



California Regional Water Quality Control Board Central Coast Region



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Arnold Schwarzenegger
Governor

MINUTES REGULAR MEETING Thursday December 10, 2009 Central Coast Regional Water Board

Vice Chair Russell Jeffries called the meeting of the Central Coast Water Board to order at 8:35 a.m. on Thursday, December 10, 2009, at the Central Coast Water Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California.

1. Roll CallOffice Technician Sherry Kuykendall

Board Members Present:

Chairman Jeffrey Young (arrived at 8:40 a.m.)
Vice Chair, Russell Jeffries
David Hodgin
Monica Hunter
Gary Shallcross
John Hayashi
Tom O'Malley

2. IntroductionsExecutive 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 7, 13, 14, 15, 16, 17, and 18.

3. Approval of October 23, 2009 Minutes Board Motion

Board member Hunter requested that the October minutes reflect a comment made on the joint effort to develop hydromodification control criteria in response to Board member O'Malley's comments.

MOTION: Russell Jeffries moved to approve the October 23, 2009 minutes to include Board member Hunter's requested change.

SECOND: David Hodgin

CARRIED: Unanimously (7-0)

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

No report. State Board Liaison Frances Spivy-Weber will not be able to attend the meeting today due a scheduling conflict.



5. Uncontested Items Calendar Board Motion

Item numbers 15/Aromas Water District and 17/Morro Bay Desal Plant were recommended for removal from the consent calendar for further discussion. Item 16/Simplot Growers was recommended for approval.

MOTION: Russell Jeffries moved to approve Item #16 on the uncontested items calendar.

SECOND: Monica Hunter

CARRIED: Unanimously (7-0)

15. Aromas Water District Resolution No. R3-2009-0056

Board member Hodgkin inquired as to why there was a need for inspection of the new Aromas Water District's sewage disposal system every two years, indicating this might be more than necessary and possibly overly burdensome for a small system. He inquired as to the reasonableness of the two-year inspection requirement listed in Waiver Resolution No. R3-2009-0056. Water Board staff engineer Cecile DeMartini indicated the San Benito County Environmental Health ordinances are required to have policies which meet the Central Coast Water Board Basin Plan requirements, but at times counties may adopt even more stringent requirements. Ms. DeMartini stated she may have mimicked the county's ordinance and this may have been the reasoning behind requiring inspections every two years. She said she would look into her references and report back to the Water Board. Board member O'Malley indicated his concern for overuse of public agency resources associated with these types of requirements, as well.

MOTION: Russell Jeffries moved to approve Item #15 on the uncontested items calendar.

SECOND: David Hodgkin

CARRIED: Unanimously (7-0)

17. Morro Bay Desalination Plant..... Order No. 2004-0005

Executive Officer Briggs introduced this item by saying it was on the uncontested items calendar but Board members had some questions. The Board's questions and Water Board staff's responses were provided in a late supplemental sheet.

Board member Hunter observed that the existing waste discharge requirements contain a finding that the facility's salinity concentration is less than seawater salinity concentration of 34,000 milligrams per liter total dissolved solids (TDS). Board member Hunter asked how this finding or requirement would be reflected in the General Permit enrollment. As a follow-up question, Board member Hunter asked if water was added to the discharge in order to dilute salinity concentrations.

Water Board staff geologist Dr. Peter von Langen explained that dilution water was not used to decrease constituent concentrations in the discharge's effluent. Furthermore, data from the past five years demonstrated compliance with the General Permit's water quality criteria. These water quality criteria are more stringent than those in the existing permit and were not calculated using dilution. The discharger has complied with all water quality requirements and therefore is eligible for coverage under the Low Threat General Permit. Staff explained that a rescission of the current permit and enrollment under the General Permit would streamline the permitting process and free up staff resources.

City of Morro Bay Engineer Mr. Dylan Wade explained that the discharge was intermittent and that pumping from the beach wells and brackish wells would not cause seawater intrusion or other impacts to groundwater and that the conditions contained in the Low Threat General Permit are more stringent than those contained in the existing permit.

Board member Hunter requested that salinity be added to the list of constituents to be monitored and added to the monitoring and reporting program. Mr. Briggs indicated he would do so.

MOTION: Monica Hunter moved to adopt the Order with the addition of salinity monitoring for this discharger.

SECOND: Russell Jeffries.

CARRIED: Unanimously (7-0)

6. Enforcement Report Status Report

Mr. Briggs asked if the Board had any questions on the written report. Dr. Hunter commented on the format of the report and would like to see the affected water bodies included. Dr. Hunter also asked about the Regional Board Action column on the report. Staff Section Manager Harvey Packard provided clarification on the listing.

7. Pacifico Azul, Inc..... Order No. R3-2009-0064

Following Chair Young's introduction and opening statement, Enforcement Staff Engineer Todd Stanley presented a summary of the Enforcement Staff's case. Various Board members had questions about the date of the Notice of Violation, the acreage of the farming operation, whether staff documented phone calls, and what the terms of the proposed settlement were. Enforcement Staff Attorney Yvonne West pointed out that Pacifico Azul did not request to submit any additional evidence in response to the November 10, 2009 hearing notice.

Rebecca Bozarth, representing Pacifico Azul, Inc., stated that Pacifico Azul was no longer in operation. She stated that she did not comply with Water Board requests because she was concentrating on the farming operation and was overwhelmed with paperwork. She said she intended to pay the earlier proposed settlement, but could not after a business deal fell through. Ms. Bozarth stated that she is now farming 70 acres using a different business entity. Ms. Bozarth described her commitment and efforts to protecting water quality on her farms. Board members had various questions of Ms. Bozarth. Board member Hodgins asked what outcome Ms. Bozarth would like to see from this hearing. Board member O'Malley asked if there were any water quality issues or problems on her farms. Ms. Bozarth replied that there were not. Board member Shallcross stated his concerns with Ms. Bozarth's lack of communication with staff. Chair Young directed Ms. Bozarth to leave her fax number and email address with staff today.

Ms. West asked Ms. Bozarth if she had signed staff's settlement proposal. Ms. Bozarth stated that she remembered some communication with staff, but did not return the paperwork. Ms. West asked Ms. Bozarth to identify the name of her new farming operation. Ms. Bozarth stated that it is Harvest Moon Farm Services, Inc. Ms. West asked Ms. Bozarth if she had enrolled the new company in the Ag Order. Ms. Bozarth stated that she has communicated with the cooperative monitoring program.

Board member Jeffries asked Ms. Bozarth several questions about the locations and topography of her farms.

The Board asked counsel about setting up a payment plan. Counsel McChesney stated that the water code requires full payment within 30 days of adopting the order.

Board member O'Malley suggested lowering the penalty to account for enrollment and monitoring fees that Ms. Bozarth paid after receiving the ACL complaint. Board member Shallcross said that the penalty should at least recover staff costs and include a strict payment plan.

Harvey Packard of the Enforcement Staff explained the State Water Board's procedures that allow Regional Boards to receive reimbursement of staff costs.

MOTION: Tom O'Malley moved to adopt ACL Order No. R3-2009-0064 with a \$7,455 penalty.

SECOND: John Hayashi.

CARRIED: Unanimously (7-0)

(Chair Young announced a break at 11:00 a.m. The meeting reconvened at 11:20 a.m.)

8. Low Threat and General Discharge CasesStatus Reports

Executive Officer Briggs noted that this is a written report that included ConocoPhillips Service Station No. 4605 and the Soquel Creek Water District. The Board had no questions.

9. Staff Case Closures Information

Executive Officer Briggs noted that we have clean closure for the sites listed in the report. The Board had no questions.

10. Recommended Case ClosuresBoard Approval

Former 76 Service Station No. 0821, 1308 Monterey Street, San Luis Obispo,
San Luis Obispo County [Corey Walsh (805) 542-4781]

Executive Officer Briggs provided an introduction and summary of each item recommended for low risk case closure. Board member Hunter had a question concerning the Former 76 Service Station located at 1308 Monterey Street. Dr. Hunter noted the pending change in land use and asked if redevelopment of the property, given the remaining soil or groundwater contamination, was factored into our recommendation. Mr. Briggs indicated that a possible change in site use was part of our risk evaluation and requested Regional Board staff to elaborate on the future property use and the potential exposure risk posed by redevelopment. Mr. Corey Walsh of the Regional Board staff confirmed that the site was changing to a mixed-use development (retail commercial and residential). Mr. Walsh indicated that risks associated with residential use of the property were evaluated and concluded to be acceptable. Mr. Walsh also communicated that redevelopment will also trigger the CEQA (California Environmental Quality Act) review process and the remaining contaminated soil may need to be further mitigated as part of that process.

11. Underground Storage Tank Program & MTBE Cases Status Report

Executive Office Briggs noted that summaries of selected sites are included in the report and that new information is listed in italics. The MTBE site list was also attached to the report. Staff Senior Engineer Chris Adair noted changes in monitoring frequency for all of the MTBE sites. There are still 150 MTBE sites within our region.

12. Department of Defense Program Update Status Report

Board member Hunter asked if federal funds are delayed and work is slowing down. Sheila Soderberg responded that actually the opposite is true. Vandenberg Air Force Base (VAFB) has received additional funds to meet their goal of having a Remedy in Place by 2012.

Ms. Soderberg also clarified that the staff report should be corrected to indicate that Don Eley is the Project Manager for VAFB Sites 24 and 50.

13. Total Maximum Daily Load..... Status Report

Senior Environmental Scientist Chris Rose provided a written status report to the Water Board. Mr. Briggs informed the Water Board that staff received two comment letters: one from Mr. Richard Quandt of the Grower-Shipper Association, and another from Mr. Drew Fenton. Mr. Rose summarized the comments and responded to them for the Water Board. He also responded to comments made by the speakers listed below:

Board member O'Malley commented that the Watershed approach makes sense, but suggested that the stakeholder process be well-defined for stakeholders.

SPEAKERS:

Kay Mercer, Central Coast Agricultural Water Coalition. Ms. Mercer commented on the Santa Maria Watershed TMDL approach. Ms. Mercer suggested the project be divided into smaller projects, and stakeholder involvement should be well-defined and robust.

Kari Fisher, California Farm Bureau Federation: Ms. Fisher commented that the scope of the Santa Maria Watershed TMDL is too complex and unmanageable. Ms. Fisher suggested that staff develop smaller TMDL projects, e.g., those addressing one or two pollutants in a project.

Melissa Locke, SLOSEA: Ms. Locke presented information on nonylphenol, which is a contaminant of emerging concern. Ms. Locke requested that the Water Board consider placing waters on the 303(d) list based on nonylphenol as the pollutant/stressor.

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Staff Recognition [Roger Briggs 805/549-3140]Resolutions

Executive Officer Briggs presented a Resolution of Appreciation to staff environmental scientist Brandon Sanderson for his multi-faceted contributions to the Water Board.

Mr. Briggs also put forward a Resolution of Appreciation to staff environmental scientist Julia Dyer for her many contributions. The Resolution will be mailed to Julia.

Mr. Briggs put forward a Certificate for 25 Years of Service to staff engineer Michael Higgins.

(Chair Young announced a break for lunch and closed session at 12:15 p.m. The meeting reconvened at 1:20 p.m. Board member Hayashi left after the closed session meeting at 1:00 p.m.)

14. Agricultural Regulatory ProgramInformation/Discussion

Board member Hayashi did not participate in this item. Executive Officer Briggs introduced the item stating that staff will present a proposed public process leading to a new Conditional Waiver of

Waste Discharge Requirements for Discharges from Irrigated Lands (new Agricultural Order). In addition, Mr. Briggs stated that several members of the public indicated that they were frustrated that they had not had sufficient opportunity to present their opinion on progress made in the existing Agricultural Order. In response, staff added an opportunity as part of this item for the public to give input to staff and Water Board members about progress made, what has worked, and what has not worked in implementing the existing Agricultural Order.

Staff member Angela Schroeter recalled to Water Board members that the public process for the new Agricultural Order started in December 2008 with the intent to bring the new Agricultural Order to the Board in July 2009. At that time, staff's first step was to invite a group of stakeholders (as the Ag Advisory Panel) to provide recommendations to staff. The Ag Advisory Panel met from Dec. 2008 through Sept. 2009, and in July 2009 the Board extended the existing Agricultural Order to July 2010 to provide more time to prepare the new agricultural order. At the October 2009 Board Meeting, staff told the Board that the current public input forum, the Agriculture Advisory Panel, was no longer working, the Ag Panel decided to discontinue it's mode of operating, and Water Board members directed staff to present a revised public input process to the Board and interested parties at the December 2009 meeting.

In response, staff proposed a revised public input process that included an additional opportunity for those stakeholders who participated in the Ag Advisory Panel meetings, as well as agencies to review a preliminary draft of the Ag Order and provide early input. In addition, the proposed public input process allowed for three input opportunities with the Board for all members of the public, time to review documents, and overall 3 months to provide written comments and present oral comments to Water Board members prior to July 2010. Staff has considered the feedback from Board Members at the Board Meeting in October 2009, as well as feedback from interested parties regarding the proposed public process for the new Agricultural Order. Staff indicated to the Board that it was staff's opinion that the proposed process was the most effective way to address multiple priorities and bring a new Agricultural Order to the Board in July 2010. In addition, it was staff's opinion that the proposed process provides for sufficient time and multiple opportunities for the public to provide input on the new Agricultural Order.

Staff stated to Water Board members that in response to the staff report for Item 14, the Water Board received 19 comment letters. In general, the comments related to whether or not there was adequate time in the proposed public process, whether or not sufficient water quality data evaluation had occurred to inform the new Agricultural Order, and the need to build on the successes of the existing Agricultural Order. Several members from the public requested the opportunity to present oral comments to the Water Board members.

Ms. Gail Delihant, representing Western Growers Association, stated that she was concerned with the time schedule for key stakeholders to review the draft Agricultural Order and that the agricultural community would need at least 60 days.

Board member Hunter requested clarification about the proposed time schedule for key stakeholders to review an early draft of the new Agricultural Order. Staff reiterated that key stakeholders would have 21 days to review an early draft of the new Agricultural Order. Staff stated that this is an additional opportunity specifically proposed in response to requests by stakeholders who participated in the Ag Advisory Panel meetings between Dec. 2008 and Sept. 2009, and that key stakeholders and the general public would also have multiple future opportunities to review drafts of the new Agricultural Order. Board members Hunter and O'Malley expressed concern that some stakeholders find this time inadequate and may need additional time to go back to their constituents to provide meaningful comments. Board member Hunter also stated that the earlier comment periods are where there is the greatest opportunity to receive meaningful comments and sufficient time is necessary to ensure that happens.

Water Board staff member Lisa McCann and Executive Officer Briggs clarified that the proposed early opportunity for key stakeholders is to provide early input to a preliminary draft of the new Agricultural Order. At this time, key stakeholders could ask clarifying questions, provide initial feedback, as well as take the opportunity to provide formal comments if they choose to do so. There will also be an additional opportunity for those key stakeholders to provide a final position or more formalized comments representing their agency during future public comment periods.

Water Board Counsel McChesney, clarified that in July 2010, staff plans to bring a new Agricultural Order before the Board. Ms. McChesney stated that under the law, the Water Board is required to provide 30 days of public comment period. This opportunity being proposed by staff today is to provide key stakeholders a special additional opportunity to review an early draft and provide early feedback. It is the beginning of the public input and the public will have at least three more public meetings and approximately six months to provide comments and it is significantly more than what is legally required. Ms. McChesney also clarified that staff has proposed to hold a public meeting for CEQA Scoping, but that the Water Board is not required to do so in this case.

Board member Hodgin confirmed that the Water Board has been working on the Ag Order Renewal for more than a year and that the proposed public input process demonstrates how quickly activities have to happen prior to July 2010 to achieve a new Ag Order. Board member Hodgin pointed out the Water Board can evaluate whether or not more time is needed beyond July 2010, however six months is quite awhile given the amount of time already spent on this issue. Board member Shallcross suggested that if the early review opportunity for key stakeholders is insufficient, the Water Board might consider eliminating this early opportunity and proceeding with the opportunities available for the public at large.

Mr. Steve Shimek, representing the Monterey Coastkeeper, the Environmental Defense Center, and Santa Barbara Channelkeeper gave a slide presentation to Water Board members that addressed the need to focus on water quality impacts related to agriculture on the Central Coast and described water quality trends in existing data from the Water Board and the Monterey Bay National Marine Sanctuary that indicates water quality is severely impaired. Mr. Shimek pointed out that Department of Pesticide Regulation indicates that 75% of Diazinon use in California occurs in the Central Coast region. Mr. Shimek indicated that while water quality trends are uncertain, it is difficult to see any improvement in water quality. Mr. Shimek also described gaps in the existing Agricultural Order related to enforcement (lack of numeric standards, stormwater criteria, and riparian protection), monitoring (lack of individual monitoring, inadequate dissolved oxygen monitoring, lack of groundwater data), reporting and enrollment. Mr. Shimek stated that the current order has a very good receiving water monitoring program, but that the monitoring program doesn't allow Water Board staff or the public to determine if agricultural water quality is improving or not, because it doesn't monitor the very thing that the program is meant to address – discharges. In summary, Mr. Shimek stated that he supports staff's recommendations and timelines, that CEQA requires staff to move quickly, and that he believes the proposed public process is thorough and open. In addition, he stated that one option could be that staff presents fewer iterations of the draft Agricultural Order, providing for more time for public review. In closing, Mr. Shimek stated that the Board should adopt a new Agricultural Order in July 2010 without further delay.

Ms. Kari Fisher, representing the California Farm Bureau Federation, also addressed the Board. She also indicated that it was her opinion that the new Agricultural Order was a CEQA project of area wide significance requiring additional CEQA requirements. Ms. Fisher clarified that the agricultural community did not ask for an opportunity to review a preliminary draft of the new Ag Order, and that the agricultural community wants to submit an agriculture-preferred alternative that will be run through the CEQA process. Ms. Fisher stated that the schedule in the proposed public input process was accelerated and different from her discussions with staff. Ms. Fisher's opinion is that the public process to date has not been transparent or open to the public, and requested that staff considers the public process used by the Central Valley Regional Board.

Mr. Kirk Schmidt stated that there are successes achieved in the existing Ag Order through cooperative efforts with the agricultural community, for example the existing Ag Order has a well-

established cooperative monitoring program that has an extensive data set identifying sources of impairment in agricultural watersheds, including confidential on-farm water quality sampling. Mr. Schmidt indicates that it is important to consider technical input about what growers can do to improve water quality. Mr. Schmidt requested that the Board members consider a Board workshop prior to the release of the first draft of the new Ag Order.

Several additional members of the agricultural community addressed the Board members. Mr. Kevin Merrill, representing the Santa Barbara County Farm Bureau, stated that it his opinion that the existing Agricultural Order is working and should be continued. Mr. Merrill cited the significant success related to enrollment and education. Mr. Merrill also stated that the previous Ag Advisory Panel related to the Ag Order renewal was not public and was not productive. Mr. Merrill would like to continue to work with staff to develop a new Ag Order that works, and to consider a long-term plan. In addition, Mr. Merrill would like an opportunity to participate in a Board workshop and present an alternative proposal to the Board that can be considered appropriately during the CEQA process. Ms. Joy Fitzhugh, representing the San Luis Obispo County Farm Bureau, stated that the agricultural community is fearful because they do not know what is going to be in the new Ag Order and it is her opinion that the content was not discussed at the Ag Advisory panel meetings. Ms. Fitzhugh indicated she does not have sufficient time to go back to her Board. In addition, Ms. Fitzhugh indicated that funding for education, including University Cooperative Extension, is not available and will not occur at the same level as in the existing Ag Order. Ms. Kris O'Connor, representing the Central Coast Vineyard Team (CCVT), gave several examples of how grape growers are proactively participating in sustainable agriculture and water quality improvement education and practice implementation. Ms. Ann Myhre indicated that the current Ag Order requirements are a burden to small business, especially related to monitoring and reporting. Ms. Kay Mercer, representing the Central Coast Agricultural Water Quality Coalition, indicated her concerns about there not being enough time for meaningful public input.

Water Board Counsel McChesney clarified the CEQA process. The scope of CEQA is still to be determined and the part of the process starts with the CEQA scoping meeting to identify if there are any potentially significant environmental impacts resulting from the Board action. Ms. McChesney clarified that the existing Ag Order utilized a CEQA Negative Declaration. Board member Jeffries expressed concern about the timing of the presentation of alternatives given the CEQA process. Ms. McChesney disagreed with Ms. Fisher about the requirement to conduct CEQA scoping. Ms. McChesney clarified that CEQA requires the Water Board to review the baseline conditions (e.g., existing water quality impairment) and identify the significant negative environmental impacts resulting from any necessary means of compliance. There are many ways that the Water Board can regulate (e.g., waste discharge requirements) and the alternatives have procedural differences, but the means of compliance may be similar.

Board members directed staff to release a Draft of a proposed order regulating discharges from irrigated lands on February 1, 2010, for members of the public to review and comment. Board members requested that the agricultural community and other stakeholders provide any alternatives or recommendations in writing by April 1, 2010 or sooner, if possible. The Water Board also agreed to listen (after reading them ahead of time) to alternative recommendations for regulating discharges from the agricultural industry, environmental organizations, or any other party, in a public workshop on May 12, 2010.

(Board member Hodgkin left the meeting at 3:05 p.m.)

18. Public Forum Board Direction

The individuals listed below had comments:

Steve Shimek, Monterey Coastkeeper – raised concerns about the Monterey County stormwater plan.

19. Reports by Central Coast Water Board Members Status Report

Dr. Hunter attended the WQCC meeting and shared information on the status of the food safety issue with the Board. Dr. Hunter is hoping that our staff is able to stay connected on the food safety issue. Board member Jeffries noted that he and Board member Hodgkin attended the ribbon cutting and dedication ceremony for the new water reclamation facility in the City of Watsonville.

20. Executive Officer's Report Information/Discussion

Executive Officer Briggs noted the inclusion of the Water Quality Certification Report.

Agricultural Waste Update - This portion of the Executive Officer's Report updates Board members and the public on activities that staff has completed or planned in the future to address the continuing presence of agricultural waste in Nipomo Creek (including irrigation drip tape and fertilizer bags) and the impacts to aquatic habitat and water quality. Board member Hunter responded that it was positive to see specific Water Board staff action addressing this issue. Ms. Kay Mercer, representing the Central Coast Agricultural Water Quality Coalition, expressed concern related to staff's consideration of potential requirements for inclusion in the renewal of the Order regulating irrigated agricultural discharges (new Ag Order) to explicitly prohibit discharges of agricultural rubbish, refuse, irrigation tubing, or other solid wastes into surface waters or at any place where they would contact or where they could be eventually transported to surface waters. Ms. Mercer expressed that this prohibition would penalize some growers and is redundant with other local and state requirements, and objects to the inclusion of this requirement in the new Ag Order. Board member Hunter reiterated the need to the Water Board to utilize their authority to address the agricultural trash issue, especially when local agency resources may not be sufficient.

Mr. Briggs presented the outreach strategy draft letter that incorporated Board member changes. The Board members signed the letter. Mr. Briggs also submitted a list of potential agencies for outreach activities.

Chairman Young adjourned the meeting at 4:12 p.m. The next Board meeting will be held on February 4, 2010 in San Luis Obispo.

The meeting was audio recorded and the minutes were reviewed by management and approved by the Board at its February 4, 2010 meeting in San Luis Obispo, California.



Jeffrey Young, Chairman