Endorsement of Regional Enforcement Priorities
Tentative Resolution No. R9-2018-0043

Chiara Clemente
Item 11
April 11, 2018
The Big Picture

• Why do we do enforcement?
  – Minimize harm to the environment
  – Prevent similar occurrences
  – Eliminate benefits of non-compliance
  – Deter other dischargers

• How do we do enforcement?
  – Programs do compliance assessments
  – ACOG meetings to discuss priorities
  – COG Meetings to prioritize cases

...In accordance with the Practical Vision
## Key Areas for the Key Beneficial Use of:

<table>
<thead>
<tr>
<th>Key Water Body Types for the Key Beneficial Use</th>
<th>DRINKING WATER</th>
<th>FISH &amp; SHELLFISH CONSUMPTION</th>
<th>RECREATION</th>
<th>HABITATS &amp; ECOSYSTEMS</th>
</tr>
</thead>
<tbody>
<tr>
<td>First (highest) rank</td>
<td>Drinking Water Reservoirs</td>
<td>Ocean</td>
<td>Oceans &amp; Bays</td>
<td>Oceans, Bays, Lagoons, Estuaries, Stream systems</td>
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<tr>
<td>Second rank</td>
<td>Groundwater</td>
<td>Bays</td>
<td>Harbors</td>
<td>Stream mouths</td>
</tr>
<tr>
<td>Third rank</td>
<td>XX</td>
<td>Harbors, Lagoons &amp; estuaries</td>
<td>Lagoons &amp; estuaries, Stream systems, Stream mouths</td>
<td>Ponds, Harbors</td>
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<tr>
<td>Total Volume(^1)</td>
<td>Total Reaching Surface Waters(^3)</td>
<td>Total Reaching Separate Storm Drain and Recovered(^4)</td>
<td>Total Discharged to Land(^5)</td>
<td>Surface Water Body Affected</td>
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<tr>
<td>---------------------</td>
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<td>--------------------------------------------------------</td>
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<td>-----------------------------</td>
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<td></td>
<td>(Gallons)</td>
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<tr>
<td>5</td>
<td>0</td>
<td>0</td>
<td>5</td>
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<tr>
<td>62</td>
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<tr>
<td>59,331</td>
<td>54,831</td>
<td>4,500</td>
<td>0</td>
<td>Kit Carson Creek</td>
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<td>36</td>
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<td>0</td>
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<td>Pacific Ocean</td>
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</table>
SECONDARY DRIVERS INCLUDE

- Compliance history
- Magnitude of impacts
- Strength of evidence
- Staff resources
- Environmental justice
- Human right to water
“…on an annual basis, enforcement staff for each Regional Water Board seek input at a regularly noticed public meeting of the Regional Water Board and consider identifying general enforcement priorities based on input from members of the public and Regional Water Board Members within thirty days thereafter.”
STATE WATER BOARD
ENFORCEMENT PRIORITIES

Dr. Matthew Buffleben
Supervising Engineer
Office of Enforcement
ENVIRONMENTAL JUSTICE AND DISADVANTAGED COMMUNITIES

Promote enforcement and compliance assistance in Disadvantaged Communities and communities with financial hardship

• CalEPA Environmental Justice Task Force
  • Two main components: interagency coordination and community partnerships
    • CalEPA agencies coordinating efforts with federal and local agencies
  • Fresno, Los Angeles (Boyle Heights and Pacoima), Oakland, Pomona, Imperial Valley

• Supplemental Environmental Projects Policy
  • Amendments approved in 2017
Focus on using all available regulatory tools, including enforcement tools, to compel responsible parties to provide replacement water to those whose drinking water supply is contaminated by nitrate.

- **Salinas Valley Water Replacement Order**
  - Replace drinking water supplies for all impacted households located within the Salinas Valley

- **Eastern San Joaquin Valley Water Replacement Order**
  - Working with three local agricultural coalitions

- **SB 623: Safe and Affordable Drinking Water Fund**
  - provide funding to address impacted drinking water supplies
Focus on a method for prioritizing and prosecuting enforcement cases for discharge violations of the industrial and construction general stormwater permits.

• Third-Party Citizen Suits
  • Clean Water Act allows citizens to enforce the Act
  • Ensure that citizen suits include measures to improve water quality

• Inspection Prioritization Tool

• Shift Enforcement Focus
  • Current focus on enrollment and reporting to Best Management Practices being used
US EPA PRIORITIES

Reducing the percent of facilities in Significant Noncompliance (SNC)

• Facilities with individual National Pollutant Discharge Elimination System (NPDES) permits
  • Historically, California has been better than the national average
  • However, the last few years, our percentage has increased
    • Focus on data and reporting issues first
Background

2006 – OE Established

• Goals:
  • Professionalize Enforcement
  • Create clear structural division between Prosecution & Advisory attorneys: “Separation of Functions”
Separation of Functions

- Water Boards serve as decision-makers in quasi-adjudicative proceedings
- Due Process – Requires Fair & Impartial Hearing
- **Separate Functions – Prosecution / Advisory**
  - Ensures that those staff advocating for a certain result do not also advise the board on the appropriate decision to be rendered
OE Legal

State Board Programs:
- USTs
- UST Cleanup Fund Fraud
- ELAP
- Water Rights
- Cannabis
- Operator Certification

Regional Board Programs:
- NPDES
- Storm Water
- Irrigated Ag
- Cleanups
- 401/404
- Landfills
- Etc.
OE Attorney Assistance

- Attorney Liaisons
- Enforcement Training
- Enforcement prioritization
- Investigations
  - Subpoenas
  - Administrative Discovery
- Prosecutions
  - Enforcement Tools
  - Application of Penalty Methodology
  - Legal Briefs
  - AG Referrals
- Writ Support
QUESTIONS?