



California Regional Water Quality Control Board Central Coast Region



895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
(805) 549-3147 • FAX (805) 543-0397
<http://www.waterboards.ca.gov/centralcoast>

Linda S. Adams
Acting Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

MINUTES

Central Coast Regional Water Board

PANEL HEARING

Wednesday, May 4, 2011

REGULAR MEETING

Thursday, May 5, 2011

Wednesday, May 4, 2011

Chairman Young called the meeting of the Central Coast Water Board to order at 10:00 a.m. on Wednesday, May 4, 2011, at the Central Coast Regional Water Quality Control Board in San Luis Obispo.

1. Roll Call – Board Members..... Executive Officer Roger Briggs

Present:

Chairman Jeffrey Young
Vice Chair, Russell Jeffries
John Hayashi
David Hodgkin
Monica Hunter
Jean-Pierre Wolff

Absent:

N/A

Recused:

John Hayashi
Jean-Pierre Wolff

2. Introductions..... Executive Officer Roger Briggs

Executive Officer Roger Briggs introduced Regional Board staff, and legal counsel Frances McChesney and Jessica Newman. Ms Newman is newly assigned to assist the Central Coast Region. Mr. Briggs noted that State Board Staff Liaison Frances Spivey-Weber would not attend the Board meeting due to a scheduling conflict. Mr. Briggs also identified Certified Court Reporter Carol Coon.

4. Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Continuation of Item 14, March 17, 2011 Board Meeting) Panel Hearing

On May 4, 2011, the Central Coast Water Board continued the March 17, 2011 panel hearing to consider the staff recommendation for an updated Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Draft Agricultural Order). Executive Officer Roger Briggs introduced Item 4. Board Chairman Young stated that Board Members John Hayashi and Jean-Pierre Wolff were recused from this item due to conflicts.

Roger Briggs presented an overview of the item, clarifying that Item 4 is to continue the March 17, 2011 panel hearing and hear public comment from the approximately 50 individuals who submitted testimony cards in Watsonville on March 17th, indicating their intent to provide verbal comments, but who could not

address the Board due to time constraints. Chairman Young indicated that individuals would be allowed three minutes to provide testimony and confirmed that the agricultural representatives panel has five minutes left from their initial hour to present a closing statement. The Water Board heard public comment from four individuals who expressed their objection to the process and restriction of public comment to only those who had submitted testimony cards at the March 17, 2011 Board Meeting. Chairman Young responded that it is routine for additional information to come up in response to public comments, and that this in itself does not necessarily open up the need for an additional public comment period.

Chair Young called the names from all of the 56 testimony cards, and 36 individuals provided testimony. Public comments included opposition to a one-size fits all approach, support for focusing on problem areas, comments about the agricultural proposal, comments to address additional pesticides, comments to prioritize protection of drinking water, comments about the irrigation and nutrient management plan, comments about the cost of implementation, and comments about the Draft Order relative to other requirements for other regulated facilities.

Agricultural representatives, including Danny Merkley (California Farm Bureau Federation), Tess Dunham (Somach, Simmons, and Dunn), and Rick Tomlinson (Strawberry Commission) presented a closing statement, including the submittal of recent changes the agricultural industry has made to the agricultural proposal submitted on March 17, 2011 (such as the inclusion of draft groundwater assessment, monitoring, and reporting requirements) and a recommendation that the Board direct staff to work with agricultural representatives to integrate the agricultural proposal into the Draft Order.

Board Members asked questions about the agricultural proposal, the timeframe for the process, how many growers have indicated whether or not they would participate in the coalition (answer from agriculture panel: unknown), whether or not a cost analysis has been completed (answer from agriculture panel: no), and how the coalitions would inform the Water Board of compliance problems (answer from agriculture panel: coalition would inform the Board of those expelled from the coalition).

Board Members also asked how the Draft Order and agricultural proposal address food safety issues. Water Board staff, Jill North, stated that the Leafy Green Management Agreement does not require vegetation removal, and that the recently enacted Federal Food Safety Modernization Act (FSMA) requires the consideration of conservation and environmental practice standards established by the NRCS, wildlife conservation and environmental agencies. The FSMA also requires the use of science based standards relating to animals in the growing area.

Water Board Senior Engineering Geologist Angela Schroeter, presented changes to staff's recommended Draft Order, in response to public comment. Recommended changes included: 1) Tiering based on characteristics of individual farms, instead of operations, 2) modifications to tiering criteria related to nitrate loading risk and acreage, 3) allowing the use of the University of California Division of Agriculture and Natural Resources (UCANR) Nitrate Hazard Index to determine nitrate loading risk, 4) removing the authority of the Executive Officer to modify the tiering criteria, and 5) adjusting the dates in the Draft Order and Monitoring and Reporting Program relative to the Board adoption date. Staff recommended specific changes to tiering criteria related to nitrate loading and acreage that would apply to individual farms growing crops with high potential to load nitrate to groundwater (Tier 1 – less than 50 acres, Tier 2 – 50 up to 500 acres, and Tier 3 – greater than or equal to 500 acres).

Water Board Engineer Matt Keeling responded to public comments and emphasized the severity and magnitude of nitrate loading and groundwater conditions in agricultural areas. Water Board staff, Monica Barricarte, responded to public comments and indicated that staff disagrees with Strawberry Commission comments that strawberries should be identified as low risk for nitrate loading to groundwater based on the preliminary results of a University of California Cooperative Extension (UCCE)



study. However, the Commission's presentation pointed out the ability of growers to greatly reduce nitrogen use and ability to meet the targets in the Draft Order.

Water Board Section Manager, Lisa McCann, responded to the agricultural proposal, indicating that the Draft Order allows coalitions and audits, and further described that the agricultural proposal does not include adequate monitoring, reporting, time schedule, or milestones; does not adequately protect drinking water; did not include groundwater monitoring and reporting (February 2010 and March 2011 versions) until submittal on May 4, and is not enforceable and does not comply with the Basin Plan. Assistant Executive Officer Michael Thomas and Executive Officer Roger Briggs presented concluding remarks and Roger Briggs stated that staff's recommendation is that the panel vote to recommend Board adoption of the Draft Order with staff's recommended changes.

Board Members discussed staff's recommendation. Board Members had questions about reporting of groundwater quality data and public access to information, as well as how reporting will be used for follow-up and enforcement, Board Members discussed new information submitted after the January 3, 2011 written comment deadline related to the agricultural proposal submitted by agricultural representatives, and requested that staff analyze the new information. Specifically, Chairman Young requested that staff review information submitted by agricultural representatives on March 17 and May 4, and compare the agricultural proposal to staff's recommended Draft Order (similar to the matrices included in previous staff reports). Additionally, Board Member Hunter asked staff to evaluate the agricultural proposal to include answers to the following questions:

- 1) What is voluntary and what is required in the proposal?
- 2) What are the consequences of noncompliance in the proposal?
- 3) How does the regional/aggregate data design in the proposal compare to the data objectives in the Draft Agricultural Order? Will the data results help us get to the root of problems, identify specific farms contributing to problems?
- 4) How do the milestones and timeframes compare between the proposal and the Draft Agricultural Order?

A full court reported transcript is available for Item 4. All documents and supporting information for this Board Item, are available on the website at:

http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2011/may/Item4/index.shtml

Thursday, May 5, 2011

Chairman Young called the meeting of the Central Coast Water Board to order at 8:00 a.m. on Thursday, May 5, 2011, at the Central Coast Regional Water Quality Control Board in San Luis Obispo.

5. Roll Call – Board Members..... Executive Officer Roger Briggs

Present:	Absent:	Abstain / Recuse:
Chairman Jeffrey Young	N/A	N/A
Vice Chair, Russell Jeffries		
John Hayashi		
David Hodgkin		
Monica Hunter		
Jean-Pierre Wolff		

6. Introductions..... Executive Officer Roger Briggs
Executive Officer Roger Briggs introduced Regional Board staff, and legal counsels Frances McChesney and Jessica Newman. Mr. Briggs noted that State Board Staff Liaison Frances Spivey-Weber would not



attend the Board meeting due to a scheduling conflict. Mr. Briggs asked parties who wished to speak to submit completed testimony cards to Board staff.

7. Approval of March 16-17, 2011 Meeting Minutes.....Board Motion
Chairman Young noted two corrections to the March 17 speaker list. Mr. Briggs added that part of the March 17 speaker list was not included in the initial minutes but was subsequently provided via a supplemental sheet.

MOTION: Russell Jeffries moved to approve the March 16-17, 2011 minutes with the noted corrections.

SECOND: N/A

CARRIED: Unanimously (5-0)

Note: Monica Hunter abstained from voting on the minutes as she was not present for the March 16, 2011 Board meeting.

8. Uncontested Items Calendar.....Board Motion
Executive Officer Roger Briggs summarized Items 12, 14, and 15 and recommended they remain on consent. Mr. Briggs thanked current and former Board staff for their work on these cases.

MOTION: Russell Jeffries moved to approve the uncontested items calendar

SECOND: David Hodgkin

CARRIED: Unanimously (6-0)

9. General Waiver of Waste Discharge Requirements Information/Discussion
Mr. Briggs introduced the item and asked if there were any questions from the Board. The Board had no questions or comments.

10. Staff Closures Information/Discussion
Mr. Briggs introduced the item and explained these are cases that have met water quality objectives and were administratively closed by staff. There were no questions or comments from the Board on this item.

11. Recommended Case Closures Information/Discussion
Mr. Briggs introduced the item and explained that staff will proceed with closure of the listed sites unless the Board directs otherwise. The Board had no questions or comments on the recommended case closures. Mr. Briggs thanked all of those who worked on these cases.

13. Los Osos Water Recycling FacilityBoard Motion
Staff Environmental Scientist David LaCaro provided a presentation for the adoption of waste discharge requirements (WDRs) for San Luis Obispo County's (or County's) Los Osos Water Recycling Facility. Staff explained that the proposed WDRs for the Los Osos Water Recycling Facility are similar to the WDRs the Board adopted for the Los Osos Community Service District in 2003. Staff's presentation included a discussion of the County's proposed facility, staff's proposed WDRs, proposed monitoring program, public comments, staff responses, and recommendation to adopt the proposed WDRs.

County Supervisor Bruce Gibson and the County's Los Osos Wastewater Project engineer, John Waddell, provided additional information on the progress of the wastewater project and the County's recently adopted due diligence resolution, which provides the County full responsibility to undertake design and construction of the Los Osos Water Recycling Facility.

Water Board members asked staff questions regarding the difference between groundwater recharge and treated wastewater disposal, the difference between secondary and tertiary treatment, and long-term monitoring for the disposal areas. Staff explained the treatment levels, recycling, methods and location of disposal, and groundwater recharge. Further, the proposed WDRs include effluent, recycled water,



and groundwater monitoring, which will allow staff to consistently evaluate the integrity of the disposal sites.

Water Board members asked County staff questions regarding progress on land acquisition, establishing recycled water reuse agreement with the appropriate land owners, and contingencies for disposal. Mr. Waddell explained that the County is currently conducting a land acquisition appraisal process for the Giacomazzi property and that the land owner is a willing participant. Mr. Gibson added that the County is actively approaching land owners for establishing recycled water reuse agreements and that land owners have demonstrated willingness to accept recycled water for turf irrigation. With respect to the disposal contingencies, Mr. Waddell explained that the Broderson site has adequate capacity for disposal and that the facility will be constructed to include wet weather storage ponds. County staff expressed their confidence in the designed wastewater system redundancies.

Don Bearden, Elaine Watson, Gwynn Taylor, Richard Margetson, Shaunna Sullivan, Lindee Owen, Mark Merit, Julie Tacker Piper Reilly, Al Barrow, and Keith Wimer addressed the Water Board Members, with comments regarding seawater intrusion, project affordability, and long-term water quality monitoring.

MOTION: David Hodgin moved to adopt Order No. R3-2011-0001

SECOND: John Hayashi

CARRIED: Unanimously (6-0)

16. Lower Salinas River Chlorpyrifos and Diazinon TMDL Board Motion

Water Board Environmental Scientist Larry Harlan presented the recommendation for approval of Resolution R3-2011-0005 that would establish TMDLs for chlorpyrifos and diazinon in the Lower Salinas River watershed.

Mr. Harlan and Water Board TMDL Program manager Chris Rose addressed Board questions about the proposed resolution. Board Chair Young asked if the data contained in Appendix A of the Project Report was graphed. Mr. Harlan mentioned that these data were tabulated as a summary of all data for each monitoring site and provided a slide and description of the summary table. Chair Young asked about the 11 toxicity listings and which of the pesticides were responsible for the listings. Mr. Rose mentioned that the toxicity listings are related to aquatic toxicity, not sediment toxicity, and that either chlorpyrifos or diazinon or both together caused the toxicity listings. Board Member Dr. Wolff asked for an explanation of the acute and chronic numeric targets as they relate to time. Mr. Harlan mentioned that the acute and chronic numeric targets are a requirement of the U.S. EPA guidance for the development of aquatic toxicity numeric criteria and that the 1-hour average would be an average of all samples obtained within an hour. Mr. Harlan also stated that the data used in the TMDL represented a one-time instantaneous grab sample, not an average. Board member Wolff then asked if flow was a consideration in the numeric targets. Mr. Harlan mentioned that it was not.

Board Member Dr. Hunter asked about the difference between impaired waterbodies and listed waterbodies. Mr. Harlan provided a table listing the waterbodies and impairments and mentioned that more recent data, following the 2008-2010 303(d) listing cycle, became available and this data indicated that additional waterbodies are impaired. Mr. Harlan mentioned that these additional impairments are included in the proposed TMDLs. Dr. Hunter also asked whether chlorpyrifos and diazinon are still used by residents although these products are no longer available at retail stores. Mr. Rose stated that the TMDL Project Report contains an estimate of residential use prior to the phase-out for residential sales. Dr. Hunter said it was good to know that programs in addition to the Water Board's Irrigated Agricultural Program are looking at agricultural chemical use. Dr. Hunter asked about the timeline for attaining the TMDL as it relates to the agricultural order. Mr. Rose stated that that the TMDL implementation program outlines recommendations for agricultural program staff to pursue, that the 2025 TMDL attainment timeline is consistent with the Water Board's measurable goals and vision, and that implementation should start in high priority areas in coordination with agricultural program staff.



Board member Mr. Hodgkin commented that half-life indicates the chemicals are still in use and asked if there are other products available. Mr. Rose mentioned that alternatives are available, but it is not as easy as one might think for agricultural growers to switch. Mr. Hodgkin asked if it was practical to prohibit the use of these pesticides. Mr. Rose stated that the agricultural industry relies on them. Dr. Wolff asked if the residential ban applies to cities, counties, and CalTrans. Mr. Harlan stated that the ban applies to residential retail sales of these pesticides and that the California Department of Pesticide Regulation (DPR) permits these entities to use these pesticides; however this use is primarily for the maintenance of turf grass. Dr. Wolff asked if the residential residual inventory could lead to continued use. Mr. Harlan stated that it is possible; however, it is very unlikely this will result in greater loads from urban areas. Mr. Harlan mentioned a DPR study that was published in March 2011, indicating that chlorpyrifos and diazinon were rarely detected in large urban areas.

Ms. Janet Parrish, U.S. EPA TMDL liaison to the Central Coast Water Board, provided public comments for the item. Ms. Parrish stated that U.S. EPA supports the proposed TMDLs, and that concentration-based numeric targets and additive toxicity numeric targets are appropriate.

Mr. Steve Shimek, Otter Project and Monterey Coastkeeper, stated his opposition to the proposed TMDLs because of its reliance upon the Agricultural Order for implementation, yet the Draft Order isn't adopted. Mr. Shimek mentioned that he agrees with the written comments provided by the National Marine Fisheries Service that the 2004 Agricultural Order is inadequate and that an update of this order is unknown. Chair Young asked Mr. Shimek if he agrees with the numeric targets. Mr. Shimek responded that he agrees with the numeric targets but not with the implementation.

Ms. Darlene Dinn, agricultural land use consultant, thanked TMDL program staff for their work and mentioned that she supports staff recommendation for TMDL approval. Ms. Dinn stated she has observed good collaboration among agricultural operators, Water Board staff, resource conservation specialists, and the research community and that this collaboration supports the agricultural alternative to the Draft Agricultural Order. Ms. Dinn also stated that the agricultural community is already looking for ways to implement. Chair Young asked if she had doubts that agriculture is a source of pesticides. Ms. Dinn responded that she has no doubt that agriculture is a source.

Chair Young asked if the agricultural order references the TMDL. Mr. Rose pointed out that the current agricultural order requires TMDL implementation and the attainment of water quality standards. Mr. Rose also commented that TMDLs can only address specific pollutants that are found to be exceeding water quality standards. Mr. Rose also mentioned that TMDLs often rely upon future Water Board implementation actions, such as a renewed Agricultural Order, and that the TMDL provides numeric targets for agriculture and the Water Board's agricultural program staff.

Dr. Wolff asked if there was any indication of how representative this TMDL is with regard to proportion of other pesticide use. Mr. Harlan stated that the use of these two pesticides is about one-half of the Monterey County total use and that malathion use may supplement the use of diazinon.

Mr. Roger Briggs stated that water quality data show that nearly all toxicity is due to chlorpyrifos and diazinon.

MOTION: Russell Jeffries moved to adopt Resolution No. R3-2011-0005

SECOND: Monica Hunter

CARRIED: Unanimously (6-0)

17. Regionwide Onsite System Implementation ProgramBoard Motion

Executive Officer Roger Briggs briefly described the proposed Basin Plan amendment, and introduced staff Sanitary Engineering Associate Sorrel Marks. Mr. Briggs also briefly reviewed the existing Basin Plan requirements adopted in 1983.

California Environmental Protection Agency



Ms. Marks summarized the proposed Basin Plan amendment regarding revisions to the region-wide onsite implementation program using a slide presentation.

Chair Young inquired about what contributed to the decrease in onsite system failures in San Lorenzo Valley. Ms. Marks responded that education, maintenance and some system upgrades contributed to improvements; and Mr. Briggs clarified that San Lorenzo had some very serious problems prior to implementing the onsite management plan, and other areas with less severe problems would not be able to show such dramatic improvement.

Chair Young inquired if new onsite system owners apply to both the Water Board and local permitting agencies. Mr. Briggs responded that this is not typically done.

Water Board Member Hayashi clarified that onsite management plans are developed by agencies not individuals.

Counsel McChesney reiterated that waste discharge requirements are required for discharges from septic systems. This amendment waives requirements for existing systems, waives reports of waste discharge and requirements for new systems in areas with onsite management plan. She also clarified that system owners would not need to apply for enrollment under the waiver for repairs.

Water Board Member Wolff inquired about the basis for the one-acre minimum lot size criterion, and whether seepage pits were considered as well as leachfields. Ms. Marks responded that the limit considered assimilation capacity of the entire area as well as placement constraints, and do not specify or limit a type of disposal.

Water Board Counsel McChesney clarified that the proposal does not change, adopt or renew the existing prohibitions section of the Basin Plan, shown on Attachment A, page 17 of the agenda material, the only action in that case is renumbering the section.

Speakers:

Melissa Thorme (City of Atascadero Special Counsel) used a slide presentation to summarize her comments and requested her letter be placed in the record (note: late letter not allowed). Ms. Thorme stated that the resolution was unsubstantiated and unneeded as there are no problems with onsite discharges in Atascadero, and reviewed each of the points stated in her letter.

Russ Thompson (City of Atascadero Public Works Director) stated there are no problems with onsite systems in Atascadero and there are on average 15 replacements per year. Mr. Thompson agreed that many areas in the region need the proposed level of regulation, but not Atascadero. The City has 5000 existing onsite systems, and expects an additional 1250 to be installed at eventual General Plan build-out of Atascadero. Mr. Thompson stated that the City implements the Basin Plan criteria for onsite systems and that supply wells are not affected by septic discharges. The primary concern stated by Mr. Thompson was the cost of implementing an onsite management plan, and asked for the issue to be delayed for further study.

Tom O'Malley (City of Atascadero Mayor) stated that the City has had a long-term low failure rate. Mayor O'Malley also stated there was no evidence of contamination from onsite discharges. Mayor O'Malley believes none of the City's earlier submittals have been incorporated into the onsite amendments.

John Niel (Atascadero Mutual Water Co) stated they have 19 wells adjacent to the Salinas River in Atascadero, and that the wells are near the western edge of the basin. Nitrates are seven times lower than standards, and depth to groundwater is about 14 feet at the wells. It appears City/County



management of onsite discharge is effective, there are some septic systems near the water supply wells, and there are less than 100 individual wells in Atascadero.

Roberta Fonzi (City of Atascadero Councilwoman) recommended delaying action on this item until the State Water Board adopts its statewide AB885 regulations. Councilwoman Fonzi supports the State Board proposed tiered, problem-specific approach, rather than the one-size-fits-all approach of the Regional Board that will place new requirements on all septic tank users.

Karyn Sturdevant (Atascadero resident) stated that Atascadero has no problem with onsite discharges and she has her septic tank pumped every year.

Shanna Sullivan (attorney and Los Osos resident) recommended looking at the criteria and implementation program together and allowing discussion. Ms. Sullivan also stated that she resubmitted 2008 CEQA violations today. Ms. Sullivan brought court action against these amendments, and this is an unfunded mandate.

Al Barrow (Coalition for Low Income Housing and Los Osos resident) read comments on a former AB 885 statewide regulations project. This will be an unnecessary burden, as well-head treatment is less expensive.

Linde Owen (Los Osos resident) expressed her general belief that septic systems are effective, and that Los Osos and Atascadero are managing their septics quite well. Septage disposal is a limiting factor in San Luis Obispo County. She requested delay until statewide AB885 regulations are developed.

Jerry Clay (City of Atascadero Councilman) stated his support for secondary units and requested that Atascadero not be compared to other areas. Mr. Clay also stated that his septic system is approximately 300 feet from a municipal water supply well. Requests delay and a program appropriate to Atascadero.

Counsel McChesney stated that there appears to be mischaracterization of this item, and clarified that agencies have discretion whether to adopt onsite management plans. However, plan development and implementation are conditions of the proposed waiver. Ms. McChesney reiterated the requirements and options for authorizing discharges from onsite systems specified in the Water Code, and that the Board cannot cede its responsibility for such authorization to the local agency. Ms. McChesney then reviewed how the conditional waiver would be implemented with respect to onsite management plans. If general waste discharge requirements were adopted in lieu of the waiver (as proposed by Ms. Thorme) then everyone would need to pay the annual fee, so that would be far more expensive for applications.

Water Board member Wolff inquired into the status of AB885 statewide regulations, and Mr. Briggs summarized the current status of the overdue regulations, workgroup, and consistency with this proposal.

Ms. Marks responded to comments and questions raised during the public testimony, most of which were addressed in the staff report. Local alternatives to the specified (region-wide) criteria are provided for through management plans. That way, agencies can focus different level of effort to different areas reflecting the potential water quality threat.

Discussion among Water Board members indicated issues need to be clarified with the City of Atascadero, since concerns expressed by the City appear to be primarily misunderstandings. Mr. Briggs highlighted the fact that this amendment applies to the entire region and that the City of Atascadero can (under this amendment) develop a program to address its own unique circumstances. The Water Board's resources and priorities should be considered and approval today would be prudent.

MOTION: John Hayashi moved to adopt Resolution No. R3-2011-0004
SECOND: Monica Hunter



CARRIED: Unanimously (6-0)

18. Enforcement Report..... Status Report
Mr. Briggs introduced the item, explained that it was a written report, and asked if the Board had any questions.

Chair Young asked about the notices of violation for failure to submit agricultural monitoring reports and how far back in time the violations went. Enforcement Coordinator Harvey Packard responded that the violations were from as early as 2007. Chair Young suggested that with electronic reporting, staff should respond to violations more quickly.

19. Department of Defense Program Cleanup Sites in Central Coast Region Status Report
Sheila Soderberg, Senior Engineering Geologist, introduced the four Water Board staff (Carol Kolb, Don Eley, Donette Dunaway, and Grant Himebaugh) working in the Department of Defense Program (DoD). Per Chairman Young's request, DoD staff prepared and distributed a map to the Board showing all the active DoD cleanup sites in the Central Coast Region.

20. San Luis Obispo Creek, San Luis Obispo County Board Direction
Matthew Keeling, Water Resource Control Engineer, stated that on May 2, 2011, the City of San Luis Obispo (City) requested that the Water Board postpone action on this item today. Instead, Water Board staff would like to discuss the City's request with the Board Members and detail staff's strategy for moving forward.

Mr. Keeling presented information that the City is required by state and federal agencies to maintain streamflow in San Luis Creek (Creek) year round (via the City's wastewater treatment plant discharge) to provide habitat for steelhead trout. Mr. Keeling presented a map identifying the City, Creek, known/suspected domestic and municipal wells located downstream from the City's discharge into the Creek, Avila Beach, and the Pacific Ocean. Mr. Keeling indicated that the City is seeking removal of the municipal (MUN) use designation for the Creek to provide financial relief from having the City's Water Reclamation Facility upgraded to meet trihalomethane (THM) and nitrate effluent limits. Mr. Keeling indicated that although the City has been able to show there is no existing MUN use of surface water within the Creek, there is evidence indicating there is an existing MUN use via potable water supply wells within the shallow alluvial aquifer (Avila Valley Subbasin) that is being recharged by the Creek.

Chairman Jeff Young asked why the City/Water Board staff should pursue this if the aquatic habitat protection criterion is more stringent than the MUN criterion for nitrate. Water Board counsel, Frances McChesney indicated that there is no state-wide standard and the Water Board would have to establish a nitrate limit based on site-specific conditions through the Total Maximum Daily Load (TMDL) process. Dr. Monica Hunter asked if the City has addressed the THM problem. Mr. Keeling responded that the Water Board issued a Time Schedule Order to the City to comply with the TMH effluent limit by 2015. Executive Officer, Roger Briggs, stated that there are separate "fixes" to resolve the City's nitrate and THM problems. Mr. Briggs indicated that if the discharged water is not ultimately used for municipal or domestic supply, then perhaps a higher nutrient limit can be determined based on creek flow and canopy. Mr. Briggs stated that the nitrate biostimulatory standard needs to be developed and the surface water/groundwater interconnectivity investigated.

Dr. Wolff asked if the City has a biological opinion, since it employs a biologist and a natural resource manager, or has considered other ways to solve the problem than eliminating a beneficial use. Ms. Jan Marx, City Mayor, stated the City has worked with state and federal agencies for many years and it agrees with aquatic resource protection. However, Ms. Marx disagrees with the Creek's current MUN use designation and asks that the Water Board make this issue a priority project for Water Board staff to work on and asked the board to approve this policy decision. Mr. David Hix, City Wastewater Division Manager, stated that MUN use may not exist or be attainable for the Creek and he asked that the board



support the City's Use Attainability Analysis Approach (UAA) process. The City has agreed that it needs to further study groundwater/surface water interaction and effect on downgradient water supply wells. The City asked the Water Board to direct staff to work with stakeholders and to make a policy decision at public hearing in six months.

Chairman Young asked if the City's nitrate discharge impacts drinking water wells down stream. Mr. Hix stated that the City's 2003 study identified that there are no nitrate impacts to the Creek within 550 feet of the City's discharge point. Mr. Keeling also indicated that none of the small and public water supply wells within the Avila Valley were currently impacted with nitrate or other constituents above drinking water standards, according to available data.

EPA Region IX Liaison, Ms. Janet Parish, addressed the board and indicated that the Water Board must apply the 10 mg/L standard for nitrate in the City's NPDES permit pursuant to the wasteload allocation contained within the TMDL. However, the TMDL is incomplete as the biostimulatory standard for nitrate in the Creek has not been determined and this numeric standard, if lower, must be applied in the City's NPDES permit. Ms. Parish also indicated that EPA will not likely approve removal of any existing beneficial uses. Ms. Parish committed to working with the City, Water Board, and other stakeholders if the City wishes to pursue a UAA.

Ms. Gerri Hall, President of the San Miguelito Mutual Water Company (San Miguelito), asked the Water Board to apply the appropriate regulations and deny the City's request to remove the MUN use. Mr. Rick Koon, General Manager for San Miguelito, stated that his company relies on groundwater for potable supply to over 600 residences. He also stated that the City's UAA must not only focus on THMs and nitrate, but also all emerging contaminants. Mr. Jim Garing of Garing, Taylor & Associates, consultant for San Miguelito, showed aquifer test data indicating that San Miguelito's wells are in hydraulic connection with the Creek. Mr. Tim Carmel, General Counsel for San Miguelito, agreed with Water Board staff's determination not to remove the MUN use for the Creek. Mr. Carmel stated that the Water Board must protect all the Creek's resources, including its groundwater recharge designation.

Mr. Gordon Hensley, SLO Coastkeeper, stated that the City should be commended for its Creek protection in the past. However, Mr. Hensley stated that the Water Board must protect future uses and recommended the board end any future discussion of this item.

Executive Officer Briggs asked San Miguelito's Me. Koon, if the Water Board required them to install a separate denitrification system costing over \$1,000,000 for their treatment system even though downgradient wells weren't degraded, wouldn't they be asking the Water Board for some kind of regulatory relief? Mr. Koon said he understands the City's predicament, however he does not believe the City has the right to degrade San Miguelito's water quality.

Chairman Young stated that this was a difficult problem; the City is required to discharge effluent to the Creek. Mr. Keeling responded that this is a policy question for the Water Board: if the City/Water Board staff proceed with the interconnectivity study, what percentage of groundwater/surface water influence supports the MUN designation, or de-designation? With regard to public health issues, Water Board staff relies on EPA, CA Dept of Public Health, and San Luis Obispo County Public Health for information.

Chairman Young stated that Mr. Garing's testimony regarding San Miguelito well pump test data was prima fascia evidence of direct communication between the Creek and groundwater. Chairman Young also questioned whether the California Department of Public Health draft guidelines for aquifer recharge and reuse could be applied to this issue. Executive Officer Briggs stated that these regulations would be applied if this was a recharge project and this is a different case. Dr. Wolff suggested that he'd like to see a matrix to understand the total picture as there are many overlapping issues. He recommended that Water Board staff "think outside the box" and evaluate if there are other approaches. Dr. Wolff suggested that staff review/survey other wastewater facilities in the state with similar issues and see how these same issues were resolved.



Chairman Young asked if the City is currently in violation of the nitrate effluent limit and Mr. Keeling responded that the limit is not currently in the permit. Dr. Hunter agreed that the Water Board should not consider removing the MUN use for the Creek until we obtain additional information. When several Water Board members asked when the Water Board staff will revisit this item, Mr. Michael Thomas, Assistant Executive Officer, stated that the issue is in the City's court and he requests that we limit Water Board staff's involvement. Ms. Carrie Mattingly, City Utility Director, committed the City to hire a staff person to provide staff resources to evaluate this item. Water Board staff agreed to come back to the Water Board with a recommendation at a later date after all the data have been compiled and evaluated.

21. Public Forum..... Board Direction
Chairman Young introduced the item; there were no testimony cards and no one in attendance requested to address the Board.

22. Executive Officer's Report Information/Discussion
Mr. Briggs summarized several items, including the "PXP" 401 certification project, a recent lagoon toxicity study, budget issues, staff presentations and training, and correspondence with the Santa Barbara County Health Department regarding nitrates in drinking water wells. Staff members John Robertson and Matt Keeling summarized staff's efforts to notify residents of health risks regarding nitrates in groundwater (potentially up to 15,000 residents need to be notified). Chairman Young adjourned the meeting at approximately 4:30 p.m. The next Board meeting will be held on July 14, 2011, in Watsonville, CA.

The meeting was audio and video recorded and the minutes were reviewed by management and will be approved by the Board at its July 14, 2011 meeting in Watsonville, CA.


Jeffrey Young

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