding best suited the allegations, and recommended two modifications to the resolution. The first suggested change was to add "The Prosecution Staff alleges that" at the beginning of Finding No. 2. Mr. Carrigan stated the Prosecution Staff's support of that recommendation. The second revision recommended by Greka was to add a limitation to the scope of the Attorney General's prosecution power based on Office of Emergency Services reports. Mr. Carrigan did not support this recommendation, advising that the Attorney General's Office could best determine that issue for itself. Mr. Carrigan then recommended the Board's adoption of the resolution with the stated revision to Finding No. 2.

Board member Shallcross asked whether the Attorney General's Office was interested in taking this case. Mr. Carrigan responded that the referral process does not allow for direct consultation with the Attorney General before a referral, but that its office accepts all referrals from the Regional Water Board.

Mr. Briggs guided the Board members to the locations of the proposed changes, and asked whether Prosecution Staff objected to also changing "its" to "alleged" in the "Therefore Be It Resolved..." paragraph of the resolution. Mr. Carrigan replied that Prosecution Staff did not object.

Board member O'Malley asked whether staff had addressed all incidents of "its" vs. "alleged" in the draft resolution and supporting documents. Mr. Briggs confirmed that only the resolution was under the Board's consideration, and acknowledged that the recommended changes were limited to the two revisions just discussed.

Greka counsel, James Meeder, introduced Andy DeVegvar, President of Greka, and Greka general counsel, Susan Whalen. Mr. Meeder indicated Greka's agreement with Prosecution Staff that this matter would be best adjudicated in superior court, and with other elements of the staff report. Mr. Meeder also pointed out Greka's disagreement with Mr. Carrigan on the applicability of statute of limitations to the alleged violations, however, he indicated his acceptance of Mr. Carrigan's suggestion that the Attorney General's Office could best determine its position on the issue. Mr. Meeder expressed Greka's belief that only the eight most recent alleged violations are referable to the Attorney General pursuant to the three-year statute of limitations provided in California law, urged the Board to limit its referral to those incidents, but recognized that the hearing was not the appropriate time or place to adjudicate the legal complexities of the question. Mr. Meeder indicated Greka's intent to return to the Board by the end of the year to report on the resolution of the matter.

In addressing Mr. Meeder, Mr. Briggs reiterated Mr. Meeder's statement that the statute of limitations issue would be best decided in superior court. Mr. Meeder interjected a brief explanation of the statute. Mr. Briggs responded that the reason that he began to confirm Mr. Meeder's statement was to point out that it was therefore best to make those arguments in superior court rather than to present them to the Water Board during the present hearing and ask the Board to make a decision on that matter. Mr. Meeder expressed his agreement.

Mr. Gordon Hensley, of San Luis Obispo Coastkeeper, then addressed the Board and stated his organization's support of staff's recommendation for referral to the Attorney General. Mr. Hensley indicated his organization's cooperation with Santa Barbara Channelkeeper on investigating Greka's spills, and indicated their collective agreement that staff's recommended action would result in an appropriate resolution.

As a closing statement, Mr. Carrigan stated that Mr. Meeder's and Mr. Briggs' discussion of the statute of limitations made it clear that the question of evidentiary discovery should be resolved once the Attorney General has an opportunity to review the facts.

Board member Hunter asked Mr. Carrigan whether there were any federal regulatory issues involved that would not be limited to the three-year statute of limitations. Mr. Carrigan said it was possible, but that he was not aware of any at the time of the hearing.

In closing, Mr. Meeder wished to confirm that the letter Greka had provided on the previous day would be part of the record. Mr. Briggs noted that he had distributed the letter to the Board.

Board member O'Malley asked for some clarification about how the statute of limitation issue would be resolved. Mr. Briggs stated the Advisory Staff's agreement that the issue be resolved by the superior court, and that because the present hearing was not a hearing of the evidence regarding the allegations, it would not be appropriate for the Board to make any findings regarding the statute of limitations question. The Board's only decision for the present hearing was whether there was sufficient reason to refer the matter to the Attorney General.

Board member Shallcross offered clarification that the process of addressing the statute of limitations would begin with the Attorney General's Office deciding which allegations to prosecute in light of any applicable statute of limitations, then, once the lawsuit was filed, Greka would have the opportunity to argue whether some of the allegations were beyond the applicable statute.

Mr. Briggs reiterated the proposed changes to the resolution, as both parties had agreed upon during the course of the hearing, and as described above, and recommended that the Board adopt the resolution with those changes.

FIRST MOTION: Monica Hunter moved to adopt Resolution No. R3-2009-0054 to include the two modifications as discussed.

SECOND MOTION: Gary Shallcross

CARRIED: Unanimously (5-0)

(Vice Chairman Jeffries announced a break at 9:56 a.m. The meeting reconvened at 10:09 a.m.)

11. Agriculture Regulatory Program.....Order No. R3-2009-0050

This item requested the Board extend the existing Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Order R3-2004-0117), which expired July 9, 2009, for a one year period to allow staff adequate time to develop a revised order. The item was on the consent calendar but was removed from consent because several people requested to speak to the Board on the issue.

The following speakers had comments:

- Steve Shimek, Monterey Coastkeeper – supported a shorter waiver extension
- Henry Giclas, Western Growers – supported proposed waiver extension and suggested extending the waiver for five years
- Morgan Rafferty, Environmental Center of San Luis Obispo – supported proposed waiver extension
- Richard Quandt, Grower-Shipper Association – supported proposed waiver extension and suggested approving a multi-year extension
- Traci Roberts, Monterey County Farm Bureau – supported proposed waiver extension and asked for more staff transparency
- Kay Mercer, Central Coast Agricultural Water Quality Coalition – supported proposed waiver extension and asked the Board to direct staff to the ag panel to examine the information before taking action

FIRST MOTION: Tom O'Malley moved to approve Order No. R3-2009-0050.

SECOND MOTION: Gary Shallcross

CARRIED: Unanimously (5-0)

12. 2008 Integrated Report.....Board Approval

Water Board Environmental Scientist Mary Adams presented the changes to the 303(d) List of Impaired Waterbodies (303(d) List), including a summary of the methods used and an overview of the assessment findings. Staff compared all available data to all criteria relevant to beneficial use protection. Staff evaluated data for 347 waterbodies including beaches, streams, harbors and lakes. Staff recommended increasing the total number of waterbody pollutants on the 303(d) List to 704 (from 222) and removal of a total of 49 waterbody pollutant combination from the 303(d) List. Ms. Adams presented a summary of the pollutants causing impairment to beneficial uses including the following: 198 recommended listings for pathogen indicators (i.e. fecal coliform and *E. coli*), 213 listings for toxicants (i.e. toxicity, pesticides and nutrients), 261 listings for conventionals including dissolved oxygen, turbidity, pH and salts, 32 listings for sediment and 2 unique listings in Pinto lake (one for scum/foam and one for Microcystin, a toxin produced by blue green algae). Forty-six of the listings are already being addressed by Total Maximum Daily Loads (TMDLs). In the presentation to the Board, Ms. Adams also described the spatial distribution of the water quality impairments in the Region. Beneficial uses in all waters of the lower Salinas, Santa Maria and Pajaro watershed are impaired by multiple pollutants, primarily pathogen indicators and toxicants. There are also several waterbodies with one or more beneficial use impairments in the South Coast watershed area (Santa Barbara County between Rincon Creek and Jalama Creek). The majority of the impairments in this area are due to pathogen indicators and conventional pollutants. Staff prioritized the 705 listings, considering the magnitude of the problem, the number of beneficial uses affected and TMDL projects already in progress. As a result, staff assigned high priority to Lower Salinas and Santa Maria watersheds, as well as pathogen indicator listings in Santa Cruz, Pajaro and Santa Barbara watersheds.

During the presentation, Dr. Hunter asked if the Central Coast region has any waterbodies that do not have a designated beneficial use. Ms. Adams responded that all waterbodies have beneficial

uses designated to them. The Basin Plan states that all waterbodies are designated Municipal and Domestic Supply, Recreation and Aquatic Life beneficial uses unless they are listed in Table 2-1 of the Basin Plan. Waterbodies identified in Table 2-1 of the Basin Plan are designated specific beneficial uses. Board member Shallcross asked how a beneficial use designation may be modified for a waterbody. Ms. Adams responded that beneficial use designations may only be modified using the Basin Plan amendment process and that the Basin Plan Triennial Review is the appropriate venue to identify potential beneficial use designation changes.

Following the staff presentation, the Board members had several comments and questions. Board member Hodgkin stated that he was impressed with the effort that went into developing the data and is impressed with the number of listings. Mr. Hodgkin asked staff to comment on the limited resources available to staff and how we plan to proceed to address all the listings. Ms. Adams reiterated that staff is considering several tools available to effectively address multiple listings, including addressing a suite of watershed listings in one TMDL project, working with regulatory program staff on implementation activities to address multiple listings, in advance and in coordination with TMDL development. Most importantly, staff has already made progress on several of the individual listings based on our former List. An integrated, coordinated, watershed approach to listings will take additional effort, but we believe we will have increased efficiency because there is coordination among programs to maximize water quality improvement.

Dr. Hunter echoed the compliments to the staff for not only the enormous amount of work but also the presentation and the great organization of the information presented to the Board and public. Dr. Hunter stated that she really appreciates the summary of public comment coupled with the staff response. Dr. Hunter asked about the comment made by Monterey CoastKeeper asking to add Monterey Bay for Deildrin, as well as comments by Paul Michele from the National Oceanic and Atmospheric Administration (NOAA) with concerns of the shifting that occurs in listing prioritization as the successive list comes out and suddenly a very high priority issue for Monterey Bay is shifted down the list by something else that is going on somewhere else. Water Board Section Manager Lisa McCann responded by stating that several of the listings that are included in the suite of listings that are high priority are continuation of projects that we had already initiated. Ms. Adams responded to the question about the Monterey Bay Listings and stated that we did not call the waterbody Monterey Bay to be consistent with the Basin Plan, which identifies 13 coastal segments. The data mentioned in the comment letter from NOAA is for the northern most coastal section, Pacific Ocean between Point Ano Nuevo and Soquel Point. This coastal segment is now listed for Dieldrin.

Board member O'Malley complimented staff and stated he was impressed with the thoroughness of staff and the responsiveness to public comments and a good job of prioritization. Suggest for the future that staff share more with the public about the prioritization process.

Board member Shallcross stated that the staff report was "incredibly informative". He also stated that it is really important that we have a good 303(d) List that is defensible as this is the kind of information we need to decide what we are going to do next and improve water quality. Mr. Shallcross thanked staff for being so knowledgeable and for doing a great job on the presentation. Ms. Adams thanked the Board Members and acknowledged the team of staff who contributed to the effort.

Vice Chairman Jeffries began the public comment for this item:

Steve Shimek, Monterey Coastkeeper stated that working with Karen Worcester, Mary Adams and Dave Paradies has been a "complete pleasure". Mr. Shimek stated we are supportive of the decisions with one exception, the recommendation to de-list San Vicente Creek. This is because the data that supports the de-listing was submitted two weeks prior to the Board meeting and there has been no public review of this recommendation. Mr. Shimek suggested that staff not delist San

Vicente Creek at this time and address it in the next 303(d) List cycle, as the public has not have the opportunity to review the data and information. In addition, Mr. Shimek indicated his support of the 1.0 mg/L nitrate guideline for aquatic life but stated that this is just a first step and this guideline will likely be improved upon and based on the literature could be even lower.

Michael Duffy, Capitola Resident, stated that in working with staff he found Mary Adams to be both professional and fair and that her decisions are based on the analysis of the data. He supports a fact based process, but is concerned that the 303(d) process allows for small amounts of data to result in far reaching implications. He generally supports staff recommendations including the San Vicente Creek recommendation to de-list.

Traci Roberts, Monterey County Farm Bureau, stated "wow, what a great job". This work has given the public a better sense of what is the issue in each water way and will help a lot in participation in the TMDL process. Requests that staff expand on the stakeholder process in spite of the cutbacks and limited resources as farmers want to be involved in the planning process. Dr. Hunter asked if the Farm Bureau is conducting smaller scale and issue oriented meetings to educate the stakeholders and whether that outreach could be a useful venue for this purpose. Ms. Roberts stated that yes, in fact this is happening and wants to expand this role for the Farm Bureau. Working with the Central Coast Agricultural Water Quality Coalition is an aspect of this task.

Kay Mercer, Central Coast Agricultural Water Quality Coalition (Coalition), also compliments Mary Adams, Karen Worcester and Dave Paradies. Ms. Mercer stated that the presentation addressed all of her comments from the 2006 List. Ms. Mercer stated that she has just learned that the average cost for each TMDL development project is \$600,000. The question she has for staff is weather there is a cost benefit analysis in the process? Stakeholder involvement and needing to do some of their own work externally in this situation where there are financial constraints. Ms. Mercer is perplexed as to how the Coalition is going to facilitate stakeholder involvement with the anticipated level of TMDL development. How do we proceed considering the enormity of the prioritization? Dr. Hunter stated that cost benefit analysis includes both water quality and also water supply, so now you are talking about a commodity that is rare and costing more and more. When you're looking at protecting future water supply, the balance starts to go in one direction.

Carol Carson, Environmental Educator, Valley Women's Club, Boulder Creek watershed resident. Ms. Carson expressed concern for delisting tributaries to the San Lorenzo River for sediment as there is no supporting documentation for this. Ms. Carson stated that the Valley Women's Club would be willing to collect data or information to support keeping these waters on the 303(d) List. Ms. Adams responded to this question and stated that this is just a misunderstanding of the information and in fact the tributaries to San Lorenzo River are not being delisted, they are being moved from the list of waters that require a TMDL to the list of waters that are being addressed by a TMDL. They will all remain on the 303(d) List. This is shown in attachment 3 to the Agenda package. On page one, Boulder Creek for example, is shown as being addressed. This means it is staying on the list, and is being addressed under the San Lorenzo River sedimentation TMDL (which included all tributaries).

Jodi Frediani, Sierra Club; Central Coast Forest Watch. Ms. Frediani thanked staff for a thorough assessment, but stated that it is not necessarily a good sign that we have so many listings. Ms. Frediani is very concerned about the de-listing of San Vicente Creek as she has not received any notification of this change. She is on the Lyris list and just found out about it this morning. She is concerned that the data was submitted only 11 days ago and after the close of the public comment period and that staff is recommending delisting. She stated that she has not had the opportunity to review the data or respond. She encourages the Board to put this decision for San Vicente Creek forward to the next listing cycle.

Bob Berlage, Big Creek Lumber Company. Thanked staff for willingness to look at data. Big Creek Lumber strongly supports the de-listing for San Vicente Creek based on the four years of daily turbidity data. The 2006 decision to add San Vicente to the List of impaired waters was based on three months of daily data (December 2001, January 2002 and December 2002). In addition, Ms. Frediani testified to the State Board that the source of the sediment was caused by timber harvest. The State Board changed the staff recommendation to list for sediment and add silviculture as a potential source. Mr. Berlage strongly urges the Board to support the de-listing because the listing has been used to attack timber harvest projects. If the Board waits five more years to revisit this and keep San Vicente Creek on the List based on the three months of cherry picked data, this will continue to have negative impacts on Big Creek Lumber Company when in fact the listing is faulty.

Board member Shallcross asked staff to clarify the timeframe for each revision to the 303(d) List. Staff stated that we are required to revise and submit to EPA the list every two years. However, there have been several delays in the past and it has often been four to five years. Board member Shallcross asked when the data supporting the de-listing recommendation for San Vicente Creek was submitted. Staff stated that the data was submitted on June 29th, 2009, 10 days prior to the Public Hearing. Board member Shallcross asked when the next update is scheduled to begin and staff stated this fall. Board member Shallcross asked when the next update should come to the Board and staff stated in two years for the 2010 List update. Board member Shallcross asked what the public comment period requirement is and when it ended for this list. Staff stated that the public comment period requirement is 45 days and the public comment period ended on May 26th, 2009. Board member Shallcross stated that therefore there had not been a 45-day public comment period for this data. Staff confirmed that to be true. Board member Shallcross asked if the recommendation to de-list was based solely on this data submitted on June 29th, 2009. Staff confirmed that to be true.

Executive Officer Briggs asked staff to clarify the date window for the data used in this update to the List of Impaired Waterbodies. Staff stated that the public solicitation included data collected up to February 2007. The data that was submitted for San Vicente Creek on June 29th, 2009 was in the December 2002-February 2007 timeframe, within the assessment time window.

Board member Shallcross stated that this does not change the fact that the San Vicente Creek data used for the recommendation to delist was submitted after the public comment period. Mr. Briggs said he was pointing out there are two time frame windows.

Gordon Hensley, San Luis Obispo Coastkeeper. Mr. Hensley added his kudos to staff and stated that the recommendations are well founded both in the evidence and the science and he urges the board to approve. He closed with a quote from Dave Paradies, "water shouldn't kill the things that live in it."

Robert Ketley, City of Watsonville. Mr. Ketley thanked staff for the productive working environment. Mr. Ketley asked the Board to change Pinto Lake from a low priority to a high priority for TMDL development because it is a recreation area for boating, fishing, etc., and is listed for Blue Green Algal Toxins. Mr. Ketley showed two pictures of the algal bloom and some data of the concentration of the Microcystin toxin at more than 2 million ppb and the World Health Organization guideline for recreation is 20 ppb.

Dr. Hunter asked Mr. Ketley if the City of Watsonville is posting Pinto Lake for health warnings. Mr. Ketley confirmed that they are. Board member O'Malley expressed concern for picking and choosing the priorities when staff has already used their own prioritization process to identify high priority listings. Water Board Section Manager Lisa McCann expressed concern for changing the priority indicating that the Water Board will need additional resources to address this problem. Board members Shallcross and Dr. Hunter support changing the priority to high and recognized the need for balancing choices. Ms. McCann recommended that Pinto Lake be listed as high priority.

Katherine Hudson Webb, Santa Cruz Resident. Ms. Hudson showed two pictures of Crystal Creek with turbid water in winter storm flow and stated that she is concerned about conflicting issues within Santa Cruz County.

Based on public testimony and Board discussion with staff, the Board members approved staff's recommendation and Resolution No. R3-2009-0053 with the following modifications 1) Pinto Lake priority changed to High because the severity of the impairment and threat to public health is high due to human toxicants and the public access and recreation on the Lake, 2) delisting for San Vicente Creek not approved because the data was submitted after the requested data submittal due date, such that staff was not able to provide adequate public review opportunity on the results of the data analysis and recommendation to delist, even though the data is from the appropriate monitoring period and the data analysis supports delisting consistent with the Water Board's Listing Policy.

FIRST MOTION: Monica Hunter moved to approve Resolution No. R3-2009-0053 with two modifications: 1) do not de-list San Vicente Creek because this decision was not made prior to the 45-day public comment period and 2) give high priority to Pinto Lake listings as the microcystin toxin is a human health risk.

SECOND MOTION: Gary Shallcross

CARRIED: (3-2) Note: David Hodgins and Tom O'Malley voted no.

(Vice Chairman Jeffries announced a lunch break at 12:45 p.m. The meeting reconvened at 1:33 p.m.)

13. 2009 Basin Plan Triennial Review.....Board Approval

Water Board Environmental Scientist Steve Saiz presented the 2009 Triennial Review of the Basin Plan and the recommended Priority List of issues to be evaluated as Basin Plan amendments. Mr. Saiz provided a brief overview of the Basin Plan, the statutory requirements for conducting the Triennial Review, and the evaluation methodology used during the 2009 Triennial Review.

Mr. Saiz described the public review process, the public workshop, and summarized the 12 public comment letters received during the comment period. Board member Shallcross asked for more details about the public involvement process and how the workshop was noticed. Mr. Saiz responded that the public workshop was held in San Luis Obispo and was noticed with a 30-day notice. Dr. Hunter expressed concern about public outreach and geographic constraints of the public to attend a single workshop. She stated that this was a potential opportunity for a web-based public participation. Mr. Saiz stated that the Triennial Review workshop was noticed at the same time and held on the same date and location as the Integrated Report (Item 12) workshop to maximize public involvement.

Mr. Saiz presented 13 recommended high priority issues to be evaluated and later developed into potential Basin Plan amendments. Staff finds that six of the 13 issues can be completed within the next three years at the current level of Basin Planning resources (approximately 2 PY/year). Mr. Saiz gave an overview description for these six high priority issues: Vision Framework Language, Biostimulatory Substances Objectives Revision, Aquatic Life Protection, Watershed Protection, Groundwater Recharge Area Protection, and Aquatic Habitat Protection/ Riparian Buffer Zone Protections.

Dr. Hunter urged staff to hold a dedicated public workshop on the Biostimulatory Substances objective revision, since she believes that this issue cuts across all of the programs, including

agriculture and urban land uses. Board member Shallcross asked for clarification on the location of the responses to public comment. Mr. Saiz explained that responses to all comments are in the staff Triennial Review Technical Report, Attachment 2.

Several attendees of the meeting intended to provide public comment by filling out speaker cards; however, only one speaker, Mr. Steve Shimek of Monterey Coastkeeper, was present for the public comment portion of the item. Mr. Shimek expressed support for the Triennial Review, especially the approach that staff is taking towards the aquatic life and riparian buffer zone issues. Mr. Shimek emphasized that those issues will cut across several of the Water Board's work areas, including the Ag Waiver. Mr. Briggs stated that staff had addressed all of the Board's questions and recommended approval of the resolution without changes.

FIRST MOTION: Monica Hunter moved to approve Resolution No. R3-2009-0052 as recommended by staff.

SECOND MOTION: David Hodgkin

CARRIED: Unanimously (5-0)

14. Resolution Allocating Guadalupe Settlement

Funds to Special Projects..... Resolution No. R3-2004-0117

Executive Officer Roger Briggs summarized the two parts of the resolution: approval of funding for Wild Cherry Canyon preservation and that remaining funds be used to support watershed scale land-development planning and whole watershed protection throughout the region (e.g., LID, Hydromodification Control, or Basin Plan amendments for appropriate projects). Ms. Rachel Fatoohi, Civil Engineer with the County of Santa Cruz supported the use of the Guadalupe Settlement funding for regional projects and requested that the Water Board work with municipalities in a coordinated effort to develop their own hydromodification criteria and timelines. Mr. Richard Quandt of the Grower-Shipper Association asked the Board to reserve a portion of the Guadalupe fund for agricultural watershed work in the Guadalupe area. Executive Officer Briggs noted that the resolution does not exclusively delegate the funds for urban low impact development or hydromodification control. He also said the Board has allocated much of the fund within the Guadalupe Area when considering that more than half of the original fund amount was allocated to Guadalupe and Santa Maria projects. Mr. Briggs stated that the entire region is considered when recommending delegation of the funds.

FIRST MOTION: Tom O'Malley moved to adopt Resolution No. R3-2004-0117.

SECOND MOTION: David Hodgkin

CARRIED: Unanimously (5-0)

15. Timber Harvest Regulation Activities.....Board Consideration

Staff Environmental Scientist Julia Dyer presented recommended programmatic modifications for the regulation of timber harvest activities in the Central Coast Region. The recommended modifications pertain to the permit enrollment process and the Monitoring and Reporting Program (MRP). Modifications to the Timber Order, Eligibility Criteria, and Standard Operating Procedures will be presented in July 2010, during the Timber Order renewal process. Ms. Dyer recommended that the Water Board approve the recommended programmatic modifications.

Speakers:

Catherine Moore of the Central Coast Foresters Association and a Felton landowner commended staff for reviewing the data and making recommendations for the program that are efficient and effective.

Martin Moore of the Central Coast Foresters Association and a Felton landowner thanked the Board for reducing redundancy and requested the Board to continue that pursuit. Mr. Moore also requested the Board to pursue methods for providing landowners incentives for making improvements on their land. Finally, Mr. Moore stated that Cal Fire has strong regulatory authority and that he has been a victim of malicious false reports when trying to improve his own land.

Janet Webb of Big Creek Lumber agreed with staff that visual monitoring with Water Board staff follow-up inspections is the most effective method of monitoring.

Brian Campbell, a timber land owner, was concerned about the burden of reporting and proof. He also stated that the source of impacts to salmonids comes from more than one land use, not just timber.

Bob Berlage of Big Creek Lumber agreed with the assessment of the timber program. He cautioned the Board to consider the context of data that has or will be presented by other commenters.

Jodi Frediani of Sierra Club and Central Coast Forest Watch theorized that the reason the timber harvest activities appear to have a minimal impact could be based on increased oversight of the Water Board in recent years. She stated that Water Board staff made an incorrect statement that Santa Cruz County Forest Practices Rules are different from the rest of the state. Ms. Frediani presented temperature data from the main stem of the San Lorenzo River and stated that upstream temperatures do influence downstream temperatures, the temperature thresholds set by Water Board staff are inappropriate, reviewing three or four plans a year isn't enough, and Class II streams are subject to 50% canopy retention. She also requested language consistency with the Forest Practice Rules and that the Water Board consider fees.

Executive Officer Roger Briggs asked Ms. Frediani if the excessive temperatures she displayed in a specific chart showing the main stem of the San Lorenzo River in her presentation are upstream and downstream of a timber harvest area.

Ms. Frediani was unsure which timber harvest areas the data were collected near and she said the chart was in the main stem of the San Lorenzo River and she was certain it is downstream of some timber harvest areas.

Dennis P. Davie of Sierra Club stated that he'd like to ask a series of rhetorical questions and didn't expect answers. These questions were: Are salmonids better or worse off than they were five years ago? Why hasn't Water Board staff attended 100% of Cal Fire preharvest inspections? Why hasn't the Executive Officer required fees? Why hasn't Water Board staff included the distance between temperature monitoring locations in their analysis? Mr. Davie did not support Water Board staff recommendations and requested the Water Board to strengthen the requirements.

Cassady (Bill) Vaughan, a Consulting Forester and Registered Professional Forester #2685, had a primary concern with Ms. Frediani presenting data out of context. Mr. Vaughan supported staff's recommendations.

Nancy Macy, a Board member for the Valley Women's Club of San Lorenzo Valley, stated that the Board of Forestry is relaxing rules that Water Board staff is proposing to rely upon. Ms. Macy encouraged the Board to not make changes to decrease the amount of regulatory oversight.

David Van Lennep of Redwood Empire discussed how Hinckley Creek temperature increases were not a result of timber harvest activities.

Board member O'Malley requested staff to address the temperature warming concerns raised by Ms. Frediani. Ms. Dyer said she would include that issue in her wrap up comments.

Patricia Driscoll, a Forest Landowner for the Central Coast Foresters Association Board, stated that small landowners care for their land and are good stewards of the land. She went on to testify that, over the past thirty years, the permit process for timber harvest projects has become dramatically more intensive. Ms. Driscoll agreed with staff's recommendation.

Michael Duffy, a Capitola resident, stated that there are canopy retention requirements for Class II watercourses, along with additional restrictions. Mr. Duffy went on to explain that a majority of the landowners in Santa Cruz County are small landowners, not large industrial landowners. Mr. Duffy agreed with staff's recommendations.

Brian Bishop of Redwood Empire supported Water Board staff's recommendations. Mr. Bishop refuted the alternate temperature standards presented by stakeholders.

Steve Shimek of Monterey Coastkeeper did not support Water Board staff's recommendations. He requested that the Water Board wait until July 2010, and the Timber Order renewal for such changes. Mr. Shimek argued that the recommended modifications rely on the timber industry to conduct self reporting and oversight, which is inappropriate based on their track record.

Kevin Collins of Lompico Watershed Conservancy testified that the Timber Order has had a positive effect by getting the industry in the field more often to review their project areas. Mr. Collins then provided photos from the Timber Order's Monitoring and Reporting Program record. Mr. Collins provided these photos as evidence that timber harvest practices in the Central Coast Region are negatively impacting waters of the state.

Nadia Hamey, a Forester for Big Creek Lumber Company, explained that her company works diligently to collect monitoring data and will continue to do so. She discussed a temperature study her company conducted on Scotts Creek. The study included conducting preharvest and postharvest data; the study showed there wasn't an increase in temperature as a result of timber harvest activities.

Brian Dietterick, the Director of Cal Poly's Swanton Pacific Ranch, supports the recommendations and findings made by Water Board staff. He stated that storm-event based turbidity grab samples is a limited monitoring technique which makes it very difficult to support conclusions. He concluded by encouraging the Board to trust the trained resource professionals.

Ms. Dyer explained that Mr. Collins' presentation was based on presumption and photos taken out of context. Ms. Dyer stated that all the photos Mr. Collins displayed were photos she took herself and they were not representative of timber harvest practices in the Central Coast Region. For example, one photo showing severe slope erosion control measures was pre-harvest.

Ms. Dyer explained, in response to Board member O'Malley's questions about temperature thresholds that temperature data is very difficult to interpret and the scientific community is having difficulty agreeing on appropriate thresholds. Therefore, the evaluation of temperature data in context of the timber harvest program is appropriately based on visual field inspections, canopy retention requirements, limitation and constraints, and a review of the scientific literature.

Board member Hunter asked staff about potential reduction in compliance by the Dischargers due to a modification to the inspection regimen. Additionally, Dr. Hunter requested Water Board staff to

provide more detail about potential program fees, cumulative impacts, and a consideration of past violations for Tier IV monitoring.

Ms. Dyer clarified that the Water Board will continue to maintain regulatory oversight of timber harvest activities. This oversight will be focused (including randomized inspections), rather than categorical. Additionally, the Discharger will not determine their monitoring tier level, they will use the Eligibility Criteria. This is consistent with the Water Board's other regulatory programs. Considering violation history in the Eligibility Criteria is an excellent idea as a disincentive for Dischargers to continue to commit violations. Charging fees is a good idea. But, fees might stay in Sacramento and not translate to additional resources to the region. Fees will be considered during the Timber Order renewal in July 2010. Cumulative impacts are addressed in the timber harvest program by the Eligibility Criteria, in Timber Plans since they are CEQA equivalent, and in TMDLs.

Board members Hodgkin and Jeffries complimented Water Board staff on the programmatic evaluation and approved of finding areas to improve regulatory consistency and eliminate ineffective requirements.

Board member O'Malley echoed Mr. Hodgkin's and Mr. Jeffries' compliments and encouraged staff to seek incentives for Dischargers to make improvements on their property, but cautioned staff regarding potential ramifications of fees. Mr. O'Malley stated he is only in support of fees if they translate to improvements for the program.

FIRST MOTION: Tom O'Malley moved to approve Water Board staff's recommended changes.

SECOND MOTION: David Hodgkin

CARRIED: Unanimously (5-0)

16. Timber Harvest Individual Waiver (Bushnell Ranch).....Order No. R3-2009-0031

Staff Environmental Scientist Julia Dyer presented an Individual Conditional Waiver of Waste Discharge Requirements (Individual Waiver) for timber harvest Ranch 1-08-073 SCR, in the Kings Creek Watershed of Santa Cruz County. Ms. Dyer's presentation included a description of the active harvest inspection. Water Board staff conducted a post harvest inspection to determine whether or not the Discharger's harvesting without a waiver resulted in discharges to waters of the state. Water Board staff's inspection found that there were not discharges. Additional conditions for the individual waiver include the requirement for the Discharger to notify Water Board staff at the commencement of operations, turbidity, temperature, and photo monitoring. Ms. Dyer recommended that the Water Board approve the conditional waiver as the site conditions are protective of water quality.

Board member Shallcross asked why the Dischargers conducted harvest without a waiver and requested a description of potential regulatory options for Dischargers that conduct such activities. Board member Shallcross further explained that the Discharger's credibility decreases when they conduct harvest activities without a waiver and brought up the fact that the Board can recommend additional restrictions for the Individual Waiver.

Ms. Dyer explained that harvesting without a waiver is not a violation of the water code and the Board can add additional restrictions as they see appropriate.

Vice Chairman Jeffries asked staff if the application for the permit was filed with enough lead time to wait for a permit and then start harvesting.

Ms. Dyer responded that the Discharger submitted the permit application in early September and Water Board staff notified the Discharger the following month of their Tier IV status. Since the

Discharger submitted the application close to the winter shut down period, had they waited for a wavier (Individual or General) they would not have been able to harvest until the following spring.

Speakers:

Eric Bushnell, Property Owner of the Ranch timber harvest plan area, explained that he harvested without a permit for financial reasons. Income from the harvest activities feeds his family.

Steve Shimek, Monterey Coastkeeper, recommended third party monitoring for the Ranch harvest plan as required in a similar circumstance in the San Vicente Creek Watershed.

Martin Moore, Central Coast Foresters Association and Santa Cruz County Landowner stated that the Central Coast Water Board does not issue permits for harvesting timber. Rather, the Central Coast Water Board regulates discharges to waters of the state. Therefore, Dischargers take a calculated risk when harvesting without a permit.

Board member Hodgkin requested staff to comment on Mr. Shimek's recommendation for third party monitoring.

Ms. Dyer replied that given the track record of excellent land management by the Bushnells, third party monitoring is not necessary.

Board member O'Malley commented that the Discharger is a good land steward and wasn't trying to hide anything. Mr. O'Malley stated that he has sympathy for families facing economic hardship.

FIRST MOTION: David Hodgkin moved to adopt Order No. R3-2009-0031.

SECOND MOTION: Tom O'Malley

CARRIED: Unanimously (5-0)

17. Public ForumBoard Direction

The individuals listed below had comments:

- Kay Mercer, Central Coast Agricultural Water Quality Coalition – discussed various merged (regionwide) Coalition activities, including a produce safety project in conjunction with the Pew Foundation

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

Vice Chairman Jeffries reported that he attended a Monterey Bay National Marine Sanctuary Advisory Committee meeting. The committee is still grappling with setting up committees for the marine protected areas. There was a presentation for the proposed regional water plan for Monterey County.

19. Executive Officer's Report.....Information/Discussion

Debbie Davis of the Environmental Justice Coalition for Water gave a presentation on environmental justice. Debbie described the purpose of the Coalition. She asked Horatio Amezsquita of San Jerardo to provide background on water issues in the community of San Jerardo. Mr. Amezsquita described the community's financial burden for a system to provide clean water. He asked about monitoring of the groundwater in the community, and the expense to citizens for water supply and wastewater treatment. He said once the currently operating water supply filter system was operational, people in the community were healthier (no skin rashes). Dr. Hunter asked if US EPA was involved (they are not). Water Board staff Angela Schroeter said funds still

remaining from the PG&E settlement might be useful, as well as potentially Cleanup and Abatement Account funds, and staff will investigate.

Vice-Chairman Jeffries adjourned the meeting at 5:17 p.m. The next Board meeting will be held on August 31, 2009 in San Luis Obispo, California.

The meeting was audio recorded and the minutes were reviewed by management and approved by the Board at its August 31, 2009 meeting in San Luis Obispo, California.

Russell Jeffries, Vice-Chairman

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