

STATE OF CALIFORNIA
CENTRAL VALLEY REGIONAL
WATER QUALITY CONTROL BOARD
PARTIAL TRANSCRIPT

CENTRAL VALLEY REGIONAL
WATER QUALITY CONTROL BOARD
11020 SUN CENTER DRIVE, #200
RANCHO CORDOVA, CA 95670
11:12 A.M.

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APPEARANCES

PANEL MEMBERS

Mr. Karl Longley, Chairperson
Mr. Jon Costantino, Vice Chairperson
Ms. Jenny Moffitt
Ms. Sandra Meraz
Ms. Carmen Ramirez
Mr. Robert Schneider

STAFF

Ms. Pamela Creedon, Executive Officer
Mr. Ken Landau, Assistant Executive Officer
Mr. Clay Rodgers, Assistant Executive Officer
Mr. Alex Mayer, Staff Counsel
Mr. Joe Karkoski, Program Manager
Mr. Adam Laputz

ALSO PRESENT

Ms. Senita Aguilar
Ms. Mercy Alonzo
MR. JP Cativiela, Central Valley Dairy Representative
Monitoring Program
Ms. Martha Carrillo
Mr. Omar Carrillo, Community Water Center

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Amparo Cid, California Rural Legal Assistance Foundation

Ms. Jennifer Clary

Mr. Perry Clauson, Executive Director, East San Joaquin Coalition

Ms. Lisa Coleman

Mr. David Corey, West Side Coalition

Ms. Maria Diaz

Ms. Tess Dunham, Somach Simmons and Dunn

Ms. Laurel Firestone, Community Water Center

Ms. Carey Fischer, the California Farm Bureau Federation

Ms. Camaria Garcia

Ms. Sandra Garcia

Mr. Bruce Houdesheldt, Northern California Water Association,

Mr. Bob Jennings, California Sportfishing Protection Alliance, California Water Impact Network

Mr. Casey Kramer, the California Cotton Growers, California Cotton Ginners, Western Agricultural Processors Association

Ms. Bertha Martinez

Mr. Luis Medellin

Mr. Rob Mikkelsen, International Plant Nutrition Institute

Mr. Michael Prado

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Roger Isom, California Cotton Ginners and Growers and Western Agriculture Processors Association

Ms. Sandra Schubert, Undersecretary, California Department of Food and Agriculture

Ms. Abigail Solis, Community Water Center

Ms. Jennifer Spalleta, San Joaquin County and Delta Water Quality Coalition

Mr. Erasjd Terran

Mr. Bill Thomas, South San Joaquin Water Quality Coalition

Mr. Chris Valeddez, California Grape and Tree Fruit League

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1 CHAIRPERSON LONGLEY: Thank you.

2 This is the time and place to continue a public
3 hearing to accept testimony regarding adoption of a
4 general waste discharge requirements for members of a
5 third-party group in the Eastern San Joaquin River
6 Watershed.

7 This hearing began last Friday in Bakersfield
8 with testimony received to be considered today by the
9 Board.

10 This hearing will be conducted in accordance with
11 the Notice of Public Hearing and the meeting procedures
12 published in the meeting agenda.

13 At this time, evidence should be introduced on
14 whether the proposed action should be taken. All persons
15 expecting to testify, please stand at this time, raise
16 your right hand, and take the following oath.

17 (Whereupon all prospective witnesses were sworn.)

18 CHAIRPERSON LONGLEY: Thank you very much.

19 The Board will be taking testimony for about 40,
20 45 minutes. We'll be adjourning for lunch. There is a
21 phone call that has to be made at 12:00 with for the
22 Executive Officer. So we will be out of here by 12:00 so
23 that she can do that phone call. And then we'll being be
24 back in session at 1:00. The Board will be having lunch
25 together, but we'll not be discussing issues before this

1 Board.

2 We'll begin at this point in time -- I'm not
3 quite done yet.

4 Following the staff presentation, total time
5 allowed for testimony is as follows: Easter San Joaquin
6 River Coalition, 45 minutes -- and Perry, I may have to
7 break your testimony. Environmental Justice, 15 minutes;
8 and CalSPA, ten minutes.

9 Following completion of testimony by interested
10 persons, CalSPA, Environmental Justice, and Eastern San
11 Joaquin River Coalition representatives shall have an
12 additional five minutes for closing comments. And of
13 course, additional time may be requested of the Chair.

14 All other persons shall limit their testimony to
15 three minutes, although additional time may be requested
16 of the Chair. And the timer up here will be used. Please
17 state your name, address, affiliation and whether you've
18 taken the oath before you testify.

19 Counsel, do you have any legal issues at this
20 time?

21 LEGAL COUNSEL MAYER: Yes, Chair Longley, I have
22 two brief legal issues I'd like to discuss.

23 First, I want to state for the record that the
24 Board received a late comment letter last week from a
25 group of environmental justice representatives. And I

1 wanted to clarify for the record that you ruled on that
2 late comment record which was submitted three-and-a-half
3 months late to exclude that letter from the record. But
4 that the group is given ample time today to discuss the
5 issues that were in that letter, if they so chose.

6 The second procedural issue, just wanted to
7 mention that the staff posted on Wednesday on our website
8 a list of late revisions to the Order. Just wanted to
9 clarify that one portion of those late revisions pertain
10 to a response to comments document. And so just wanted to
11 clarify that for the record, that a single response in the
12 response to comments has been revised regarding response
13 23. Thank you.

14 CHAIRPERSON LONGLEY: Thank you very much.

15 We'll now beginning with testimony by staff.

16 WATER RESOURCES CONTROL ENGINEER LAPUTZ: Good
17 morning, Mr. Chair, members of the Board.

18 My name is Adam Laputz. I am the lead staff for
19 the Central Valley Water Board's Long-Term Irrigated Land
20 Program. I have taken the oath.

21 Today, I will be discussing the tentative waste
22 discharge requirements for the Easter San Joaquin River
23 Watershed. You will find in your agenda package for this
24 item the Tentative Order, associated attachments, comment
25 letters you have received, response to comments. And we

1 have also provided late revisions on this item that you
2 should have before you dated December 5th and December
3 7th.

4 --o0o--

5 WATER RESOURCES CONTROL ENGINEER LAPUTZ: In this
6 presentation, we will provide a brief background and
7 overview of the Order's components and discuss late
8 revisions and summarize significant issues raised by
9 commentors.

10 --o0o--

11 WATER RESOURCES CONTROL ENGINEER LAPUTZ: The
12 Board initiated the development the Long-Term Irrigated
13 Lands Program as part of approving the 2003 conditional
14 waiver.

15 In 2006, the Board re-affirmed the goal to
16 develop the Long-Term Irrigated Lands Program.

17 In 2008, the Board initiated the Irrigated Lands
18 Program Stakeholder Advisory Work Group to provide input
19 on development of the Long-Term Program. The Work Group
20 developed goals and objectives for the program and a range
21 of alternatives to be evaluated in the EIR.

22 In 2010, the Board released the Draft Irrigated
23 Lands Program Environmental Impact Report. The Final EIR
24 was certified by the Board in 2011.

25 The program EIR equally evaluated impacts of a

1 range of program alternatives. The Tentative Order before
2 you today has been developed from the alternatives
3 evaluated in the program EIR. The Tentative Order relies
4 on the program EIR for compliance with the California
5 Environmental Quality Act and makes related findings.

6 --o0o--

7 WATER RESOURCES CONTROL ENGINEER LAPUTZ: The
8 Tentative Order would establish regulatory requirements in
9 the Eastern San Joaquin River Watershed for discharges of
10 waste to surface and groundwater, irrigated agricultural
11 operations, managed wetlands, and nurseries.

12 --o0o--

13 WATER RESOURCES CONTROL ENGINEER LAPUTZ: This
14 slide just provides a picture or a figure of where the
15 Eastern San Joaquin River Watershed is within the Central
16 Valley.

17 There is approximately one million acres of
18 irrigated lands within the watershed. Top crops are
19 almonds, hay, corn, grapes, tomatoes, pasture, wheat,
20 cotton and walnuts.

21 There is about 150,000 acres that are regulated
22 under the Dairy Order within this. So out of the million,
23 there's maybe about 850,000 of irrigated acres that would
24 be under this Order.

25 --o0o--

1 WATER RESOURCES CONTROL ENGINEER LAPUTZ: This is
2 just a summary figure. We showed this on November 30th.
3 This is meant to basically give you a background of how
4 our Order or a big picture of how our Order is intended to
5 work to protect water quality.

6 So really, I'm going to bring up a couple of the
7 bullets here.

8 One second. So the first step -- and you see
9 over there on the top right third of the circle, is
10 collect information. The Order is designed to gather and
11 collect information to really determine where our water
12 quality protection efforts need to be focused. These
13 mechanisms to do this include monitoring and assessment
14 reports to be developed by the third party, such as the
15 groundwater quality assessment report; sediment erosion
16 assessment report; and water quality monitoring management
17 practices evaluation program; and other special studies.
18 These assessment reports are to gather information and
19 target where additional work is needed.

20 An example would be the sediment and erosion
21 assessment report would be used to determine which members
22 of the third party need to develop sediment and erosion
23 control plans. Members would be required to enroll with a
24 third party and report on management practices in place,
25 to protect water quality. And in high vulnerability

1 areas, members will be required to provide information on
2 nitrogen management.

3 Where water quality problems are identified -- so
4 now I'm going to move down into the implement management
5 practices third of the circle. Where water quality
6 problems are identified, the third party will develop
7 Water Quality Management Plans to effect implementation of
8 management practices to -- the management plans would be
9 used to basically determine what the sources are, what
10 types of practices need to be implemented, and to educate
11 members of a third party on the management practices, and
12 then provide an outreach program, and then also monitor
13 the progress of practice implementation and whether the
14 water quality problems are being dealt with.

15 Also by individual members, they would be
16 implementing the Surface and Groundwater Quality
17 Management Plans. They need to implement practices
18 consistent with their Sediment and Erosion Control Plans
19 and with their Nitrogen Management Plans.

20 So all this information gathering and practice
21 implementation is intended to inform efforts elsewhere
22 within the region, within the Irrigated Lands Program, and
23 also other programs, such as CV Salts and other water
24 quality protection efforts.

25 --o0o--

1 WATER RESOURCES CONTROL ENGINEER LAPUTZ: I'm
2 going to talk more in detail about some of those
3 components now.

4 Because groundwater requirements are new to the
5 Irrigated Lands Program, the Order establishes a process
6 for developing the Groundwater Monitoring Program. The
7 Groundwater Quality Assessment Report is the first step in
8 instituting these requirements and is needed to gather
9 information on groundwater quality in irrigated
10 agricultural areas, identify high and low vulnerability
11 areas, and provide a basis for work plans and management
12 plans.

13 --o0o--

14 WATER RESOURCES CONTROL ENGINEER LAPUTZ: The
15 Management Practices Evaluation Program, this is another
16 third party report. And it's needed to really look at
17 management practices and their effectiveness at protecting
18 water quality, or groundwater quality specifically.

19 So the site conditions and the management
20 practices really need to be -- as you can see in the flow
21 chart here, look at each -- not each practice, but types
22 of practices that would be instituted to protect
23 groundwater quality and evaluate effects of waste
24 discharge on groundwater quality from these practices to
25 get it more of a real time idea of how these practices can

1 effect groundwater quality.

2 The groundwater monitoring of deeper wells
3 doesn't give us that real time measurement. And really
4 the ultimate goal of this program is to extrapolate the
5 results elsewhere within the region. So where other areas
6 have similar site conditions and a need to develop or
7 implement similar practices to protect groundwater
8 quality, this program would hopefully be able to determine
9 that.

10 --o0o--

11 WATER RESOURCES CONTROL ENGINEER LAPUTZ: In
12 addition to the Management Practices Evaluation Program,
13 the third party will be tasked with developing a Trend
14 Groundwater Monitoring Work Plan to evaluate base line
15 quality and trends in regional groundwater quality
16 associated with irrigated agriculture. Trend monitoring
17 will be conducted over both high and low vulnerability
18 areas. Shallow existing wells may be used for trend
19 monitoring.

20 --o0o--

21 WATER RESOURCES CONTROL ENGINEER LAPUTZ:
22 Additional third party reports, information gathering
23 reports, would be the sediment discharge and erosion
24 assessment report. This report will identify areas that
25 are subject to erosion that may degrade surface water.

1 Members within these areas will be required to
2 develop a Sediment and Erosion Control Plan. The Orders
3 proposed surface water monitoring builds on the current
4 waiver program surface water monitoring. The program
5 utilizes six surface water monitoring zones based on
6 hydrology, crop types, land use, soil types and rainfall.

7 A broad suite of parameters, including
8 pesticides, metals, and toxicity will be monitored at six
9 core sites. If problems are identified, additional sites
10 will be monitored.

11 Other surface water monitoring will be conducted
12 to monitor progress of Surface Water Quality Management
13 Plans and where TMDLs are in place with respect to
14 agriculture.

15 Also special project monitoring will be
16 instituted where necessary to identify sources of water
17 quality concerns and problems and also evaluating the
18 effectiveness of management practices.

19 --o0o--

20 WATER RESOURCES CONTROL ENGINEER LAPUTZ: The
21 annual monitoring report is a mechanism by which the third
22 party and the Board will evaluate the effectiveness of the
23 program. Towards this goal, the report will include
24 technical analysis of data, updates on Management Plan
25 progress, overall conclusions and recommendations for

1 adaptation of the program.

2 In the annual monitoring report, a third party
3 will summarize water quality sample results and
4 exceedances, farm evaluations and nitrogen management
5 information.

6 --o0o--

7 WATER RESOURCES CONTROL ENGINEER LAPUTZ: I'm
8 going to move over into information gathering from the
9 individual members.

10 Members must describe their water quality
11 management practices in place in the farm evaluation.
12 Farm evaluation would gather information on crops grown,
13 acreage planted, practices implemented to meet the
14 Tentative Orders' performance standards, identification of
15 sediment erosion risk areas, identification of whether
16 surface water leaves the property, and whether or not
17 wellhead protection and backfill prevention measures have
18 been put in place.

19 --o0o--

20 WATER RESOURCES CONTROL ENGINEER LAPUTZ: The
21 Order also has to gather individual and member
22 information, Nitrogen Management Plans and Nitrogen
23 Management Plan summary reports.

24 In high vulnerability areas, members would need
25 to develop a Nitrogen Management Plan summary report.

1 This report would gather information on the ratio of total
2 nitrogen available versus estimated crop consumed or need.
3 The information is needed for the Management Practices
4 Evaluation Program.

5 Members in low vulnerability areas would not need
6 to do the nitrogen management summary report. It's just
7 in high vulnerability areas while all members would need
8 to develop a Nitrogen Management Plan. The plan itself
9 would not be submitted to the third party or the Board.

10 All members would also be required to enroll with
11 a third party. Existing members need to provide a notice
12 of confirmation that they intend to continue in the new
13 order. And new members would have to join the third
14 party.

15 --o0o--

16 WATER RESOURCES CONTROL ENGINEER LAPUTZ:
17 Shifting over into how the Order is intended to be used to
18 follow up on water quality concerns found through the
19 information-gathering efforts are the Water Quality
20 Management Plans.

21 The Water Quality Management Plans are the
22 Order's key mechanism to address identified water quality
23 problems in high vulnerability areas. Management plans
24 establish an adaptive management process whereby sources
25 of the constituent are investigated, plan area hydrology

1 and other information are considered, a strategy is
2 developed to achieve water quality goals, a feedback
3 monitoring strategy is implemented to try and determine
4 whether the plan is having effective results, and also
5 including data evaluation and reporting.

6 --o0o--

7 WATER RESOURCES CONTROL ENGINEER LAPUTZ: This is
8 individual members would need to implement management
9 practices associated with their -- and I spoke about this
10 earlier -- the Nitrogen Management Plan and also in
11 Sediment and Erosion Control Plans where they're required
12 to develop the Sediment and Erosion Control Plans.

13 Member would be implementing the practice in
14 those plans and also consistent with third-party developed
15 Ground and Surface Water Quality Management Plans. That's
16 really how the Order's water quality protection efforts
17 would reach or the ground would be implemented by these
18 individual members associated with these plans. Also I
19 have here they have to implement practices to meet the
20 farm management performance standards within the Tentative
21 Order.

22 --o0o--

23 WATER RESOURCES CONTROL ENGINEER LAPUTZ: I moved
24 through this pretty quickly. I wanted to give a brief
25 discussion of what is in the Tentative Order.

1 If you have any questions for me, I'm available
2 right now. Otherwise, Joe Karkoski, the Program Manager,
3 is here to talk about the significant issues and some of
4 the late revisions.

5 CHAIRPERSON LONGLEY: Thank you very much.

6 BOARD MEMBER MOFFITT: I have a question.

7 The last slide you mentioned that the practices
8 must be consistent within the Nitrogen Management Plan --
9 sorry -- the Management Practices Evaluation Program. Who
10 develops that? Is that each grower develops their own?

11 WATER RESOURCES CONTROL ENGINEER LAPUTZ: That
12 would be the third party. They develop the Management
13 Presents Evaluation Program. And really the program
14 itself would be they would look at different types of
15 groundwater quality management practices, try to figure
16 out how those -- whether those practices are protective,
17 considering site-specific types of conditions. Sandy
18 soils are quite a bit different than a site with soils
19 that aren't as transmissive and would maybe facilitate
20 more runoff.

21 So the idea is to take that -- for the third
22 party to develop that program. And also I didn't mention
23 it, but the program is really meant or encouraged that the
24 third party would work across with other third parties and
25 commodity groups to evaluate these practices and the

1 Management Practices Evaluation Program so that the Order
2 actually encourages that type of process for this program.

3 But the results of it will be used to inform
4 members in areas with, say, if they are in areas of sandy
5 soils and there is a practice that's protective, that that
6 type of practice or some equivalent should be implemented
7 or needs to be implemented there.

8 BOARD MEMBER MOFFITT: Does it also -- would that
9 also include different types of cropping styles? If
10 you're doing cover crops, maybe drip is not going to work
11 for because you need to build the cover crop.

12 WATER RESOURCES CONTROL ENGINEER LAPUTZ: Yes.
13 The Management Practices Evaluation Program needs to be
14 concerned with what the site conditions are, what the
15 growers are growing. That's why commodity groups would
16 hopefully be involved in this and what practices work for
17 that type of commodity. Some practices aren't going to
18 work just by nature in a hilly area versus a flatter area.
19 So those have to be kept in mind.

20 BOARD MEMBER MOFFITT: Okay. Thank you.

21 CHAIRPERSON LONGLEY: Any further questions?
22 Comments? Thank you very much.

23 PROGRAM MANAGER KARKOSKI: Good morning, Chair
24 Longley and members of the Board. My name is Joe
25 Karkoski. I am the Program Manager for the Irrigated

1 Lands Regulatory Program. And I will be discussing the
2 late revisions, some of the issues that I'm sure you're
3 going to hear about, and then I'll summarize our
4 presentation. I have taken the oath.

5 --o0o--

6 PROGRAM MANAGER KARKOSKI: So Adam had mentioned
7 you have a couple sets of late revisions, some dated
8 December 5th and others dated today. So I will be going
9 through those just sort of the highlights of some of the
10 more significant changes. And since my EO told me to
11 hurry up, I'm going to briefly touch on each of these so
12 she can get to her call at 12:00.

13 So one is with respect to the findings. We
14 wanted to clarify that the Order is not intended to
15 regulate on-farm supply and drainage ditches. And again,
16 a number of these late revisions are based on having
17 conversations and discussions with our various
18 stakeholders, members of the ag community, and the EJ
19 community and where they correctly pointed out some
20 adjustments that we should have made.

21 Finding 23, we added some more information. It
22 discusses regional monitoring. But we also wanted to make
23 clear that there is a lot of information gathering being
24 done. It's not just -- we're not just relying on regional
25 monitoring to determine whether water quality is being

1 protected.

2 Finding 49 is a discussion of our enforcement
3 priorities. And we added a provision to clarify that the
4 Management Practices Evaluation Program that we just
5 mentioned that practices identified as protective of
6 groundwater quality through that program should be
7 implemented. And if they're not, that would be an
8 enforcement priority for us.

9 BOARD MEMBER COSTANTINO: Joe, sorry to
10 interrupt. One quick point is that even though we have to
11 break, I don't want to seem at all like we're rushing
12 through this, because this is very a important topic. And
13 if we need to break in the middle of something --

14 CHAIRPERSON LONGLEY: We'll continue after lunch,
15 if necessary. Because as Jon points out, we need to
16 understand where you're talking about and what you're
17 talking about.

18 BOARD MEMBER COSTANTINO: I'll give you my
19 question. My question is, on these late revisions, can
20 you highlight -- I don't want you to speak for everybody
21 else. But where you know there is agreement that
22 everybody likes the late revision or a joint decision.
23 Meaning, there is not a lot of controversy.

24 PROGRAM MANAGER KARKOSKI: I'd love to speak for
25 everybody else. It can cut the testimony short. So I can

1 highlight as we go through.

2 So Finding 5 came from the ag community, because
3 the finding currently just talks about water in ag fields,
4 but they're ditches and that sort of thing as well. So I
5 think everybody is comfortable with that. We want to make
6 sure it didn't get expanded to ditches that might go from
7 one grower to another grower. So we've limited that.

8 The Finding 23 was just something we felt we
9 needed to add. I think it just sort of captures all of
10 the monitoring efforts. I believe some folks made some
11 comments that the way the finding read was as if, you
12 know, regional monitoring was bad or insufficient and we
13 didn't have anything else. So we wanted to make clear
14 that the regional monitoring is a component of an overall
15 information and collection effort.

16 The Finding 49, that did come from our
17 discussions with the environmental justice community.
18 It's very consistent with the other enforcement priorities
19 we have. And it's consistent with one of the provisions,
20 one of the requirements for members to implement practices
21 that are found to be protective of groundwater quality
22 through the Management Practices Evaluation Program.

23 EXECUTIVE OFFICER CREEDON: Joe, if I can add a
24 clarification. It's where they're applicable.

25 PROGRAM MANAGER KARKOSKI: Right. Where they're

1 applicable.

2 --o0o--

3 PROGRAM MANAGER KARKOSKI: Okay. And then in the
4 waste discharge requirements, I think you heard it about
5 this a bit in Bakersfield regarding the property access
6 issues and whether we are allowing ourselves to have more
7 access than might be provided by applicable law.

8 So we've made a change. Basically, we're going
9 to language very similar to what is in our conditional
10 waiver. And this was an issue of concern to growers and
11 their representatives. So we've changed that language so
12 that we'll conduct -- we'll get access, conduct
13 inspections, consistent with the law, which is basically
14 we'll get consent, unless certain exceptions apply. And
15 those exceptions are spelled out in the law.

16 Another provision, which we mentioned in
17 Bakersfield, is we have a performance standard regarding
18 construction of settling ponds and basins. And what we
19 added was just some information that that construction
20 should be consistent with NRCS conservation standards or a
21 U.C. extension or NRCS recommendation or something
22 equivalent. So that provides a little bit more guidance
23 on what we mean. So I haven't heard of any concerns about
24 that additional language.

25 --o0o--

1 PROGRAM MANAGER KARKOSKI: The next item is
2 regarding the farm evaluations and low vulnerability
3 areas. So I think there's a concern expressed that we
4 have a number of due dates focused I think appropriately
5 on high vulnerability areas. And there is a request from
6 the ag community that we give a little more time. We've
7 already given more time for the first farm evaluations for
8 the small farming operation. Their due date is 2017.
9 This gives larger farming operations in those low
10 vulnerability areas more time. This is from the ag
11 community. I haven't heard of any concerns about giving
12 that little bit of extra time.

13 For the Nitrogen Management Plans, I'll repeat
14 what we said in Bakersfield. So as we're considering some
15 specific concerns regarding nitrate discharges, we
16 reconsidered the change that drop the Nitrogen Management
17 Plans requirement for low vulnerability areas. Low
18 vulnerability areas do not have evidence of degradation
19 and are considered high quality waters, per the State's
20 anti-degradation policy.

21 The WDR allows degradation to occur. Therefore,
22 we must establish standards that result in implementation
23 of best practicable treatment or control, BPTC, of the
24 discharges authorized by this Order.

25 For irrigated ag, the proposed WDR standard for

1 nitrate requires that all growers implement practices that
2 minimize excess nutrient application relative to crop
3 need. Staff proposes that implementation of the Nitrogen
4 Management Plan is the grower's mechanism to control their
5 discharge and to document that they are meeting the
6 performance standard.

7 Staff believes nutrient management is a control
8 measure that defines BPTC for nitrates. There would be no
9 reporting requirement for the low vulnerability areas, but
10 the plan would need to be provided to Board staff if
11 requested. And this requirement would kick in in 2016.
12 And my guess is you're going to hear from the ag community
13 about this proposal.

14 EXECUTIVE OFFICER CREEDON: Joe, if I could
15 interfere. I just want to make a point just this is a
16 change that is probably the most significant for the
17 agricultural community because they lobbied hard to have
18 it removed.

19 And after much consideration and discussion on my
20 part, I agreed to and then now we're reversing that to put
21 it back in, not in its original form, but similar.

22 But I want to make it clear that staff did this
23 because based on my conversation with our attorneys and
24 others that we felt this was absolutely necessary. So
25 they did it at my direction to do that. So if there is

1 people who want to complain, they can point at me and not
2 staff for making this change.

3 I'm very sensitive to our commitment to not just
4 flip flop on ideas or suddenly put requirements in we
5 haven't discussed with our interested parties. This was a
6 surprise for them at the meeting last week in Bakersfield.

7 CHAIRPERSON LONGLEY: Thank you very much. Go
8 ahead and continue.

9 --o0o--

10 PROGRAM MANAGER KARKOSKI: We also have -- there
11 is a reporting provision that currently states that
12 information that the coalition or third party has from
13 individual members would have to be provided upon request
14 from the Regional Board, which could be read relatively
15 broadly that any staff person could ask for the
16 information and they would have to be responsive. So we
17 clarified that it would be upon request from the Executive
18 Officer.

19 --o0o--

20 PROGRAM MANAGER KARKOSKI: We also made a late
21 revision to the MRP, and it's focused on that Management
22 Practices Evaluation Program. So we changed one of the
23 objectives from an annual estimate of loading of nitrogen
24 to providing a mass balance for constituents of concern.
25 And the reason for that is Management Practices Evaluation

1 Program isn't just about nitrogen. It applies generally
2 to constituents of concern that are identified through
3 that Groundwater Quality Assessment Report.

4 We believe a mass balance provides a more
5 complete picture of what is applied on the land surface
6 and what reaches the groundwater.

7 Now we do have a late revision that's in the
8 December 7th version that would allow the third party to
9 propose an equivalent method to a mass balance. And we
10 say mass balance and conceptual model that would require
11 approval by the Executive Officer. And that was requested
12 by the agriculture folks.

13 BOARD MEMBER COSTANTINO: Joe, can I jump in and
14 ask a question?

15 In practical terms, what is the difference
16 between an estimate of loading and a mass balance? How
17 much more work is involved? How much more time? How much
18 more expense?

19 PROGRAM MANAGER KARKOSKI: Well, that will depend
20 on the constituent. But basically, the reason that we're
21 doing this is somehow those site-specific studies that are
22 being done need to be related to the broader area that's a
23 high vulnerability area. So we're using the term mass
24 balance because for various constituents, they can go to
25 different places, right.

1 So if you're looking at nitrates, you can have
2 transformation of nitrates into nitrogen, which would then
3 go back into the air. You can have some remain in the
4 soil or the tree. Some that will go to groundwater. So
5 we're not saying we didn't describe it as providing an
6 annual estimate. But somehow those site-specific studies
7 need to be related to what's going on in the broader area.
8 And that's a lot of what we're trying to get at.

9 And I think the cost is really going to depend a
10 lot on the complexity of the given issue that they're
11 dealing with. And again, we're asking for an estimate.

12 Yes?

13 BOARD MEMBER MOFFITT: What would be the
14 difference between the two? How would that data be
15 collected for either, between an estimate of loading and
16 the mass balance.

17 PROGRAM MANAGER KARKOSKI: They are sort of two
18 differences. One is the way we word it, the objective was
19 to provide an annual estimate of nitrogen loading. Okay.

20 So, couple things. One is it says annual and
21 then it's also focused on nitrogen. There would be a lot
22 of similarities in terms of if you're trying to get an
23 estimate of annual loading going to groundwater, while you
24 should be sort of figuring out what's going on in those
25 other compartments, like what is going into air or the

1 tree or what might be transformed or degraded, if you're
2 looking at something like a pesticide.

3 So part of this is kind of clarifying that it's
4 not just -- there has to be some sort of science around
5 the estimate of the loading that's being provided. You
6 have to at least keep track of where else that particular
7 consistent may be going. That's about the only way I
8 think you can actually estimate how much might be going to
9 groundwater.

10 BOARD MEMBER COSTANTINO: Back to this, did this
11 change -- does this change effect who would actually be
12 performing this task? Did we take it from one party --

13 PROGRAM MANAGER KARKOSKI: No

14 BOARD MEMBER COSTANTINO: From farmer to hired
15 specialist or --

16 PROGRAM MANAGER KARKOSKI: No. It doesn't change
17 that at all. The Management Practices Evaluation Program,
18 like Adam mentioned, we're anticipating -- and Perry or
19 Tess may speak to this -- that a number of coalitions as
20 well as commodity groups are going to get together to do a
21 joint study. It's just going to be more economical to do
22 that. So presumably, part of that they're going to hire
23 the various experts who would actually conduct the studies
24 and do the analyses. And so I'm sure that would include
25 agronomists, geologists, et cetera.

1 --o0o--

2 PROGRAM MANAGER KARKOSKI: Another late revision
3 was with the high vulnerability areas and the definitions,
4 Attachment E. Basically, what we did was we pulled
5 wording from other parts of the Order rather than
6 referencing the Order section. So there's really not a
7 change in definitions. It's just trying to pull the
8 information together in one spot.

9 --o0o--

10 PROGRAM MANAGER KARKOSKI: Then for in both the
11 December 5th and December 7th versions of the late
12 revisions, there are a number of changes in the
13 information sheet to reflect the late revisions in the WDR
14 and MRP, as well as provide some additional
15 clarifications.

16 --o0o--

17 PROGRAM MANAGER KARKOSKI: Now I'm going to move
18 onto some of the issues we were asked to talk about. So I
19 believe Dr. Longley asked us to touch on the cost issue.

20 So this is a table that's from our information
21 sheet. It's the estimated average annual cost per acre.
22 And I wanted to focus on a couple of things. The items
23 identified as administration, monitoring reporting and
24 tracking, those are really the third party or sort of
25 coalition associated costs. So you see that's, you know,

1 about four-and-a-half dollars or so per acre. And when
2 Perry gets up, that's -- you know, from what I've heard at
3 the grower meetings, that's kind of where they're landing
4 right now, is that four to five dollar an acre. What we
5 would anticipate is that cost.

6 The other cost that's going to be really variable
7 and we wanted to touch on is that management practice
8 cost. It's really going to depend on whether a grower is
9 currently implementing practices that are protective of
10 water quality or not. So if they're currently
11 implementing all those good practices -- and I think we've
12 heard a lot of testimony from growers who are, then their
13 additional costs related to management practices, you
14 know, they won't have those additional costs. Whereas, a
15 grower who doesn't have those practices in place, like say
16 they don't have backflow prevention or wellhead
17 protection, they're going to have some cost. So that is
18 an average annualized cost.

19 So for some growers are going to see much higher
20 cost and other lowers. So you heard Perry during his Prop
21 84 discussion, something like drip is fairly expensive.
22 But keep in mind, many growers put in drip for other
23 reasons than protecting water quality; saving water,
24 increasing yield, et cetera.

25

--o0o--

1 PROGRAM MANAGER KARKOSKI: Another issue that I
2 think you'll hear about is fertilizer use reporting. So
3 just to be clear, staff is not proposing any change in
4 what we have, which does not include fertilizer use
5 reporting. Our sense is that reporting fertilizer use
6 would provide an incomplete picture. And part of that is
7 that greater use does not necessarily indicate greater
8 threat to groundwater.

9 So, for example, you may have a grower who has
10 higher yields at, like, say processing tomatoes, somebody
11 who is irrigating using furrow irrigation, versus somebody
12 who has drip, the person on drip is going to use more
13 fertilizer. They'll get higher yields, but they're
14 probably applying more efficiently because they can
15 control the application better.

16 So you know, we feel like reporting the use, it
17 wouldn't necessarily get us -- be a good indicator. So
18 the indicator that we have -- and this has been part of
19 the order for a while -- is that ratio of total nitrogen
20 available the nitrogen consumption by the crop. Now,
21 through that Management Practices Evaluation Program, we
22 could certainly identify some additional key parameters
23 that would be important, and then we would expect
24 reporting on those parameters.

25 The final point I'd like to make is any sort of

1 fertilizer use reporting would likely be driven by
2 legislation, and in all likelihood with CDFA as the lead,
3 because they do have that fertilizer program. Just like
4 with pesticides, we're not requiring use reporting on
5 pesticides because the Legislature has put that
6 responsibility on the Department of Pesticide Regulation.

7 --o0o--

8 PROGRAM MANAGER KARKOSKI: Another issue that
9 you'll hear about is the pesticide monitoring of
10 groundwater. So we have carefully evaluated Department of
11 Pesticide Regulation Groundwater Protection Program. You
12 heard from them at the August Board meeting. You know,
13 they do have a pretty robust program there. They have
14 these two sort of lists of pesticides, 6800A pesticides
15 have use restrictions and the groundwater protection
16 areas. And DPR has a monitoring well network to track the
17 effectiveness of those use restrictions. And we do have
18 folks from DPR to answer any questions -- additional
19 questions about their program.

20 The 6800B pesticides are prioritized for
21 monitoring, and there is an extensive evaluation process
22 that is conducted if there are any detections related to
23 legal ag use of those 6800B pesticides. So they go
24 through an evaluation to see if there is any potential
25 human health threat.

1 Now, just to be clear, we retain our authority to
2 regulate discharge of pesticides to both ground and
3 surface water. So this isn't about us deferring our
4 authority. It's about coordinating with a sister agency
5 and taking advantage of the program that they already
6 have.

7 So our sense is requiring monitoring of these
8 pesticides, especially as recommended for trend
9 monitoring, would be duplicative of what's already ongoing
10 and not a good use of limited resources.

11 --o0o--

12 PROGRAM MANAGER KARKOSKI: Another big issue
13 that's come up is the public review of the various
14 templates, plans, and reports that would be produced by
15 the third party. So we have provision for public review
16 of the templates: Farm evaluation, nitrogen management
17 plan, and the sediment and erosion control plan templates.
18 We have provisions for the Groundwater Quality and Surface
19 Water Quality Management Plans so they would be available
20 for public review prior to and comment prior to EO
21 approval.

22 We don't have those similar types of provisions
23 for some of the more technical reports, you know, like the
24 assessment reports and the work plans where it's really
25 providing technical information to us versus describing

1 how implementation is going to take place. So those other
2 plans and that sort of thing where we have those public
3 review processes identified, that's where they're really
4 defining here's how we plan to move forward with
5 implementation versus here's the technical information
6 that we're requesting.

7 But we do really want to point out that we're
8 fully expecting to come to the Board on an ongoing basis
9 with information items because there are any number of
10 reports and deadlines. And I'm assuming the Board is
11 going to be very interested in the progress that's being
12 made, should you adopt this Order today.

13 --o0o--

14 PROGRAM MANAGER KARKOSKI: So this just briefly
15 summarizes what I said. The third party will apply to be
16 a third party, and there is not a public review process.
17 There is one for the templates. There is not one for the
18 Groundwater Quality Assessment Report. There is a public
19 review process for the Management Plans. And there is not
20 one for the trend Monitoring Work Plan or the Management
21 Practices Evaluation Program Work Plans.

22 --o0o--

23 PROGRAM MANAGER KARKOSKI: Another issue that
24 comes up is with respect to compliance and enforcement.
25 And I want to make it clear to the Board that we do have a

1 number of provisions where in the near term we will be
2 able to evaluate compliance. Okay. And that is things
3 like are, they a member of the third party? Is the grower
4 a member of a third party? When we conduct an inspection,
5 we'd be able to see whether we have backfill prevention or
6 wellhead protection. We'll be able to see if there is
7 sediment being discharged and evaluate that. And also
8 whether a member has completed the plans that they're
9 required to complete. We'll be able to ask for that.

10 --o0o--

11 PROGRAM MANAGER KARKOSKI: There are some
12 longer-term issues, like, are practices protective of
13 water quality? That's going to be informed by the
14 monitoring that's conducted, management plans, and the
15 Management Practice Evaluation Program.

16 And once we know that, then we'll be able to
17 evaluate whether a member is implementing effective
18 practices.

19 We will also be able to see whether the schedules
20 and the management in the Surface and Groundwater Quality
21 Management Plans, the schedule for implementation is being
22 met. And so you may want me to stop or pause if we've got
23 the 12:00 --

24 CHAIRPERSON LONGLEY: I indicated earlier we were
25 going to break before lunch. There's been a change. So

1 continue until you get to the end of your presentation.

2 PROGRAM MANAGER KARKOSKI: All right. So another
3 big issue is the third party reporting of the data. We
4 talked about this before. I'm going to go into it a
5 little bit more.

6 So we've gone from reporting on a section to
7 township basis since nothing in between seemed viable as a
8 common reporting unit. Our sense is that it would be
9 really difficult for us to manage the data coming in if
10 the spatial resolution were variable. So that's why we
11 want a common reporting unit.

12 There were concerns from the ag community that it
13 be difficult to manage information if reported at the
14 section level. And there were also concerns about how
15 farm-specific information might be used if it were readily
16 available to the public.

17 Now, although staff agreed to the proposed
18 revision, we want to make it clear that being a member of
19 a third party does not provide anonymity to the grower or
20 their information, except as provided through the
21 confidentiality provisions and they have that opportunity
22 to make those claims.

23 Farm-specific information collected by the third
24 party must be provided to the Board when requested. Staff
25 believes that initial submittal of the information at the

1 larger spatial scale will allow us to assess general
2 trends. And if the general trends regarding
3 implementation of improved practices are not positive, we
4 could then follow up and request member-specific
5 information.

6 So I'm going to go through a bit of an animation
7 to hopefully explain this a little better.

8 --o0o--

9 PROGRAM MANAGER KARKOSKI: So if you look at
10 this, each of those squares -- this isn't the East San
11 Joaquin, but each of those squares represents a township.
12 Within the township, it's six miles by six miles. You
13 have 36 sections, or one square mile.

14 Within a section, you'll have individual parcels.
15 So the members who have those are -- they're the land
16 owners or the growers for those individual parcels submit
17 information to the third party. The third party will then
18 report the data to us by the township.

19 --o0o--

20 PROGRAM MANAGER KARKOSKI: So, for example --
21 I'll just give an example. Let's say this is the nitrogen
22 ratio we've been talking about. So each of those parcels
23 that are reporting a nitrogen ratio and submitting that to
24 the third party. And again, they report that data to us
25 on a township level.

1 Now, if it were reported to us on a section
2 level -- so again, this is a section, we would get, say, a
3 list of five data points. All right. As an example if
4 there were five parcels within that section.

5 When it's reported on a township basis, you know,
6 let's say there'd be approximately 180 different data
7 points. So we would get all those data points, but they
8 would not be associated with a given parcel or a given
9 member.

10 --o0o--

11 PROGRAM MANAGER KARKOSKI: So then the other
12 thing is, well, what could we do with that information at
13 that scale?

14 So, for example, we could once you go through
15 this process say with the Management Practices Evaluation
16 Program, get a sense of what an elevated nitrogen ratio
17 might be. I'm not going to put a number there because
18 people will say we're establishing numbers for nitrogen
19 ratios and we're not. The number is the number of growers
20 who exceed some nitrogen ratio threshold that everybody
21 agrees is too high and not protective of water quality.

22 What we expect over time if the outreach efforts
23 are effective and the growers aren't doing what they
24 should do is you expect a downward trend of the number of
25 parcels with that elevated ratio. So I would say in that

1 case, when we see a downward trend, that's good news. We
2 let that process play itself out. Looks like it's
3 working.

4 --o0o--

5 PROGRAM MANAGER KARKOSKI: However, if we didn't
6 see any sort of trend in improvement, that would suggest
7 that it's not working. So we still have the ability
8 within the order to then get the information for, say,
9 those parcels, the 50 or 60 growers, who apparently are
10 implementing a practice that is not protective of water
11 quality. So this sort of highlights how we would likely
12 be strategic in any sort of request for that individual
13 grower information.

14 CHAIRPERSON LONGLEY: I guess if you go back, you
15 know, explain to me you've got 95 percent of the growers
16 being good citizens. You've got a five percent or one
17 percent or whatever small percentage you want to use out
18 there who are quite greatly exceeding what they should be
19 exceeding, very poor practices. It would seem to me early
20 on we ought to be able to ferret those folks out. How
21 would you go about doing that?

22 PROGRAM MANAGER KARKOSKI: Well, like I said,
23 what we would do -- a lot of this, honestly, is we work
24 with the coalition to get a sense from them, well, how are
25 things going with your outreach? You know, they're not in

1 an -- they don't want to be our cops on the beat type of
2 thing. But what we would have that conversation. And if
3 it's pretty clear they're running into some resistance
4 from some folks versus it's just a matter of educating and
5 providing the tools that are needed, if they're really
6 running into resistance, then we would go through this
7 process that I mentioned, which is we identify through the
8 analysis of the data which growers seem to be implementing
9 practices that do not protect water quality, and then we
10 do a data combing. We go to the third party and say we've
11 noticed you have whatever it is, 20, 30, 40 growers or
12 parcels that are reporting practices that seem to not
13 protect water quality. You've had a couple years to
14 outreach to them. That doesn't seem to be working. We
15 want that individual information. Then we, as the Board,
16 would follow up with our appropriate enforcement tools.

17 CHAIRPERSON LONGLEY: I think it was you who
18 pointed out to me earlier this is only one tool among
19 several to get to that answer; is that correct?

20 PROGRAM MANAGER KARKOSKI: To get to the answer
21 of whether water quality its being protected?

22 CHAIRPERSON LONGLEY: Yeah.

23 PROGRAM MANAGER KARKOSKI: Oh, sure. Yeah.

24 BOARD MEMBER RAMIREZ: Joe, I have a couple of
25 questions. So I see that we've gone to the township size.

1 Earlier in the presentation, it was said that it was our
2 hope that we would be able to extrapolate information
3 based on summaries.

4 Now that we're going to the township, it has
5 different soils, different crops, maybe a residential, is
6 that going to present more of a complication? Or has
7 staff already considered that? And how are we going to
8 deal with that? That's my first question. And I have a
9 second one.

10 PROGRAM MANAGER KARKOSKI: Well, thanks for not
11 asking me multiple questions.

12 So, yeah. In answer to the first question, keep
13 in mind it's going to be the third party. And we're
14 anticipating sort of this group of folks getting together
15 and doing that Management Practices Evaluation Program and
16 evaluating the information and doing those assessments.
17 So they're going to have the parcel-specific information.

18 So what I would anticipate is they will look at
19 the different high vulnerability areas, and they'll do
20 that analysis for those different high vulnerability
21 areas. And they will have the data. Okay. So it's just
22 the way the data are being reported to us, we wouldn't
23 necessarily be able to --

24 EXECUTIVE OFFICER CREEDON: Joe, the 36 square
25 miles is a reporting mechanism for the Nutrient Plans and

1 the Farm Evaluations, but the Management Practice
2 Evaluation, that's a different reporting mechanism.
3 That's not done on the township level. That's an
4 evaluation of management practices and how effective they
5 find them to be or not. That's a different reporting
6 mechanism.

7 PROGRAM MANAGER KARKOSKI: Yeah. So if I
8 understood you, so that the information that would be
9 needed to go from the field studies to what is going on
10 generally in the high vulnerability areas would be
11 available, you know. And it's the responsibility of the
12 third party to do that analysis.

13 CHAIRPERSON LONGLEY: What I heard the Executive
14 Officer saying -- and I think it amplifies what I was
15 asking you earlier -- we do have farm level evaluations
16 that are taking place parallel with this; is that correct?

17 PROGRAM MANAGER KARKOSKI: Right. So like I had
18 in the slide on compliance, there are a couple things.
19 One is we will be out in the field doing inspections. So
20 that's one type of evaluation. There will be the data
21 that the members are going to report to the third party.
22 And again, it kind of depends on what situation they're
23 in. And every grower is going to do a farm evaluation and
24 will be reporting their practices.

25 Now, again, that information initially coming to

1 us as proposed is coming at the township level and not
2 associated with the particular members. That doesn't mean
3 we couldn't look at the information and see if there is
4 anything that's of concern. Like, if we see a given
5 practice for a given crop that we all know is not
6 protective or, for example, 25 percent of the growers are
7 reporting pressurized irrigation but they don't have
8 backflow prevention, then we would have an ability to
9 follow up.

10 But really, a lot of the benefit of having the
11 third party is so that we don't necessarily need to right
12 away go out and use our enforcement tools. They're going
13 to do the education and outreach. And to some extent,
14 like when we're looking at things like nitrogen ratios,
15 there is probably a self-correcting aspect to this. If a
16 grower sees that on average folks growing the same crop
17 have a much lower nitrogen ratio, they're just
18 incentivized from an economic perspective to really look
19 closely at what they're doing and try to save some money
20 and put on less fertilizer.

21 BOARD MEMBER RAMIREZ: Okay. My second question,
22 we've talked that, you know, farmers that enroll in these
23 coalitions or these ag businesses that enroll in these
24 coalitions have to comply with what the coalition's doing
25 and it's for their benefit. How would we deal with a

1 rogue coalition? Like, if the coalition is acting more as
2 a shield to protect the farmer. So you've got 900 farmers
3 that are doing the right thing and their coalition is not
4 acting appropriately. How would we handle that?

5 PROGRAM MANAGER KARKOSKI: We have provisions for
6 withdrawing that notice of applicability to the third
7 party. I mean -- and now the way we've got it set up is
8 it would have to go through a Board hearing because
9 obviously that is a big deal. You don't want to delegate
10 that to the Executive Officer and you may not be able to.

11 So, yeah, I think I can't speculate exactly under
12 what circumstances that may happen. But certainly, the
13 third party has any number of obligations on them, right?
14 There is a whole suite of requirements associated with the
15 third party responsibilities they have. And part of their
16 performance we're going to track is are they submitting
17 the reports in a timely fashion? Are they complete? Are
18 they meeting all of the requirements we've laid out? And
19 ultimately, are we actually seeing water quality improve?
20 That's kind of the real bottom line.

21 BOARD MEMBER RAMIREZ: Thanks.

22 EXECUTIVE OFFICER CREEDON: During this last --
23 we've been in this since 2003. I should point out that we
24 did have a circumstance where we thought that the
25 coalition was not acting properly, and we did send notices

1 out to all the individual growers. So we sort of
2 self-regulate them that way before we go to the extreme
3 where we move to dissolve the coalition.

4 CHAIRPERSON LONGLEY: Yes. That's a good point.
5 We're not new at this. We've been at it for quite a while
6 now.

7 BOARD MEMBER MOFFITT: I have a couple questions
8 about the data.

9 Could there ever be a point where there might be
10 a request for more information from growers who have a
11 certain ratio or are above a certain ratio? Could there
12 ever be that point that staff might request that?

13 PROGRAM MANAGER KARKOSKI: Where we might request
14 more?

15 BOARD MEMBER MOFFITT: There's the grower who has
16 the 2.2 ratio. Maybe there's, you know, a 2.0. I'm not
17 establishing any sort of ratio. Could there ever be a
18 point where staff could request more information from
19 those specific growers who are over a certain ratio the
20 look into it more?

21 PROGRAM MANAGER KARKOSKI: That's always a
22 possibility, because the Board still retains its authority
23 under 13267 to ask for that kind of request. So if it's
24 not within -- if the data reporting aren't within the
25 confines of the Order, something they already have to do

1 already, then the Executive Officer could, under 13267,
2 ask for a technical report and provide and get that more
3 detailed information.

4 BOARD MEMBER MOFFITT: Would there ever be the
5 possibility that enforcement action could be taken? I
6 think Dr. Longley touched on this. Would there ever be a
7 possibility that enforcement action would be taken on a
8 suite of growers, just somewhere down the line. Certainly
9 not you, but we'll say 10, 15 years down the line there's
10 new staff of different opinion about things that can go
11 just down the line and say everyone with above a 2.0 ratio
12 we're going to issue enforcement letters on nitrogen only,
13 or the nitrogen management plan ratio only.

14 PROGRAM MANAGER KARKOSKI: You're asking me to
15 speculate on the future version of myself and Pamela as to
16 what we might do?

17 BOARD MEMBER MOFFITT: Should you guys no longer
18 be around or at the Board.

19 PROGRAM MANAGER KARKOSKI: You're asking would
20 the Order allow for the --

21 BOARD MEMBER MOFFITT: Would the order allow for
22 something like that to happen. Strictly related to the
23 ratio and the nitrogen --

24 PROGRAM MANAGER KARKOSKI: There's nothing in the
25 Order that establishes a specific ratio. The Management

1 Practices Evaluation Program will help inform us -- when I
2 say us, everybody, on what practices are protective of
3 groundwater quality.

4 So when we're looking at the results of that
5 study and then give growers adequate time to respond to
6 that, certainly at some point if some growers are not
7 implementing those practices that are protective of water
8 quality either as found from that Management Practices
9 Evaluation Program or something equivalently effective,
10 yeah, we have a basis for enforcement because there is a
11 specific requirement that says they need to do that.

12 Now, whether that -- I'd have a hard time
13 imagining that it would just be based on a ratio. Because
14 the thing is, you know, excess fertilizer doesn't move
15 without something to move it. So you need to be looking
16 at things like whether there is excess irrigation water or
17 other kind of factors.

18 BOARD MEMBER MOFFITT: That was another question
19 I wondered is -- and the nitrogen plan does it factor, you
20 know, all sorts of things, like soil biota and the health
21 of the soil as well irrigation, or is that part of the
22 farm plan?

23 PROGRAM MANAGER KARKOSKI: Well, the Farm
24 Evaluation Plan or the farm evaluation will certainly have
25 more comprehensive information on things like irrigation

1 practices. The initial templates that we've seen on the
2 Nitrogen Management Plan is primarily focused on almost
3 like a nitrogen budget kind of thing. How much is in the
4 soil and how much is in the irrigation water. What does
5 the crop need. What is based on life expected yield and
6 that sort of thing.

7 EXECUTIVE OFFICER CREEDON: If I could just
8 elaborate a little bit.

9 I would hope that after 10 to 15 years we would
10 be taking some enforcement for those who are not
11 implementing good practices, because I would hope by then
12 we have sufficient information to guide staff on what is a
13 protective measure or not. Similar to what we've done
14 here with the current program. We just started really
15 implementing enforcement and issuing penalties against
16 growers who have not implemented good practices. But it's
17 been a long time before we reached that point to give the
18 growers the time to learn about the program, implement the
19 good practices, and for us to gain knowledge.

20 So for us to say we would never take enforcement,
21 I would hope that we would against those growers who are
22 not doing the things that their neighbors are doing. And
23 it's case-specific, site-specific. So we're not proposing
24 a number at this point. I don't see us putting one in a
25 future order. It may change. We may have enough to do

1 it. I don't see it with so many different crops. It
2 would be a complex table to establish.

3 BOARD MEMBER MOFFITT: I think my concern more is
4 not whether or not action would be taken, but it would be
5 a sweeping action that would just be based on one number
6 for the nitrogen management --

7 EXECUTIVE OFFICER CREEDON: We're not proposing
8 that now. And given what I've learned about ag, I don't
9 know how we could actually do that in the future.

10 BOARD MEMBER MOFFITT: I think it would be
11 challenging. Thank you.

12 --o0o--

13 PROGRAM MANAGER KARKOSKI: So in summary, we've
14 had four years of stakeholder dialogue, multiple Board
15 meetings. And keep in mind, this is the first of multiple
16 waste discharge requirements to implement our Long-Term
17 Irrigated Lands Regulatory Program.

18 --o0o--

19 PROGRAM MANAGER KARKOSKI: So going back to the
20 figure that Adam started with --

21 CHAIRPERSON LONGLEY: Joe, rather than this one,
22 can you use number six? Can you go back to number six?

23 EXECUTIVE OFFICER CREEDON: I would also while
24 he's doing that point out to Member Moffitt and others
25 that we're working very, very closely with the California

1 Department of Food and Ag around this nitrogen and
2 nitrogen management. You heard a presentation yesterday
3 on their FREP program.

4 And so with a sister agency, much like we work
5 closely with DPR, would be working with them around this
6 whole issue of nutrient management and control and
7 fertilizer reporting. We're working very closely with
8 them to -- I don't think this Board needs to take on that
9 entire burden, but we have another sister agency who can
10 equally regulate the control of fertilizer use.

11 PROGRAM MANAGER KARKOSKI: So I believe we've
12 developed a comprehensive -- and thank you for asking me
13 to bring this particular figure up, because you can see
14 that -- and integrated approach to identify what is being
15 done to protect water quality, determine whether water
16 quality is being protected, and identify what needs to be
17 done to protect water quality. And we are requiring
18 growers to implement practices to protect both ground and
19 surface water quality.

20 It's really hard to know in advance the exact
21 balance between trying to minimize cost so the
22 requirements are not overly burdensome and making sure we
23 get the information we need to ensure water quality is
24 protected.

25 So I believe with this Order we have an excellent

1 starting point in striking that balance. It is the
2 product of consideration of the well-articulated interests
3 of our many stakeholders who have been engaged with us and
4 our best assessment of what we need to do to meet our
5 mission and comply with the law.

6 However, we know that there is no way to make
7 this perfect at the outset. We have set up a system and I
8 think established positive working relationships that will
9 allow us collectively to learn and make improvements over
10 time.

11 So with that, I would recommend that you adopt
12 the Order with the late revisions. And I would be happy
13 to answer any further questions.

14 CHAIRPERSON LONGLEY: Thank you very much.

15 The reason I asked for this is because the Order
16 that we're considering here today is not something
17 entirely of our own making. It has to fit the law, the
18 requirements that are upon us. And we can't respond to
19 people that we, in fact, are accomplishing was expected of
20 us unless we have information. And what you've developed
21 here is not a three-legged stool. It's about a seven or
22 eight or ten-legged stool or something like that, if I
23 start counting.

24 But in this case, we need a stool with many legs.
25 It's a very complex program.

1 And I want to compliment you on the many years
2 that come off of your life, probably more than the actual
3 years you've put in, to put this thing together.

4 And as you can see, it's just not one piece of
5 information, but it's a number of pieces of information
6 coming together to make these judgments. And we've had a
7 lot of long conversations, as I've strived to understand
8 the various parts of this. And I thank you for putting up
9 with me and my questions.

10 Are there any questions or comments by members of
11 the Board?

12 BOARD MEMBER SCHNEIDER: I have a few.

13 I wanted to appreciate the way staff has reached
14 out to integrating other existing programs and other
15 agencies and organizations into this being efficient and
16 non-duplicative. I think that's very important.
17 Certainly, a lot of this in groundwater is legacy issues.
18 Nitrogen is part of that. A lot of people have been
19 affected in their homes and in the water they drink.
20 We've seen some of that through the U.C. Davis report
21 recently.

22 But the solutions through this program aren't
23 going to resolve a lot of those issues. I mean,
24 groundwater has huge lag times, and we need to recognize
25 that. And I think to a large extent this program

1 recognizes that. I think that's really important.

2 When I try to frame some of this, these issues,
3 it sometimes you have bad actors and then you have a big
4 problem in a small area. And sometimes you just have an
5 incremental degradation and then you have a small problem
6 but it's over a very large area. And I think the program
7 you devised tries to deal with both of those potential
8 pollution problems to be able to identify an individual
9 problem or to deal with an incremental problem that occurs
10 over a bigger area. I think that as important.

11 The economics of this are a tough one. But at
12 the same time, I think a lot of the practices that might
13 come out of this, as you've alluded to, are also practices
14 already being implemented by the good farmers that are
15 looking at drip and micro drip and just driving a minimum
16 use of herbicide/pesticides or fertilizers just because
17 you want to use what you need to use. But there is an
18 economic disincentive to overuse.

19 Education is a big component of this. I mean,
20 like I've alluded to sometimes you have bad actors. But I
21 think to a large extent, this is an education problem that
22 can push this down the road a lot.

23 So again, I want to thank staff. I know we'll
24 have a lot of comments from different issues, from the
25 farming community, the environmental justice community,

1 and the environmental community. I look forward to
2 integrating that into some of my thinking and the outcome.
3 So that's kind of how I'm framing my thoughts as we move
4 forward.

5 CHAIRPERSON LONGLEY: Thank you, Bob.

6 Any other questions or comments?

7 BOARD MEMBER COSTANTINO: So thank you for that
8 presentation.

9 As far as late revisions, because I wasn't around
10 for the last week, the first time stakeholders on either
11 side knew of late revision was last Friday; is that right?
12 Or was there a pre-discussion? And then the follow-up
13 question -- I'll give you two questions -- is what
14 happened since the late revisions were made public as far
15 as discussions?

16 PROGRAM MANAGER KARKOSKI: So we alluded to a
17 number of the late revisions at the Bakersfield meeting.
18 We didn't have the exact language prepared at the time.
19 But we certainly, with some of those major issues, we said
20 what we planned to do. And we've reached out to those
21 folks who have been engaged with us and the ag community
22 and the EJ community to go over those late revisions with
23 them in the last few days.

24 So keep in mind, it was just a week ago that we
25 opened the hearing and then we worked on the late

1 revisions I think on Monday. And so then on the 5th, we
2 got them out and available. And we had various conference
3 calls and discussions with folks.

4 Now, the late revisions that we finished up this
5 morning folks just had -- hopefully everybody got copies.
6 They just had this morning to look at those language
7 changes. But a number of those are in response to some of
8 the discussions that we had.

9 CHAIRPERSON LONGLEY: Any other questions or
10 comments? We have a lot more opportunities the rest of
11 the day.

12 EXECUTIVE OFFICER CREEDON: The late comment,
13 it's a repeated problem. Unless this Board wants to put a
14 strict deadline on us to stop working, it's almost
15 impossible to come without late revisions. It just is
16 part of this public process that we have and people keep
17 working with us to get some changes. And we get other
18 things that go on. Our attorneys come back and say,
19 sorry, you can't do what you want to do.

20 CHAIRPERSON LONGLEY: And in fact, in the last
21 item, which was very complex but not nearly as complex as
22 this, we ended up with a late, late revision and took ten
23 minutes out while you guys got a chance to put it
24 together. Appreciate the difficulty.

25 BOARD MEMBER COSTANTINO: My question was not to

1 pass judgment on late revisions. At this point, I just
2 wanted to ask for clarifying how much notice there was and
3 how much discussion there was and outreach. And when you
4 said we reached out to folks, are we just talking East San
5 Joaquin or other coalitions and commodity groups as well
6 because of the issues that will follow? Have we reached
7 out to everybody or just the people that will be directly
8 impacted at this point?

9 PROGRAM MANAGER KARKOSKI: The conversations we
10 had are with a lot of those folks who showed up in
11 Bakersfield and were part of those panels. So that group
12 of ag folks, which includes the East San Joaquin and the
13 folks in the Southern San Joaquin. And I'm sure they were
14 communicating with the other coalitions as well.

15 And the same with the EJ community, like the
16 panelists that you heard from and that we've been hearing
17 from over the course of the four years or so are the
18 primary folks that we reached out to directly to. But
19 certainly, we send these things out on our Liras list and
20 it goes out to thousands of people. So many folks got it
21 and we put our contact information if they want to call
22 and discuss it.

23 CHAIRPERSON LONGLEY: Carmen.

24 BOARD MEMBER RAMIREZ: I was just going to say I
25 can see by the late revisions and the late, late revisions

1 just much time staff is putting in and how receptive and
2 available they are. So I appreciate that.

3 And I do -- you know, I see that it's helpful for
4 the public, but I can see how it's also problematic to
5 keep issuing these late revisions. So as of right now,
6 I'm not taking a position on whether or not we should
7 have, like, a fast and hard deadline. But I would like to
8 acknowledge that I see the kind of work that goes into it
9 late at night, early in the morning by staff and that I
10 really appreciate it. Thanks.

11 CHAIRPERSON LONGLEY: Any further comments?
12 Thank you, Joe.

13 We're now ready for lunch Bob says. We're now
14 ready for presentation by the Eastern San Joaquin River
15 Coalition, and that will begin at 1:30 or shortly
16 thereafter.

17 (Whereupon a lunch recess was taken at 12:28 PM)

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AFTERNOON SESSION

1:34 PM

1
2
3 CHAIRPERSON LONGLEY: When we ended before lunch,
4 I had called up the Eastern San Joaquin River Coalition.
5 But before we start that, I'd like to introduce to
6 everybody Sandra Schubert, the Undersecretary of
7 California Department of Food and Agriculture, who wishes
8 to make a statement.

9 UNDERSECRETARY SCHUBERT: Thank you. I want to
10 thank you all very much for allowing me to take some time
11 today.

12 I know you heard from Dr. Ofis Mahn (phonetic)
13 yesterday. I was not able to make yesterday, so I do
14 appreciate your accommodating my somewhat hectic schedule.
15 And I just want to make a couple of brief comments because
16 we've been working very closely and collaboratively with
17 the Central Valley Regional Water Quality Control Board
18 staff. And I want to thank the staff and my staff, their
19 staff, Executive Officer Pamela Creedon for the time and
20 attention they have spent working with a sister agency.

21 As you know, CDFA has jurisdictional authority
22 over fertilizer use and reporting, fertilizing materials,
23 management and beneficial use, and research and education.
24 Over 30 years, we've developed a lot of expertise, and
25 it's outside of just the FREP program also. So we have a

1 branch into which FREP is part of. We have nearly two
2 dozen people who work for that branch. Over half of them
3 are scientists with Ph.D.s that are intimately involved in
4 day-to-day research and activities and working with their
5 colleagues both in the Central Valley, at U.C. cooperative
6 extension, CSU, NRCS to work on these very issues. So the
7 staff has reached out to us.

8 I hope the Board members themselves will whenever
9 they feel the need, if they have questions, to feel that
10 we are a resource for you. We are there. You can reach
11 out through me. And I'm happy to connect you with whoever
12 would be the appropriate person if I'm not able to answer
13 the questions.

14 So it's been a very good approach. We want to
15 commend the staff for the way they have worked to come to
16 a balance between the type of high quality data that the
17 Regional Boards need to ensure water quality, balancing
18 out growers and farmers' needs to be able to manage the
19 complex nature of agriculture and protect their
20 confidential business practices. I know they've worked
21 very hard. We've been in many discussions with the
22 Regional Board staff. We've had conversations about
23 management practices, use reporting, the complexities.

24 And I know Dr. Mahn talked a little bit about
25 this yesterday, but I know that there was the section

1 versus township issue. And we talked a lot about what
2 value the data has in different cropping patterns and why
3 at certain levels you might not get the information you
4 need, depending on what you're asking for.

5 For instance, just growing broccoli in one area
6 you will do different nitrogen use patterns and management
7 practices, depending on whether you're growing for a head
8 of broccoli you're going to buy and steam or whatever you
9 do or broccoli that you may be using in a larger
10 institutional setting such as a hospital or may go into a
11 package. They grow it differently. They have different
12 management practices and time periods.

13 There are instances where nitrogen use itself may
14 vary for circumstances that will not be apparent from
15 numbers. And your staff has worked closely in
16 understanding that with us. For instance, we are ten
17 degrees above normal right now. We're very concerned
18 about getting appropriate frost for many of our crops. If
19 they don't bloom, these guys are going to use different
20 management practices. They may want more nitrogen at
21 certain points, different watering practice. Do we get
22 some sort of a root infestation where they don't harvest
23 the crop, but they just get under. What does that mean
24 for nitrogen use and management.

25 My point is Dr. Mahn went through the details.

1 As an Undersecretary, we really appreciate the
2 collaborative approach. We are here for you. If there is
3 a concern that you want more data, different quality data,
4 you need to understand it better, we are always here to
5 work collaboratively with your staff and respond to any of
6 the questions that the Board itself may have.

7 So I just wanted to make a few brief comments.
8 If you guys have any questions, I'm happy to answer any of
9 them.

10 CHAIRPERSON LONGLEY: Any questions?

11 BOARD MEMBER MOFFITT: Not necessarily a
12 question, but certainly it's been -- it's nice that CDFA
13 has an Undersecretary, and it's nice you have been so
14 involved and engaged in this process. And I want to thank
15 you for the work you've done. So thank you.

16 UNDERSECRETARY SCHUBERT: Thank you, Jenny. And
17 thank you for allowing me.

18 CHAIRPERSON LONGLEY: And not only this program,
19 but your leadership on the California Federal Digester
20 Work Group together working with this Board is
21 tremendously appreciated.

22 UNDERSECRETARY SCHUBERT: Thank you, Chairman
23 Longley.

24 CHAIRPERSON LONGLEY: Thank you very much. And
25 we appreciate your participation today.

1 approximately 540,000 irrigated acres covered by the
2 existing order. We also about a 1.1 million acres in the
3 coalition region.

4 If you take out dairy, we have approximately a
5 quarter million acres that are not participating in the
6 program at this time. And I wouldn't say they're out of
7 compliance. Just many of them are not discharging -- have
8 the potential to discharge to surface water.

9 --o0o--

10 MR. CLAUSON: We have a unique area. As every
11 area is in the Central Valley, we are dominated by three
12 main waterways, rivers, and belted by the San Joaquin
13 River. So we do have surface water and surface water
14 issues we've been contending with.

15 I won't go into much detail, other than to say we
16 have distinct geographic areas that we have numbered that
17 have caused us to modify our approach to solving water
18 quality problems in our region. And that's because of
19 experience and understanding of our crops in our area.

20 --o0o--

21 MR. CLAUSON: We also started into this program
22 with a pretty extensive water monitoring program. By
23 2007, we found pesticides or other constituents above
24 water quality standards in 25 different waterways. We did
25 identify problems right away. We did get the cooperation

1 of the Regional Board to prioritize those 25 watersheds.
2 There was no way that we could just jump into working on
3 those in a short period of time. So we have broken those
4 priorities based on toxicity and exceedances of pesticides
5 and went to work on doing outreach and further monitoring
6 to track what we did with our outreach.

7 Myself and Wayne Ziptzer, who I think is in the
8 audience, is also with the coalition. He's in the
9 Stanislas County Farm Bureau. We have made over 200
10 individual member visits with land owners as a result of
11 these exceedances.

12 --o0o--

13 MR. CLAUSON: And just to give you a slice of my
14 life, in 2007, this was July monitoring results. And
15 there is actually two more off the bottom of the sheet
16 that show the number of waterways that we had exceedances
17 for chlorpyrifos. So we had a fairly serious problem in
18 our area, but we took the bull by the horns, as we
19 anticipate doing with this upcoming Groundwater Program --

20 --o0o--

21 MR. CLAUSON: -- and went out and identified what
22 we felt were the sources of the problems in surface water.
23 We did GIS mapping from our monitoring site, which you see
24 at the bottom of this map. And we visited every single
25 member, land owner that was upstream of that sampling

1 site. We had management practices surveys. We asked them
2 questions about how they MANAGED sprays and irrigation
3 water. We documented those practices. And then we
4 continued with monitoring for two to three years, and we
5 are continuing to monitor those watersheds.

6 --o0o--

7 MR. CLAUSON: In our first and second priority
8 that we started in '08, we have gone and back and done
9 follow-up meetings to see what management practices have
10 been changed. And we are seeing a very large decrease in
11 exceedances in those areas. I'll show you a graph in a
12 minute as well as our third priority watersheds that we
13 visited in 2011 and '12. We will get through our 26
14 management practice weeds in a couple of more years and
15 these are ones that are primarily E. Coli. We don't have
16 many exceedances anymore.

17 --o0o--

18 MR. CLAUSON: I think this best illustrates our
19 trend in particularly chlorpyrifos, where in 2011 we had
20 considerable exceedances. We in 2012 didn't have a single
21 exceedance in any of our priorities in these first three
22 priority watersheds. Copper is kind of a complex and
23 confusing issue. We are not making headway on it. We're
24 still doing some source identification to see where this
25 copper is coming because it's not aligning with

1 applications. The exceedances don't align with the
2 application that farmers made. But the point is that we
3 are making progress. We have made progress in our Surface
4 Water Program.

5 --o0o--

6 MR. CLAUSON: And this is a little bit
7 complicated chart. But I want to leave you with the
8 impression today, one thing, that a grower -- and I'm a
9 grower myself -- that Get this little twitch when I hear
10 people say we're using nitrogen in a way that's
11 contaminating groundwater. That hits us as growers
12 because we have a lot of motivation to not use too much
13 fertilizers. It costs us money. And many of us are doing
14 practices that protect groundwater.

15 The cases that you see here when we go out and
16 talked to these 200 growers, we asked them what are you
17 doing now and what did you do before our visit? We found
18 in a few instances, as you can see with the pink bars,
19 those are the practices that were changed after we visited
20 them. The green bars shows the practices that were made.

21 I have a sense that when we go out and start
22 asking growers what they're doing with groundwater
23 protection, we're going to find a high level of compliance
24 already. Many growers are doing the things that we were
25 coming out and talking about as best management practices

1 and we have been talking about as best management
2 practices for years.

3 --o0o--

4 MR. CLAUSON: So what our results show is that
5 education and outreach work. Growers don't want to be
6 dischargers. I heard that conversation before. We don't
7 want to be dischargers. That is a negative connotation
8 for an individual. It just doesn't come across well to
9 us. And if our growers pointed out a practice that may
10 not be correct, they're willing to make these changes,
11 especially when we have the data behind that says that's
12 an effective practice to do that's not going to impact
13 your quality and your yields. We've shown real water
14 quality improvements. We'll continue to say to our third
15 parties and the others in the valley they are effective.
16 We need to build this program on what we have in place
17 right now. And we've developed this trust with growers.
18 We're not replacing the program, but we are improving and
19 building on what we have in place.

20 --o0o--

21 MR. CLAUSON: Now, I don't want to understate
22 that this new WDR that we're going to take on is going to
23 be a huge administrative burden. The cost is going to be
24 hard to estimate right now.

25 We, as our own coalition, in the last three

1 months have raised our dues from two to four dollars an
2 acre. We were just barely collecting enough money to pay
3 for our Surface Water Program. We raised our dues for our
4 existing members. Because, of course, we have new
5 elements that we know are going to be costly that we have
6 to undertake.

7 The other thing that is that when we go to our
8 growers and I think we've started with our Nitrogen
9 Management Plan template, it has to be logical and it has
10 to be scientifically based or these guys are going to blow
11 you off and not going to cooperate.

12 This is very important for us as we go forward to
13 make sure that what we do is making sense to people. And
14 is not just something that comes out of Sacramento because
15 somebody thinks it needs to be done. We were anticipating
16 a 50 to 70 --

17 --o0o--

18 MR. CLAUSON: -- percent cost increase. We're at
19 about \$1.4 million budget a year. And Bob, since we
20 started in 2003, we've spent ten million dollars in our
21 region doing surface water. I think that shows a
22 commitment of our growers to work on these problems, to
23 continue paying dues. That's a big commitment when it's
24 coming out of your checkbook.

25 But again not to underestimate the amount of

1 months.

2 --o0o--

3 MR. CLAUSON: The goal of the Nitrogen Management
4 Plans -- I think Joe did a good job of explaining that.
5 We're working towards improvement, when and if we need it.
6 I'm preparing myself to come to you and say we have crops,
7 we have areas, we don't think need improvements.

8 And somebody mentioned legacy. We have a legacy
9 issue out about there. But if we do find there are
10 shortages in practices or deficiencies, we'll work to help
11 growers understand what they can do in the context of
12 their crops.

13 And then I believe, too, that same as we've done
14 with surface water, we're going to involve into better
15 management of nitrogen as this new information is
16 developed.

17 And this use of the ratios we believe, too, is
18 going to help us identify outliers. And I don't want to
19 put the outlier term as being a criminal or somebody
20 that's doing wrong. It just may be that the person needs
21 more information. Maybe just needs to talk to an expert
22 that maybe can allow him to focus on the crop needs and
23 not the total amount that's applied.

24 --o0o--

25 MR. CLAUSON: Okay. The Management Practice

1 Effectiveness Program, this is not again to minimize the
2 breadth and the enormity of this undertaking. We're
3 working with other coalitions to figure out how we're
4 going to do this, but this is going to be very important.
5 We need the public and private agronomists working with us
6 to examine the data that's going to be coming past these
7 when they do these studies. It's going to be cutting-edge
8 technologies to do the analysis and also understand the
9 trends over larger areas.

10 I think Rob will back me up in his presentation.
11 There is nowhere in the United States, in the world, no
12 places in the world that are undertaking what you are
13 about to vote on today. I don't want to minimize at all
14 that this program is not massive and an enormous
15 undertaking.

16 The commodity groups are going to be very
17 valuable in our effort to develop this additional
18 information. And we really need to not say today what we
19 are going to decide on five years from now. I think it's
20 going to be a learning process that we need to be flexible
21 in determining what it is we do with the information that
22 we come up with.

23 --o0o--

24 MR. CLAUSON: Again, also Joe did a good job
25 explaining the township level reporting. We think that's

1 going to be the adequate scale for comparison. Some say
2 pesticides are 640. Why don't you do that with nutrients.
3 It's not even a comparable type of management decision.
4 We need these larger areas because --

5 --o0o--

6 MR. CLAUSON: -- I'll show you a little box plot
7 here. This again made up numbers, but when we start
8 getting this data back, most growers are going to be
9 clumped into these yellow areas. Those outliers, on the
10 top, they're going to be the focus of outreach. Those are
11 the guys we're going to talk to immediately, get the farm
12 advisors, the crop commodity groups, CCAs and others to
13 talk to them. If we went on a --

14 --o0o--

15 MR. CLAUSON: -- small scale of a section as you
16 see in the right, this could be done one or two growers
17 that gives you no relative data in our opinion how to
18 compare to many growers.

19 On the left you have a lot -- is the townships
20 reporting. You have a lot more data for comparison. As
21 was said, if you go five, ten years into this and you
22 decide you need to look at it a different way, I think
23 that's obviously in your discretion to do that.

24 We think going forward in a data analysis
25 approach, understanding what's going on out there, and

1 then targeting who and how we talk to the outliers I think
2 this is going to give us a much better tool.

3 --o0o--

4 MR. CLAUSON: And closing, I just want to say the
5 value of East San Joaquin Coalition, the coalitions we are
6 best suited to collect information. I think the County Ag
7 Commissioners do a good job. But adding this onto their
8 burden of requirements, you would be five years away
9 before you have those County Ag Commissioners working, my
10 estimation.

11 Our Board is run by growers and those involved
12 with agriculture. We have proven I believe in the years
13 that we can make a difference impacting these problems
14 that are identified.

15 And I guess I just want to reiterate and
16 encourage you to be flexible. You have committed to be.
17 And again, you'll probably hear more of this. What's good
18 for our coalition doesn't mean it's good for the other
19 regions. I really think as you go through these other
20 coalition orders, that you take keep in mind that we are
21 not South Valley. We are not Sacramento Valley. We are
22 pushing for what we think is appropriate in a region that
23 has identified problems already.

24 Other regions should be able to adjust the
25 programs. You're not saying that they can't. But I just

1 want to reiterate, we believe they should be able to
2 adjust their programs based on their specific conditions.

3 --o0o--

4 MR. CLAUSON: This says Tess, but I'm going to
5 put Rob in place, unless you have some questions.

6 CHAIRPERSON LONGLEY: Any questions?

7 BOARD MEMBER COSTANTINO: And maybe this is for a
8 question for the end. But your PowerPoint -- thank you --
9 it sounded positive. It sounded like you were generally
10 in agreement with where we ended up. But I'll just ask
11 you and put you on the spot, did your Board take a
12 position this waste discharge requirement?

13 MR. CLAUSON: I don't think there is ever going
14 to be a farmer that says they like a regulation. I'm
15 going to -- our Board believes this is a workable program.
16 We believe that we can implement this, that we have the
17 capability and the capacity to take this program on. And
18 I think we can show improvements where they're needed. I
19 think we're going to come back, like I said, with a lot of
20 information that says growers are doing a pretty good job
21 out there.

22 BOARD MEMBER COSTANTINO: Thank you.

23 CHAIRPERSON LONGLEY: Any other questions? Thank
24 you. Mikkelsen.

25 MR. MIKKELSEN: Hi. My name is Rob Mikkelsen.

1 I'm with the International Plant Nutrition Institute. My
2 home is at 40125 Situi Court in Merced, California. And I
3 took the oath.

4 Perry asked me to come and talk to you and tell
5 you a little bit what's happening in relation to
6 fertilizer management and give my perspective on what we
7 can do to move forward with nitrogen management and
8 introduce a concept called the four Rs.

9 --o0o--

10 MR. MIKKELSEN: A little bit about the Plant
11 Nutrition Institute. It started many years ago, and it's
12 supported by all the major fertilizer companies in the
13 world. So that makes us a little bit unique on our
14 perspective because we can see what's happening in
15 different parts of the world, how we're moving forward to
16 protect environmental quality, water quality, and also
17 maintain food production, which is a major issue in many
18 parts of the world.

19 --o0o--

20 MR. MIKKELSEN: And so I'm working the western
21 United States, but we have scientists -- Ph.D scientists
22 as myself throughout the world.

23 Just mention I'm also a certified crop advisor as
24 well as a certified professional horticulturalist. I do a
25 lot of training for the CCAs to help them know what the

1 latest information is.

2 So the mission of IPNI is to give them the best
3 information so they can manage plant nutrients, whether
4 it's manure or fertilizer or whatever it may be. What is
5 the best science. I work closely with the universities
6 throughout western North America. I'm on the FREP Board,
7 for example, on the CCA Board trying to get these people
8 to talk together and give them the best science possible.

9 So from that perspective, we're trying to focus
10 down on the east San Joaquin area now and what we can do
11 there, looking at this issue that we're dealing with.

12 --o0o--

13 MR. MIKKELSEN: Just a little bit of background
14 on why we use nitrogen. I think for anyone in
15 agriculture, this is pretty obvious. But one of the world
16 experts Vak El Smil (phonetic) came up with an estimate
17 recently that we have three billion people or 35 percent
18 of the world's population without nitrogen fertilizer.
19 That is with using the organics and manures and everything
20 else. Half the population wouldn't be on the earth now.
21 So we have to figure out a way we can use this nitrogen in
22 a smart way, because we're not going to be going back.
23 That's what we're talking about today, how can we be smart
24 about what we're doing.

25 --o0o--

1 MR. MIKKELSEN: This is a diagram called the
2 nitrogen cycle. And when I look at this, I see all these
3 arrows and it looks like spaghetti almost. There is
4 arrows going up and down. We see nitrogen in the water.
5 We see nitrogen in the air. It's in the plants. It's in
6 the soil. So our issue is how do we get a handle on this
7 and keep that leaching loss arrow as small as possible?

8 So what we're asking the farmers to do is
9 incredibly complex and sometimes it's even conflicting as
10 well. So if the system is naturally leaky, it will never
11 be a 100 percent efficient. But I think we're all
12 agreeing we can do better than what we're doing. And
13 we're proposing some things that will make that happen.

14 --o0o--

15 MR. MIKKELSEN: In concept, it's pretty simple.
16 That's what we're talking about. Let's balance removals
17 and replacements. We're pretty familiar and we can
18 measure these removals pretty well. And we can measure
19 how we replace that nitrogen from a variety of sources.
20 So we say, well, that should be pretty easy to do. When
21 we look at really how to do that --

22 --o0o--

23 MR. MIKKELSEN: -- we look at the inputs, water,
24 nitrogen fixation from crops like alfalfa that make their
25 own nitrogen. We look at what's happening in the soil.

1 We look at the fertilizer, other organic materials, such
2 as dairy manure or compost, yard waste. They have all
3 these things we're trying to manage that go into the soil
4 and balance that with all the outputs. We're trained to
5 grow something to harvest and then also some of that
6 nitrogen ends up in the plant.

7 The two undesirable ones are the gas loss and
8 nitrogen leaching. Those are what we are trying to
9 minimize. It's a very complex system. Things we add to
10 the soil and sometimes that's hard to know where that's
11 going exactly. We're doing the best we can. But it's a
12 very complex system. We heard earlier about art and
13 science.

14 --o0o--

15 MR. MIKKELSEN: I put this slide in about
16 nitrogen management. It would be nice if we could say
17 it's a formula. Just color within those lines and you're
18 going to have a masterpiece.

19 Well, obviously, that's not the case. It's not a
20 formula. It's not an engineering solution, like many of
21 the things we do. It really is an art and very complex.
22 But we are making progress.

23 When I deal with training of the certified crop
24 advisors, I'm helping them how to understand how to put
25 all the piece together to achieve the objective we have.

1 --o0o--

2 MR. MIKKELSEN: We often here, well, if we just
3 cut back on the rate of nitrogen, that will take care of
4 the problem; right?

5 Well, if you're having trouble with your car, you
6 don't just look at the gas peddle because that's what
7 makes the car go. It could be a flat tire. It could be
8 the muffler dragging on the ground. It could lots of
9 things, the suspension. So you don't just look at the
10 rate. You have to look at the whole package.

11 --o0o--

12 MR. MIKKELSEN: So the industry has really
13 adopted a program. We call it the 4R strategy. And we've
14 put a lot of effort into educating growers and thinking
15 about the 4Rs. And the Rs are rights. The right source
16 of nitrogen, the right rate, at the right time, and put it
17 in the right place.

18 Because if you mess up any one of those, it
19 doesn't matter what you do on the other ones. If you use
20 the wrong source, put it on at the wrong time, or you
21 don't put it where the roots can use it, then it doesn't
22 matter what you do with the other ones. So it's really a
23 very complicated process of getting all of these to work
24 together.

25 --o0o--

1 MR. MIKKELSEN: So as we look to the future and
2 say, well, what don't we understand? How come we're not
3 doing a better job? One of the things -- I just put a few
4 examples here. What is the fertilizer replacement of
5 irrigation water nitrate? Well, FREP is spending almost a
6 million dollars just getting started to answer this one
7 question. Because when we looked at this, we said, we
8 really don't know that. No one has ever tested it before.
9 How fast organic materials, how fast do they break down
10 when released the nitrogen?

11 We know if you mess up the irrigation practices,
12 it doesn't matter what you do with your nitrogen. So to
13 look at nitrogen without water doesn't make sense.

14 How do we account for the complex rotations we
15 have? And when you're only removing a small portion of
16 the plant, what happens to all the residue. Just talking
17 at lunch time about when you harvest broccoli, you take
18 the flowers off and leave the rest of the plant behind.

19 You're not taking off very much nitrogen in those
20 little florets in the broccoli.

21 Throughout the valley, you have such a range of
22 conditions. I live in Merced. We have sandy soils in the
23 Merced River basin there compared to the some of the high
24 clay soils. We need a lot of flexibility. There is not
25 one answer for all these things.

1 Looking at the rooting zone as well. Grow onions
2 and garlic down my way. And there is walnuts up closer to
3 Stockton. Walnuts may be seven feet of roots. Onions may
4 be six inches of root. So we need a lot of flexibility
5 again.

6 And we hear about enhanced efficiency
7 fertilizers. We are just beginning to understand how
8 those can contribute to some of the problems that we have.

9 --o0o--

10 MR. MIKKELSEN: So how do we figure out what's
11 moving below the root zone? That's what we're really
12 trying to figure out.

13 We do some demonstrations such as this where we
14 put dye actually in the irrigation water. Let the water
15 run for a while and see where that simulated fertilizer
16 might go. So we are not going to get into the technical
17 things, but interesting demonstrations that get the
18 farmers attention. If I leave the water on too long, that
19 nitrate is all wasted. It's all moved past the root
20 system.

21 Can we do direct measurements under each field?
22 Well, that is technically possible to put wells and soil
23 samples every year. But we don't know what to do with the
24 numbers, and it would be impractical and very expensive.

25 How about mass loading? That's a little more

1 doable, but still has a lot of assumptions. You do it in
2 one area and you hope it transfers somewhere else. We
3 need a lot of new science to measure some of these things,
4 and it's still not very quantifiable often.

5 On the FREP Board, we fund some studies like this
6 and they are easily several hundred thousand dollars a
7 year to set up one trial like this. And Perry is talking
8 about setting up trials all over his coalition to measure
9 some of these practices. So it's an expensive and a
10 long-term project.

11 --o0o--

12 MR. MIKKELSEN: Looking directly at the fate and
13 transport of nitrogen, we can use isotopes and tracers,
14 but those are very expensive and difficult things to do.

15 Down there, I put integrate multiple practices.
16 For example, cover crops is a technique that we often
17 recommend to recover nitrate leaching. A week or so ago,
18 the Air Resources Board had a hearing on nitrous oxide or
19 nitrogen gases going as a greenhouse. The result there
20 was don't use cover crops because they increase nitrous
21 oxide.

22 So the farmers are now going, well, do I want to
23 keep the nitrate from leaching or keep it from going in
24 the air? So we need some real comprehensive studies to
25 figure out what we are going to recommend to the growers.

1 It's not simple at all.

2 --o0o--

3 MR. MIKKELSEN: One analogy to look at this is
4 these ships are very complicated. We adjust their sails
5 so they move in the right direction. And in our case, the
6 right direction would be water quality, sustainability
7 goals, and such things.

8 --o0o--

9 MR. MIKKELSEN: So just on our little nitrogen
10 ship here, we have to adjust each one of these sails
11 individually to get to our goal. If you just get one, or
12 get the sail backwards, it's going to stop the ship. And
13 you're not going to get to the goal. So again, incredibly
14 complex and a challenging situation.

15 Not focusing on nitrogen rate all by itself to
16 the exclusion of the other things.

17 --o0o--

18 MR. MIKKELSEN: So where are we and where do we
19 go?

20 Well, we've demonstrated that nitrogen fertilizer
21 management is very complex and we're developing much of
22 the science so we can get it right.

23 The fertilizer industry, the CCA, WPHA, my
24 institution, the California Fertilizer Industry, we are
25 working closely with academic experts, the coalitions,

1 commodity groups to develop some tools for nitrogen
2 management. FREP has just given us a grant to develop
3 many new educational tools for nitrogen management in the
4 next few years. So we're looking forward to working with
5 CDFA as well.

6 Put these 4R practices into the hands of the
7 decision-makers and the CCAs. Those people on the farm
8 are the ones that are making those recommendation.
9 They're the ones deciding how long do I run my irrigation
10 system? When I do cultivate? Where do I put my
11 fertilizer? What kind do I buy from the dealer?

12 I'm not sure what that cut off there. But
13 anyway, rushing ahead of the science will not produce the
14 results that we want.

15 So as Perry mentioned, we need to go one step at
16 a time. We're moving in the right direction. We're all
17 committed to this goal. There are lots of incentives to
18 reach that goal. But it's expensive and slow, and I think
19 we are making progress.

20 --o0o--

21 MR. MIKKELSEN: So this 4R really is the key to
22 getting nitrogen management right, using the right source,
23 the right rate, time and place. So the International
24 Plant Nutrition Institute in cooperation with WHPA, the
25 different coalitions, commodity groups, the certified crop

1 advisors, we're all with committed to working together and
2 implementing these things to improve nitrogen management.
3 But it's going to take a little while to get there.

4 That concludes my presentation. If there is any
5 questions, I'd be glad to entertain those.

6 CHAIRPERSON LONGLEY: Are there any questions?
7 Thank you very much.

8 MS. DUNHAM: Thank you. Tess Dunham with Somach
9 Simmons and Dunn here today representing the East San
10 Joaquin Water Quality Coalition.

11 And unfortunately, you know, the lawyer, we
12 always get to the boring stuff. And Rob and Perry get to
13 do all the fun, interesting stuff. But hopefully I think
14 that my comments here today are going to be fairly modest.
15 And so hope that the Board will think about accommodating
16 some of our very -- what we would consider very modest
17 requests.

18 Just in general, I think it's important that we
19 do have just a couple of general legal concerns. It was
20 talked about about a lot of the number of late changes.
21 And I think one of our primary concerns really is I
22 understand that late changes are needed and necessary, but
23 there were a number. And of course, there was no
24 additional written public comment period available for any
25 of the late changes, this week as well as some that came

1 out in early November. And the ones in early November
2 were fairly quite extensive.

3 So it is somewhat challenging to make sure you
4 have the opportunity to provide all the written comments
5 that you need to do when we are dealing with such
6 substantive late changes. Just want to -- that's a
7 comment for the record.

8 I also think it's important to note this process
9 does not happen in a vacuum. I know the Board is well
10 aware -- and I won't go into it -- but there is challenges
11 to the EIR to which this WDR is relying upon. And we have
12 been having some administrative record issues we're trying
13 to resolve with the various counsels. And of course,
14 again, it does all tie in together and this does not
15 happen in a vacuum. So we have to keep in the mind there
16 are many different parts and components to this program.

17 --o0o--

18 MS. DUNHAM: I do want to talk a very briefly
19 there is new provisions within this WDR that are not
20 typical and not something that we've seen previously
21 within the waiver program. And these are some of the
22 general provisions. They're called or termed Farm
23 Management Performance Standards. And I understand a
24 little bit better today after talking to staff yesterday
25 the intent with respect to the performance standards, but

1 standards in compliance with water quality standards. I'm
2 concerned that, to me, by including the water quality
3 standard provision within the performance standard that
4 it's not necessarily the intent or necessary and in large
5 part it's a duplicative requirement. There are other
6 provisions already that say you have to implement
7 management practices to achieve compliance with water
8 quality standards. There is provisions 4(b)(3),
9 provisions 4(b)(6), and then in the farm management
10 performance standard. You have three different permit
11 limits that you could be in violation for for the exact
12 same thing.

13 And I do believe that when we come to the
14 enforcement policy, the more technical arguments you have,
15 you violated three different provisions of the permit,
16 that goes into the calculations and violations of the
17 permit. When you have the same provision three times in
18 the permit, it is of concern to me.

19 So my request is simply not to delete the whole
20 performance standard provision itself that talks about the
21 need to minimize waste to percolation of groundwater and
22 so forth, but simply to at least the delete the inclusion
23 of the water quality standard language from the
24 performance standard and the provision of nuisance. It's
25 not necessary. There are other provisions that already

1 require it. It's duplicative. And it makes the intent
2 and the discussion with respect to performance standards
3 confusing.

4 --o0o--

5 MS. DUNHAM: The next issue is one that's been
6 touched upon a little bit earlier today I think by Mr.
7 Karkoski in that there is a lot of discussion with staff
8 as well how do you ask for information and when can you
9 get individual information from the coalition that is
10 submitted to the coalition.

11 And currently, in Provision 10 of the Tentative
12 WDR, the Regional Board would be required to pretty much
13 request individual information used by the third party
14 pretty much upon -- at any time upon request. There is no
15 qualification. There is no requirement for a
16 justification associated with that request. It's fairly
17 open-ended.

18 And we actually have suggested -- and I believe
19 we made this comment in Bakersfield as well -- there
20 should be some qualification associated with requesting
21 information from a third party. And in large part, the
22 third party has gained the confidence of its members. And
23 by through that confidence, it has allowed Perry and Wayne
24 to go out and talk with them and to get them to make
25 changes to what they do in order to improve water quality.

1 And if there is a suspicion that whatever they give to the
2 third party is automatically open to being disseminated
3 widely, I think it creates some trust problems between the
4 coalition and its members.

5 So again, I think we're looking for a modest
6 request to change that language to add here that, first of
7 all, that the request from the Central Valley Board, that
8 it has to be a written request to the third party from the
9 Executive Officer. Currently, it's not specified as being
10 written. It could be any open-ended oral request. And I
11 think for the third party, it's important that that
12 request be in writing. So if their member comes and asks,
13 "Why did you give up my information," they can say it was
14 upon a written request.

15 And that the written request really needs to
16 provide some type of explanation or need for the reports
17 and justification for that information. And this is
18 actually very consistent with -- actually a little bit
19 less of a burden than if you went to 13267 of the Water
20 Code, it does require pretty much a similar requirement.
21 So if the Executive Officer wanted to go to an individual
22 to ask for some additional information than using the
23 13267 authority, they would have to do it in writing and
24 would have to provide the justification. And actually,
25 they would also have to identify the evidence that they

1 are relying upon in order to make that justification. So
2 we think it's only appropriate that there be some caveat
3 and requirements associated with that here.

4 --o0o--

5 MS. DUNHAM: And I know there has been a lot of
6 talk about issues associated with what level of reporting,
7 whether it's township, section, farm level. I think it's
8 been stated well between Rob and Perry and Joe earlier
9 today that farm level fertilizer use reporting isn't
10 technically sound. It doesn't provide us any scientific
11 technical information with respect to determining impacts
12 to water quality. Really, it comes down to it's a
13 political reality. It's a political question. And to
14 the extent that that is a political issue, it's an issue
15 that should reside in the Legislature, not necessarily
16 with the Water Quality Board.

17 I will note some say the central coast has
18 required it. I think it's important to note that the
19 central coast requirements have been petitioned to the
20 State Water Board. The State Water Board is reviewing
21 those and has stayed those requirements while it undergoes
22 its review. I can't tell you whether they agree with them
23 or not. They haven't opined on them. But they did say
24 they think it was proper to stay them until they make a
25 final determination.

1 --o0o--

2 MS. DUNHAM: So we only needed 35 minutes.

3 CHAIRPERSON LONGLEY: Thank you.

4 Could you back up on the slides to where you
5 talked about the first major item inclusion of a water
6 quality standard within a performance standard.

7 MS. DUNHAM: Yes.

8 CHAIRPERSON LONGLEY: Okay.

9 EXECUTIVE OFFICER CREEDON: Dr. Longley, that
10 would be in your agenda on page 19. I think you're
11 referring to 4(b)(7) or 4(b)(20) provision on page 19 of
12 your agenda package.

13 And she has a point in referring to Items 20 C
14 and D. I think that's what you're referring to, Tess.
15 Where we prevent pollution nuisance and achieve and
16 maintain --

17 MS. DUNHAM: That is correct.

18 EXECUTIVE OFFICER CREEDON: Those are duplicate.
19 We've added a footnote in the late change on that as well.
20 But taking those out of that section, those two provisions
21 C and D, would end the footnote that staff is recommending
22 would not be an issue. Because she's right, it is
23 addressed in other parts of the Order.

24 BOARD MEMBER COSTANTINO: Can I get clarity on
25 where exactly we're looking at?

1 EXECUTIVE OFFICER CREEDON: It's under provision
2 4(b).

3 MS. DUNHAM: General provision.

4 EXECUTIVE OFFICER CREEDON: General provisions
5 4(b)(20) C and D. It's under the section that are
6 requirements for members of the third party group. So
7 those would be the individual requirements for the
8 coalition -- members of the coalition

9 MS. DUNHAM: For the members.

10 EXECUTIVE OFFICER CREEDON: For the members of
11 the coalition. Sorry. It's in your agenda package.

12 CHAIRPERSON LONGLEY: It's right above
13 requirements for the third party group.

14 EXECUTIVE OFFICER CREEDON: Exactly.

15 BOARD MEMBER COSTANTINO: So Pamela, you were
16 suggesting that C&D could be deleted and without a
17 problem?

18 EXECUTIVE OFFICER CREEDON: Yes.

19 LEGAL COUNSEL MAYER: We have the similar -- like
20 Ms. Dunham was saying, we have the same exact requirements
21 earlier in the Order on page 16 III, receiving water
22 limitations. So it's just kind of cross-referencing it.
23 But yeah, by eliminating the second reference, you don't
24 lose anything from the Order.

25 CHAIRPERSON LONGLEY: Does that take care of that

1 particular concern for --

2 MS. DUNHAM: Yes, it would.

3 CHAIRPERSON LONGLEY: Thank you. Let's go to the
4 next one, which is the no qualification for when
5 individual member info can be requested. You provided
6 some language?

7 EXECUTIVE OFFICER CREEDON: Well, I do take some
8 exception so this. There are two issues.

9 I agree with Ms. Dunham. If I was the require
10 new reporting or information beyond what this order
11 requires, she's right, 13267 kicks in. And I do need to
12 write a full explanation.

13 If it's about compliance information associated
14 with what they're required to do in this order and I need
15 that individual information, then I shouldn't have to go
16 to such length of justification, although typically in our
17 request when we do it, we do say why we are asking for
18 this information and the reasons behind it. So there's
19 usually this is why and so therefore please submit this by
20 a certain date. And that's standard practice.

21 I don't think it needs to be explicitly in here.
22 I've had this authority to request this information all
23 along. And I think -- I'd like to know from Ms. Dunham
24 how many letters have you received over since 2003 from me
25 from the individual growers asking for this data?

1 MS. DUNHAM: I have to defer to Mr. Clauson. I
2 personally as a grower have never received one.

3 EXECUTIVE OFFICER CREEDON: As a coalition, I
4 think they can say that we haven't made that type of
5 request, unless there was an enforcement issue. And then
6 we dealt directly with the grower individually.

7 It's not something I abuse. It's not something I
8 intentionally go out to find information. There has to be
9 a reason why I need to find that. When we get to that
10 point, we usually always write an explanation or
11 justification for the information.

12 CHAIRPERSON LONGLEY: With the existing
13 conditional waiver, is it consistent with what you're
14 requesting here?

15 EXECUTIVE OFFICER CREEDON: I don't have the
16 exact language in front of me. You know, I think the last
17 sentence she's recommending, it's not necessary. And I
18 would not recommend putting that in there. If you want it
19 to be written, I think that's appropriate. I usually
20 always write a request to the growers. I don't know
21 exactly what's in the current waiver.

22 MS. DUNHAM: Can I just add, Dr. Longley, this
23 goes to the third party from the Executive Officer or her
24 delegatee.

25 CHAIRPERSON LONGLEY: Understand.

1 MS. DUNHAM: This just seems to me to be
2 important for the third party to be able to tell the
3 individual we received a written request. It's oral. I
4 know she probably would never do it in an oral manner, but
5 I think making sure it's required to be written for now
6 and into the future since this is a long-term program will
7 make sure that the intent is very clear going forward in
8 the future as well.

9 MR. CLAUSON: Dr. Longley.

10 CHAIRPERSON LONGLEY: Yes.

11 MR. CLAUSON: I'd like to say, too, Pamela is
12 correct. We get written requests, but I have been coached
13 the last year that Pamela is not going to be there
14 forever. And we need to have in this long-term order
15 really what we think is appropriate guidelines.

16 EXECUTIVE OFFICER CREEDON: Good Lord. I'm
17 putting you on notice in five years, when I'm 62, I'm
18 going to retire. And God willing, I'm here in the next
19 breath. So there is no guarantee.

20 But regardless, I don't -- you would not hire an
21 Executive Officer and keep them here if they were to just
22 go out and start going crazy asking for information.

23 CHAIRPERSON LONGLEY: Well, general practice is
24 it's written. And providing the need for the reports, I
25 don't see that that's particularly onerous. I would

1 suggest that maybe this be somewhat worked -- because none
2 of us are going to be here forever and hopefully this
3 program has viability.

4 EXECUTIVE OFFICER CREEDON: It's just Board
5 practice. When we ask for information, see a need for it,
6 we have to provide a reason why. If we don't approve
7 something, we provide a reason why. They don't have to
8 listen --

9 BOARD MEMBER SCHNEIDER: I would in the include
10 the second sentence. But I know Tess doesn't like things
11 to be duplicative in our reports. But I don't mind it and
12 would be happy to add the word "written" here. If that's
13 standard practice, anyway. I think it's -- and if those
14 assurances help us do it, you know.

15 And I do think it is important in these
16 proceedings to not be thinking about the individual that's
17 involved. We're talking about the placeholders that we
18 all are. And as such respect as I have for Perry and the
19 good work he's done, I'm afraid he might not be here
20 forever, too.

21 MR. CLAUSON: I'm going to pay for that.

22 CHAIRPERSON LONGLEY: Lori has her microphone on,
23 but I'd like to ask questions of Board members first.

24 Is there any objection to including language here
25 that states that the request will be in writing?

1 BOARD MEMBER COSTANTINO: It's written, but not
2 the second sentence, right. I have no objection to that.

3 BOARD MEMBER RAMIREZ: I like that suggestion. I
4 would not be in favor of the second sentence, but the
5 written part is fine.

6 CHAIRPERSON LONGLEY: Good. Lori.

7 LEGAL COUNSEL OKIN: I think my mike just went
8 off. I don't have anything to add to that.

9 CHAIRPERSON LONGLEY: Okay. Thank you. We've
10 got one more here.

11 BOARD MEMBER RAMIREZ: I would like to say that
12 not everybody is bored by legal talk, Tess.

13 CHAIRPERSON LONGLEY: You had one more and that
14 had to do with provided resources against -- provided
15 reasons against the farm level fertilizer use reporting.

16 MS. DUNHAM: Yes. I talked about it.

17 CHAIRPERSON LONGLEY: Yes.

18 MS. DUNHAM: Do you have questions?

19 CHAIRPERSON LONGLEY: Yes. Put it up, please.

20 MS. DUNHAM: Sure.

21 CHAIRPERSON LONGLEY: Okay. My own personal
22 feeling on this is that this has to be in here, that the
23 State Board does away with it. The courts do something
24 with it or if the Legislature does something else with it.
25 That's not within our purview. But I think that if this

1 is -- if this is what the Board when they get through with
2 their deliberations -- and I'm talking about those of us
3 up here -- believe should be here, then I think it should
4 stay in. That's something --

5 EXECUTIVE OFFICER CREEDON: Dr. Longley, we are
6 not requiring farm use. People keep bringing this up. We
7 do not a requirement yet in this that requires fertilizer
8 use.

9 ASSISTANT EXECUTIVE OFFICER LANDAU: There are
10 suggestions we should be requiring it.

11 CHAIRPERSON LONGLEY: I'm looking down here and
12 I'm looking at the farm level reports we are talking
13 about. You bring up a good point. I'm looking at the
14 bullets and not up higher.

15 BOARD MEMBER SCHNEIDER: I think our staff did a
16 good job, and Tess alluded to it, in discussing the
17 measurement, using the township instead of the section. I
18 initially had concerns about that. I'm quite comfortable
19 at this point. And if a problem is indicated or we feel
20 like there is an issue, we have the ability to go deal
21 with that. That makes a lot of sense.

22 CHAIRPERSON LONGLEY: But the Board -- I ask that
23 slide number six be put it. It described the reports that
24 were required. Some of them had to do with fertilizer
25 applications and so forth. The nitrogen management plans,

1 if you will --

2 MS. DUNHAM: You may have misunderstood. This
3 was -- I know that there are probably some individuals in
4 the audience that will testify later to where they would
5 hope that the Board would require a direct report maybe on
6 a farm level basis directly to the Board or to the
7 coalition that is then reported on a farm level basis.

8 And this is just not to say that we are in
9 agreement with the nitrogen management plans summary
10 reports coming to the coalition and the coalition
11 aggregating the information to the township level. We are
12 trying to make sure you understand it.

13 We don't believe there are technical
14 justifications, as Mr. Karkoski I think very well talked
15 about earlier today, for at this point in time for there
16 should be some direct level farm -- by farm, by crop, by
17 year on fertilizer use from -- to the regional Board from
18 individual farmers.

19 CHAIRPERSON LONGLEY: Before you sit down, Board
20 members have any comments or questions of Tess?

21 BOARD MEMBER MOFFITT: I don't have any for Tess,
22 but I have a question for Rob.

23 CHAIRPERSON LONGLEY: Okay.

24 BOARD MEMBER MOFFITT: So thank you very much for
25 your presentation, and I hope that will be available

1 online. I think it was a very useful presentation.

2 In a dream world, you indicated some scenarios of
3 how we could collect data, and this would be extremely
4 cumbersome, very expensive. They might give us amazing
5 data, but for this Central Valley as we've all kind of
6 come to the conclusion, that's virtually impossible.

7 The Nitrogen Management Plans, is that a solid
8 step that you feel would give up the accurate information
9 that is manageable?

10 MR. MIKKLESON: I think that is a great first
11 step. I think what the Board is considering today is
12 something we can live with.

13 Working with farmer education, I realize this is
14 a very slow process. I do a lot of training and it's
15 going to take some time. But I think we can get people on
16 board and move them in the right direction. So as long as
17 we're realistic in our expectations. I think getting
18 people to think about what they're doing and document what
19 they're doing will help us get to the goal we want, which
20 is to improve water quality.

21 BOARD MEMBER MOFFITT: Great. Thank you.

22 CHAIRPERSON LONGLEY: Any further questions?
23 Thank you very much.

24 We are now Board is now ready to entertain
25 testimony from environmental justice.

1 (Thereupon an overhead presentation was
2 presented as follows.)

3 MS. FIRESTONE: Thank you. Sorry for the delay.

4 So my name is Laurel Firestone. I've taken the
5 oath. I'm an attorney and Co-Executive Director of the
6 Community Water Center. I'm speaking on behalf of both
7 the Community Water Center, Aqua, CRLA, Clean Water Action
8 and wanted to talk with you about three main concerns we
9 had with this Order.

10 --o0o--

11 MS. FIRESTONE: We've been working with the Board
12 for longer than the last four years, but very intensely
13 over the last four years on this program in particular.
14 It's been a very intensive process, and we want nothing
15 more than to be able to come in here and say adopt this.
16 This is great. We love it.

17 Unfortunately, there's three key problems that
18 need to be addressed before we can support this, and they
19 have to do with the legal responsibilities of this Board.
20 And you know, there's what the Board would like to do and
21 there's what they're legally -- what you are legally
22 required to do and what the law says. And we want to make
23 sure these are addressed before asking for approval.

24 This has been -- of the program as a whole. We
25 think the program is very close to being where it needs to

1 be, but it needs to address these three things. And we
2 think it could either address them today or if additional
3 consultation on exact language is needed, it wouldn't
4 delay it more than a month or two. And we could -- and
5 it's better to get it right now than have to take it up
6 through the State Board process or -- and also get it
7 right the first time with this first permit, rather than
8 setting something that doesn't get it right and then
9 having to go through that with each of the permits as
10 well.

11 --o0o--

12 MS. FIRESTONE: Specifically, there's three main
13 issues, lack of public review and input on a couple of
14 very key documents and plans that really are determinative
15 as to what the requirements of this permit are. And this
16 has been a very collaborative process thus far. It's
17 really important that we have some basic safeguards since
18 there is some public review in some of the key documents
19 that are going to set the actual requirements of this
20 program.

21 The other is the last two have to do with the
22 anti-degradation policy and the legal requirements around
23 that. There was a recent decision by the appeals court in
24 a suit that we had with you all -- or I guess we still
25 with you all on the Dairy Program that was very clear and

1 really clarified a lot of these issues. We need to make
2 sure those are addressed correctly in this Order. And we
3 have some suggestions on that.

4 --o0o--

5 MS. FIRESTONE: So on the first one, the water
6 quality plans and programs, there's a couple of
7 foundational documents that you have a whole list of
8 documents that people have to do and plans and what are
9 the work plans. It's really hard to tell what is going to
10 be required from this until you see those actual details.

11 And there's four key ones that we think are key
12 determinations and plans or programs that we think need
13 public review that right now there is no mechanism for
14 public review, other than if Pamela or whoever is here
15 after her decides to get public review.

16 It has the effect of excluding the public and
17 ourselves and stakeholders that have been very involved
18 and are directly effected by this from participating in
19 these key documents. The plans and designations are
20 substantively determinative as to what the requirements
21 are in this program. And we think this has the effect of
22 delegating the authority to set waste discharge
23 requirements to the Executive Officer in violation of
24 Porter-Cologne and the sunshine laws of the state.

25 So we are not asking for public review of every

1 single thing. We know there is a lot of information that
2 is staying with -- there's compromises being made. A lot
3 of the detailed information is staying with coalitions.
4 But in terms of the plans and the specific designations as
5 to what, for example, is high and low vulnerability areas,
6 those are substantively key for determining what the
7 meanings of any of these requirements are.

8 So specifically -- and you know, this program has
9 an unprecedented level of data and plans and requirements
10 that are really developed by growers and the coalitions
11 that are outside of the purview of this sort of public
12 process and not going before the Board. So we think a
13 basic amount of input and review by the public and
14 stakeholders is a bare minimum. It's something there is
15 already language for for the Groundwater Management Plans,
16 for example, and the templates. I think Joe went over
17 that.

18 We think an easy thing to do would just be use
19 that same language and apply it for these four things. So
20 the key ones are the groundwater assessment reports.
21 Those are foundational because they determine kind of
22 everything that falls from that. They determine the
23 designation of high and low vulnerability areas. They
24 determine -- and that determines the level of oversight
25 and protection provided by the regulations. They

1 determine the constituents and locations to be tracked
2 through the trend monitoring program. You know, they're
3 kind of the substantive base line for everything that
4 follows. We think, you know, it wouldn't delay or add
5 cost to make that -- to add a public review to that.

6 Similarly, there is a -- similar for the Trend
7 Monitoring Plan, we think that's going to set the ability
8 to determine trends over regional area for many years to
9 come. We think a basic thing is for that basic plan to
10 have some public review and the Management Practice
11 Evaluation Program as well.

12 And then any -- the establishment and changes to
13 high and low vulnerability areas we think should also have
14 some at least minimal public review.

15 --o0o--

16 MS. FIRESTONE: Two things that were added were
17 allowing the Executive Officer to reduce the frequency of
18 updates and reports for the Farm Management Valuations and
19 the Nutrient Management Plan summaries at a very early
20 date. And we think again there should be some public
21 review and notice before allowing to do that. I don't
22 think this would delay things much and allow it some basic
23 safeguards.

24 So as a summary on this first issue, at a
25 minimum, what we're asking for is the same requirements

1 but for public review and input as are required now for
2 templates and Groundwater Management Plans for the
3 following key plans programs and fundamental changes and
4 requirements that are outlined here, the Groundwater
5 Assessment Report, the Trend Monitoring Plan, the
6 Management Practice Evaluation Program, changes in
7 groundwater vulnerability designation because that has
8 huge, huge implications for requirements and changes in
9 the requirements of frequency of reporting and for Farm
10 Management and Nutrient Management Plans.

11 --o0o--

12 PANEL CHAIRPERSON LONGLEY: The second issue is
13 really around inadequate requirements for base line
14 information to determine degradation. So the anti-deg law
15 says that it is the obligation of this Board to protect
16 the maximum quality to achieve the maximum quality for the
17 maximum benefit for the people of the state. And they
18 are -- and to do that, you need to establish what the base
19 line is for determining degradation. And there's nowhere
20 in this permit or in any of the documents or reports that
21 you're establishing a base line from which to measure
22 degradation from. So you can't know how much degradation
23 has occurred or will occur what the effects might be if
24 you don't know where you're measuring from.

25 So what we're suggesting is that you just

1 include -- you know, this is not ideal. But in a
2 practical way, what we're suggesting include this in the
3 groundwater assessment reports as also part of that base
4 line kind of basic assessment for the Groundwater
5 Assessment Reports is to provide that base line which the
6 court defined as the best water quality since 1968 and use
7 that as a base line for -- as establishing the base line
8 for the anti-degradation policy. So we're suggesting
9 including that in the groundwater assessment report.

10 --o0o--

11 MS. FIRESTONE: We're also -- the other thing the
12 Court said is there needs to be a mechanism for tracking
13 degradation or being able to detect or track degradation.
14 And our understanding is that that's primarily through the
15 Trend Monitoring Plan. We think that the Trend Monitoring
16 Work Plan should also add something to identify any
17 degradation that occurs relative to 1968 base line. It
18 adds another -- basically adds -- makes it so that that
19 report is also -- and that plan and work plan is also
20 trying to relate the trends to that base line basically.

21 --o0o--

22 MS. FIRESTONE: Additionally, not all of the --
23 the other thing is if you're not measuring something or
24 you don't have a way to measure it, you can't tell whether
25 degradation is occurring.

1 You know, we've talked a lot about pesticides.
2 We think, you know, by law, you should be tracking and
3 having some mechanisms to track all of the potential
4 degrading constituents, at a minimum though.

5 --o0o--

6 MS. FIRESTONE: We think that you should make
7 sure that you're including all constituents of concern.
8 That means any constituent that has already been found to
9 exceed water quality objectives or/and has already been
10 identified as a constituent of concern, at least that
11 should be included in the trend monitoring -- and that
12 should be included in the trend monitoring program. So
13 that would include pesticides.

14 And what that means is you can still use and rely
15 on whatever monitoring is going on through DPR or other
16 outside mechanisms, but you wouldn't exclude it just
17 because it's a pesticide. Because DPR's program is not
18 based on trying to measure amounts of degradation over
19 time. It's trying the really focus on protective
20 practices. And this really is a different function. It's
21 around trying to detect levels of degradation. So we
22 think all constituents of concern should be included in
23 that.

24 And like I said, the groundwater -- so this is
25 sort of the minimum proposed changes that I just talked

1 about.

2 --o0o--

3 MS. FIRESTONE: And finally -- and this is really
4 key is that the compliance limitations don't comply with
5 the law.

6 --o0o--

7 MS. FIRESTONE: What you have right now, as you
8 say, is that the receiving water limitations basically
9 allow for -- so it says waste discharge from members shall
10 not cause or contribute to an exceedance of applicable
11 water quality objectives and ultimately not cause or
12 contribute to a condition of pollution or nuisance. Then
13 you have a footnote that says unless you're doing it with
14 an approved plan, Groundwater Management Plan.

15 Well, the -- and that those can allow up to then
16 years. So basically what that says is you can continue to
17 pollute or cause nuisance for up to ten years, which is
18 not allowed under the basin plan. It's in the allowed
19 under the anti-degradation policy. It's just not legal.
20 And it's also -- you know, you're basically allowing
21 continued pollution if people are -- there's no way that
22 that should be compliance and that should be something
23 that this Board sanctions.

24 --o0o--

25 MS. FIRESTONE: It's also -- you know, there's a

1 number of things that are that make it unlikely to even
2 achieve the ten year. You know, we think that there's
3 some -- that there's insufficient information to determine
4 the impact on water quality collected. But I think from a
5 legal perspective, what I want to focus on is the
6 fundamental problem is that you need to set a goal to
7 protect and improve existing water quality to achieve the
8 highest quality from the maximum benefit of the people of
9 the State.

10 So what this is doing so far is just saying not
11 only that you're only aiming to just prevent pollution,
12 but that you're actually going to allow pollution for up
13 to ten years. And that is far different than what's
14 legally required, which is to set your goal at protecting
15 and improving existing water quality to achieve the
16 highest quality for the maximum benefit of the people of
17 the state.

18 So what really you need to be doing is
19 determining what is that maximum water quality. And the
20 way -- then what you said is and you're allowed to do is
21 say, okay, the max -- the base line that we're starting
22 from is a certain level. We're going to allow some
23 limited degradation above that. You're totally -- it's
24 totally appropriate to do that. But you need to determine
25 what that level is. And right now, what you're doing is

1 allowing not just a limited amount of degradation; you're
2 allowing the full amount of degradation up to the level of
3 pollution. That's far different than what your findings
4 say, which is that you're allowing a limit amount of
5 degradation. You're allowing the maximum amount of
6 degradation without any justification or consideration. I
7 don't even think this Board totally understands that's
8 what it's doing. And we have some specific -- I know my
9 time has run out.

10 --o0o--

11 MS. FIRESTONE: I had some specific changes to
12 the language around this last issue that I have in the
13 last few slides I can go through, if you want to allow me
14 time. But otherwise just to --

15 CHAIRPERSON LONGLEY: Give us your summary,
16 please.

17 MS. FIRESTONE: Okay. The summary -- I mean, so
18 you mean -- I'll skip the actual language. If you have
19 questions about that, you can let me know.

20 But we have some suggestions on how you could
21 comply with this today. And as a bottom line, we just
22 hope that -- we really want -- we think this program is
23 very close to where it needs to be. But it does need to
24 comply with the laws that you're sworn to implement. And
25 right now it doesn't -- there's three key areas that we

1 hope you'll correct today before you approve anything.

2 Be happy to answer questions.

3 CHAIRPERSON LONGLEY: Any questions by members of
4 the Board?

5 Yes, Jon.

6 BOARD MEMBER COSTANTINO: This question is to
7 Alex.

8 Can you point me to the part of the Order which
9 gives the public review on the templates that she referred
10 to as sample language?

11 LEGAL COUNSEL MAYER: Yeah. I can go ahead and
12 I'll go ahead and try to find those for you right now. So
13 one of the examples of public review is for the --

14 EXECUTIVE OFFICER CREEDON: It's on page 28 of
15 your agenda, waste discharge requirements. So it's
16 Section 7.7(d)(2). And it's under the (2)(a) on page 28.
17 And it says, "A third party shall make the nutrient plan
18 available" -- wait a minute. That's not the language
19 you're looking for.

20 PROGRAM MANGER KARKOSKI: I've got it. So
21 Attachment B in the MRP page 24 where it talks about group
22 option for templates.

23 CHAIRPERSON LONGLEY: That's 24 of Attachment B.

24 PROGRAM MANGER KARKOSKI: Yeah. Page 24 of
25 Attachment B. Oh, Joe Karkoski.

1 So there is a provision the there that says,
2 "Prior to Executive Officer approval of any template, the
3 Central Valley Water Board will post the template on its
4 website for a review and comment period."

5 BOARD MEMBER RAMIREZ: Joe, is there a standard
6 time that the review period is open for?

7 PROGRAM MANGER KARKOSKI: Well, we didn't specify
8 that. There is no legal requirement. But I think, in
9 general, we probably give at least 30 days.

10 BOARD MEMBER COSTANTINO: And consideration of
11 comments doesn't mean the Board is required to respond
12 formally, nothing like that? I just want to make sure
13 when some people ask for public comment what we're
14 actually talking about. So --

15 EXECUTIVE OFFICER CREEDON: We do look at the
16 comments. We will respond to the comments. That doesn't
17 necessarily mean something will change as a result of the
18 comments.

19 BOARD MEMBER COSTANTINO: So without passing any
20 judgment, just to ask the question.

21 The idea that each of these four items, which you
22 brought up, need to be put up for public comment for an
23 unspecified amount of time, that's what you're asking for
24 you. You want to be able to see them before they're
25 approved, even without sort of a procedure for formally

1 commenting or formally taking that into account? You just
2 want to see them before it's approved?

3 MS. FIRESTONE: Well, we're trying to compromise
4 here. And we originally had had actually wanted a couple
5 of these to go through the Board because I think they're
6 so substantive that I think the Board should -- and that
7 could help ensure that there is a more public review
8 process.

9 You know, we're trying to balance making sure
10 that there's stakeholder consultation and input and public
11 input with making sure we're staying on a tight time line
12 and moving things forward.

13 So you know, I think as long as there's -- I
14 think the idea that there needs to be -- that at least
15 needs to be put up out for public review and giving us a
16 chance to provide input with staff and the Executive
17 Officer before final approval is the minimum that we would
18 hope to get.

19 CHAIRPERSON LONGLEY: I'd like to have staff
20 comment on that.

21 BOARD MEMBER RAMIREZ: And Laurel, can you go
22 back to the list of the things that you were asking for?

23 MS. FIRESTONE: Yeah. I mean, this is the
24 summarized list. But --

25 CHAIRPERSON LONGLEY: The four items.

1 MS. FIRESTONE: Yeah the four items.

2 PROGRAM MANGER KARKOSKI: So I mean, certainly
3 we'll do whatever you would like us to do. And you know,
4 I think part of what it comes down to, honestly, is when
5 we have a number of these things coming up and we put in
6 these extra procedural steps, that would probably -- in
7 some cases -- and I haven't thought through each one of
8 those. We might need to look at, well, are the time lines
9 still reasonable because, remember, there are a lot of
10 contingent deadlines, where we get the groundwater
11 assessment report and then a certain amount of time after
12 that you have to do some other things. So I think we'd
13 have to carefully look at that.

14 I understand what Laurel is saying and what her
15 interest is. I guess, you know, another option is or
16 another thought is, like I said in my presentation, we're
17 certainly coming to you all with information items. And
18 something as big as the first Groundwater Quality
19 Assessment Report I can't imagine that we wouldn't bring
20 that to you to say, hey, here's how this is playing out.

21 Now, whether you want to sort of hard wire that
22 into the Order or not or just verbally provide us with
23 direction that, for some of these major things, you want
24 to have an information item and hear from us, I guess that
25 would be another option. But I think Laurel is correct.

1 There's some of these things that they are relatively big
2 and there are other --

3 CHAIRPERSON LONGLEY: I think the bigger item is
4 whether we should go through public review on these or
5 not. The Board can pull anything in it wants to do, as we
6 did on the ACL yesterday.

7 So that's I think the first issue, in my opinion,
8 is what is your view of the public review process for each
9 of these four items.

10 PROGRAM MANGER KARKOSKI: Oh, okay. In terms of
11 how we would go about doing that?

12 CHAIRPERSON LONGLEY: No. In your mind, is it
13 required or not required?

14 PROGRAM MANGER KARKOSKI: For which items? For
15 the items where we --

16 CHAIRPERSON LONGLEY: The Groundwater Assessment
17 Report Monitoring Plan and --

18 PROGRAM MANGER KARKOSKI: We're silent.

19 EXECUTIVE OFFICER CREEDON: They want your
20 opinion, Joe. Of the four she has up there, what your
21 opinion is.

22 We are not required to do a public review
23 comment. It's up to the discretion of the Board.

24 Now, why we picked these, some of these are
25 documents that we would in any waste discharge, something

1 where we ask for the discharger to provide us information.
2 We do monitoring, for instance, with groundwater
3 monitoring in our Orders. We ask them to submit to us
4 their plan for how they're going to implement that
5 monitoring plan. Staff reviews it. Goes through
6 extensive review by technical extensive, and then it gets
7 approved and they're put forward.

8 Do we need -- typically, we do not do public
9 notice on those types of things. So many of these that
10 are listed here are things that we would do public notice
11 on. But I could see but all of our documents are
12 available for public review. We can ask for them. We
13 would provide them. They're going to be in our record.
14 We could also just simply post them on the website for
15 them to be readily available for

16 CHAIRPERSON LONGLEY: They may not be -- they may
17 not know when they're being submitted. And --

18 EXECUTIVE OFFICER CREEDON: These dates are --
19 the dates of when they need to be submitted are in the
20 document. They would know when they need to be submitted.

21 CHAIRPERSON LONGLEY: So, with due diligence, we
22 probably need a little more transparency than that.

23 BOARD MEMBER RAMIREZ: I like the idea of them
24 being posted on the web and that, you know, certainly, you
25 know, she's part of a very organized group and a group

1 that cares. So I don't think that it's overly burdensome
2 for them to sort of calendar and know when they can look
3 or around when time things are going to be posted. I
4 think that it at leasts provide them with the opportunity
5 to look at it and review it. And if it's so -- if there's
6 no formal review time of how long they get to submit
7 comments, at the very least they'll know what's happening.
8 And they can come to the Board and say, "Look, I see
9 alarming things." But if they don't have the ability to
10 look at them, then, you know, I guess I can see their
11 concern.

12 EXECUTIVE OFFICER CREEDON: Last Friday, we do
13 have some that are specifically identified as being
14 posted. You've heard from the agriculture community
15 they're very opposed to that. I'm not opposed to it at
16 all. But it's really if the Board so chooses, we can make
17 all of these available for public review and comment or --
18 there is nothing that says you can't do it, if that's what
19 you're asking. There's nothing that says you have to do
20 it.

21 CHAIRPERSON LONGLEY: I guess what I'd like to
22 see, following up on what Carmen said, posted for 30 days
23 before a decision is made. The decision put there that
24 being part of the LERIS dissemination for people who are
25 signed up for that so they get it automatically.

1 EXECUTIVE OFFICER CREEDON: There's a whole time
2 for public comment or we can just post it once I approve
3 it and notice people it's on the website. There are many
4 alternatives you can consider.

5 BOARD MEMBER COSTANTINO: I wasn't trying to wrap
6 up the whole process in bureaucracy, because is you have
7 these five items over a dozen coalitions, half a dozen
8 coalitions, at any given time, there will always be
9 something going on. And we may never get to the end game.
10 I'll really cognizant of Joe's point there are time lines
11 and calendars that are sort of hard wired into this. If
12 we start adding time, you have to look at how all the
13 pieces fit together.

14 So my original question was what exactly is being
15 asked so that we could have this discussion?

16 PROGRAM MANGER KARKOSKI: Can I study make one
17 point? It's a little unusual the language we have anyway,
18 because it's like we're telling ourselves what to do in an
19 order to somebody else. It's more kind of more of an
20 indication of intent for at least those specific items,
21 like the templates and the management plans that seem
22 especially critical because they are defining exactly how
23 they're going to be moving forward in implementing
24 management plans. It's sort of a signal from us that,
25 yes, we really -- heads-up, third party, we intend to have

1 a public review process for those.

2 And that's not to say because we're silent on
3 these other items that we wouldn't have a public review
4 process. But it's just --

5 CHAIRPERSON LONGLEY: It gets back to, Joe, let's
6 think five, ten years down the line.

7 I think the language here has to be very clear
8 and establishes a process that people can either like or
9 dislike and work to have changed or whatever. But there
10 has to be something there. And to be silent on the
11 process I don't think really does us any good.

12 BOARD MEMBER RAMIREZ: I guess based on what I've
13 heard, I think I could find that I would support that they
14 be posted, but I would not be inclined to support that
15 they be given a certain time frame where they're open and
16 have public review, anything like that, that would stretch
17 out the dates that are already in there. I wouldn't
18 necessarily be inclined to look that way.

19 But as far as them being posted as they're
20 received, I don't think that's additionally burdensome. I
21 think that would satisfy her concerns.

22 CHAIRPERSON LONGLEY: So taking that plus the
23 fact that -- I think on that website if something goes on
24 it that particular place, there is a LERIS notification.
25 Am I correct?

1 PROGRAM MANGER KARKOSKI: Yes.

2 CHAIRPERSON LONGLEY: When you post something,
3 yes.

4 MS. FIRESTONE: Well, I just think that -- I
5 would just say it's really critical we get to see it's
6 before it's approved. Otherwise, what is the point? We
7 can't provide any input. It's already been approved. I
8 would like to make sure -- I think it's fine. Nobody
9 wants to stretch this out long or than necessary or we're
10 not asking for a specified time period.

11 But at least being able to provide some input and
12 review before final approval seems like a bare minimum.

13 This is -- again, we're not asking for this on
14 everything. It's a couple very, very key things that are
15 going to be totally determinative of what actually
16 substantively is required. And I think it's in line with
17 the philosophy that the Board has taken with this program
18 so far, which is open stakeholder process and open
19 communication on these the basic framework to make sure
20 that we have the most effective program that we need.

21 BOARD MEMBER MOFFITT: I have a question -- or I
22 guess a comment.

23 What is the process moving forward that
24 stakeholders would be involved in the development and
25 implementation of this program, unofficially, I guess?

1 They're requesting very formal measures. Are there more
2 informal measures that we anticipate moving taking forward
3 with.

4 PROGRAM MANGER KARKOSKI: Yeah. I mean, I feel
5 like we've been doing those informal things quite a bit
6 for the last few years. We had the formal Stakeholder
7 Advisory Work Group that was convened. But since that
8 time, our interaction with a variety of stakeholders have
9 been a combination of informal forums and as well as
10 coming before the Board at key times. So I would
11 anticipate that we would keep doing that because,
12 especially in the first few years, there is going to be a
13 lot of intense interest, specifically in the first few
14 documents.

15 Like Jon pointed out, we're going to have a
16 number of these WDRs with a lot of these documents coming
17 in. So again I would assume that we're going to keep
18 having that sort of informal dialogue.

19 CHAIRPERSON LONGLEY: I'm very uncomfortable with
20 assumptions.

21 EXECUTIVE OFFICER CREEDON: Dr. Longley, our
22 dairy order is an example of what we have in place now.
23 And nowhere in the document do you find a discussion of
24 involvement with other parties. But we have engaged with
25 Lauren and her group on many, many situations involving

1 the dairy order and soliciting input and comments from
2 them without it being explicit in the order. Because we
3 know that's a critical issue for the Board. It's a
4 critical issue for staff. And of course, you know -- and
5 we want to make sure that we're not just out there me just
6 approving things when we know some something is a pretty
7 contentious item.

8 We don't need that level of specificity, unless
9 you feel it's that necessary. But we do have in areas
10 where we have that we will post them for 30 days public
11 notice and comment.

12 But some of these -- I mean, if you're going to
13 ask me which ones, the last two items, four and five, I
14 don't necessarily think those are as critical as letting
15 some comment on the management practice, that whole
16 process is going to be a very technical process. It's
17 going to be very involved. It's going to be a difficult
18 one to try to solicit a lot of public input on.

19 The groundwater assessment, that's going to
20 identify the problem areas. What is going to be provided
21 for public comment would be their management plans by
22 which they're going to tell us how they're going to
23 resolve the issue. That is available for public, and
24 that's probably more critical than anything.

25 CHAIRPERSON LONGLEY: That's a good point.

1 Bob.

2 BOARD MEMBER SCHNEIDER: This is a complex,
3 difficult issue. Having been a developer and what I heard
4 one of the comments in Fresno, we want to get on the
5 ground and get work done and not due process forever. But
6 I do think public opportunities of some form is quite
7 appropriate. And I think posting for 30 days prior to
8 Executive Officer's decision -- is going to take 30 days.
9 It's going to take some time to relatively look and
10 respond to the comments that are. Made but I think that's
11 a pretty minimal amount of time to try to ensure at the
12 maximum amount of transparency we can.

13 And I do want the maximum amount of transparency
14 while also protecting the proprietary interest of our
15 farming community. So I think this could accomplish some
16 of that.

17 One of the things that I -- I mean, there's
18 always opportunities for people the come to the Board and
19 request attention. That's what our public forum is. And
20 we've seen the effectiveness of that in this meeting.

21 But I'm kind of beginning to wonder -- I don't
22 know if we talked about it. Joe, you mentioned hard wire.
23 If we shouldn't think about just hard wiring -- I don't
24 want to be here discussing this issue for years on end
25 year by year. But maybe the first couple years we should

1 say we will have a review of the program in year one, two,
2 and three and then five and ten or something, but just as
3 we get it going. I suspect we would be doing that in any
4 case, because that's generally been our procedures. But
5 we all we said won't be here. And maybe putting some of
6 that into the Order it's a question I have I'd like to
7 hear some discussion on.

8 CHAIRPERSON LONGLEY: I think that goes a long
9 ways towards where I was thinking and I think encompasses
10 some of what I've been hearing from the other Board
11 members, 30 days with the Executive Officer not taking
12 action until that 30 days after posting expires I think
13 would begin to give the level of transparency that
14 hopefully the Board will feel comfortable with.

15 MS. DUNHAM: Mr. Longley, may we comment?

16 BOARD MEMBER COSTANTINO: I'd like to hear the
17 other side before we recommended anything.

18 CHAIRPERSON LONGLEY: Let's get through with
19 this, and then we can go back to other people later if we
20 want to. Thank you, Jon.

21 Okay. Laurel, could you comment on that, posting
22 30 days allowed for comment before a decision?

23 MS. FIRESTONE: That would be great. I mean, we
24 feel like that would accomplish the minimum that we're
25 looking for in terms of some basic transparency and

1 opportunity.

2 CHAIRPERSON LONGLEY: Good. And then your second
3 item has to do with the base line issue. Inadequate
4 requirements for base line info to determine degradation.

5 BOARD MEMBER SCHNEIDER: This is intrigues me. I
6 understand what was the base line in 1968, and you can
7 possibly easier define what the base line was in like
8 1900. It's just extremely difficult to be able to do
9 that.

10 And I think what I was looking in this is where
11 are we now, because I think it would be extremely
12 difficult to reconstruct. There might be some doubt it's
13 helpful. But you know, I'm looking at how do we
14 ameliorate over time and get -- it's good to have a base
15 line, because you know what the natural conditions are.
16 For instance, on the west side, on TDS and arsenic and
17 boron and other minerals are going to be really high.
18 Whether you could ever meet water quality standards with
19 that is a pretty valid question for any use uses,
20 beneficial uses.

21 But for nitrogen, you know, it's helpful to know
22 maybe this always was too high for human consumption. But
23 otherwise, it's like, are there ways to ameliorate over
24 time and to improve water quality or prevent further
25 degradation until it ameliorate to meet water quality

1 standards or not. I don't know the answer to that. That
2 will depend on the trending.

3 I'm not totally convinced that reaching back to
4 1968 makes a whole lot of sense as much as looking at as
5 soon as we can what we have. That's just going to take
6 some time. I mean, even if we sit down and do these
7 studies, we're two or three years down the road before we
8 get anything done.

9 So I'd like to minimize time and be moving
10 forward. And I think in a lot of respects, people are
11 already moving forward. So I'm not convinced that going
12 back to '68 works. I think getting things in place and
13 moving down the road as fast as possible is going to get
14 us where we want to go. But that's my preliminary
15 thoughts

16 CHAIRPERSON LONGLEY: I'd like to talk to the
17 groundwater expert before we talk to Alex.

18 By the way, when you push that button, it comes
19 on David Coupe.

20 LEGAL COUNSEL MAYER: Just in terms of Board
21 Members Schneider's statement is whether it'd be desirable
22 to have that 1968 data. For the record, it's my legal
23 opinion that anti-degradation policy, the guidance
24 documents issued by the State Board, and even the Agua
25 ruling is does not require the Board to -- wouldn't be

1 legally required to collect that information in order to
2 implement the anti-degradation policy the way we've framed
3 this Order.

4 We've already made a determination there may be
5 some high quality waters that are degraded by this Order.
6 And so we've already done that analysis and determined
7 there are some high quality waters and that this Order is
8 going to be degrading. And so we've gone forward and
9 assumed that the anti-degradation policy applies and we've
10 made appropriate findings. So in my opinion, that
11 inventory of 1968 data is not legally required.

12 CHAIRPERSON LONGLEY: Thank you very much.

13 Mr. Rodgers you have considerable experience with
14 groundwater. You've done a lot of work in the field. And
15 if you had to go out and find the '68 base line, how
16 practical would you think that was?

17 ASSISTANT EXECUTIVE OFFICER RODGERS: This is
18 Clay Rodgers, Assistant Executive Officer in the Fresno
19 office.

20 Unfortunately, Dr. Longley, that task is very
21 difficult if not impossible. The significance of 1968 is
22 that that's when the policy was adopted by the State
23 Board. There has been no --

24 BOARD MEMBER SCHNEIDER: Can I rephrase some of
25 your question?

1 CHAIRPERSON LONGLEY: Sure.

2 BOARD MEMBER SCHNEIDER: I think the intent here
3 is to have the best data we can at what water quality was
4 at one point in time. And do we have or can we get that
5 information, and would that satisfy -- or would that be
6 useful in terms of looking where we might want to try --
7 what we're trying to get to?

8 BOARD MEMBER SCHNEIDER: I think a lot of that is
9 really the intent of the trend monitoring is to start to
10 collect that data, that regional data that some of our
11 basin plans like the Tulare Lake Basin Plan, has always
12 talked about regional monitoring there really has been no
13 funding to go out and do.

14 Now, part of this, we dovetail this with the
15 looking at what the trends are with collecting some of
16 that --

17 BOARD MEMBER SCHNEIDER: I don't mean to
18 interrupt again, Clay. I think the intention -- not
19 speaking for Ms. Firestone -- are we starting from now or
20 are we looking -- do we have other information from going
21 back in time to some extent about what water quality was
22 so that we -- as a base line so -- I mean, we know it's
23 been degraded to this point, but we don't know how much.
24 We don't know what the opportunities might be to over time
25 improve water quality or not. Does that make sense, or is

1 there information or can we do that? Is it worth while?
2 I don't know the answer.

3 BOARD MEMBER SCHNEIDER: Certainly, there are
4 some data that we can go back and get. Some of that is
5 the work that will be included in the groundwater
6 assessment report. It's the very initial report that the
7 coalitions will put together. So we'll expect them to go
8 out and collect this data to tell us what the current
9 conditions are. There was the base line condition report
10 as part of the environmental impact report that looked at
11 some of this information. So we could have some of that.
12 The unfortunate thing is there was no real comprehensive
13 look at this at any one time in the past. It's bits and
14 pieces here and there for different parts of the valley.
15 Make it very difficult to correlate this data across the
16 area to say this is what the groundwater looked like at
17 that specific point in time.

18 CHAIRPERSON LONGLEY: So what I hear you saying
19 is we'll get that data where it exists. But in many
20 instances, it doesn't exist; is that correct?

21 BOARD MEMBER SCHNEIDER: That is the expectation.

22 CHAIRPERSON LONGLEY: And following up, if I can
23 paraphrase what Board Member Schneider said, we will be
24 getting the best data we can obtain for base line; is that
25 correct?

1 BOARD MEMBER SCHNEIDER: That is our intent and
2 expectation.

3 EXECUTIVE OFFICER CREEDON: Dr. Longley, can I
4 could just --

5 CHAIRPERSON LONGLEY: Certainly.

6 EXECUTIVE OFFICER CREEDON: There are a couple
7 issues here trying to establish that. But I think what
8 Laurel is pointing out, and she's correct, the Board needs
9 to look at that information to make a determination of
10 anti-degradation applies.

11 We already know that there's water that's been
12 degraded since 1968 past the water quality objective.
13 We're making that finding that there are some poor quality
14 waters and some high quality waters in the valley. And
15 because of that, we are saying the anti-degradation
16 applies and therefore we're making the proper findings.
17 She's very right. But does that mean we have to go back
18 out and get all that data? No. That's not what we need
19 to do. But it would be wonderful if we could

20 CHAIRPERSON LONGLEY: What I'm hearing is that
21 data is not there.

22 EXECUTIVE OFFICER CREEDON: It may not be there.
23 But we made the finding that the policy applies and
24 therefore we're making the proper findings and setting the
25 proper requirements to comply.

1 MS. FIRESTONE: Can I clarify?

2 CHAIRPERSON LONGLEY: Yes.

3 MS. FIRESTONE: So what we're -- the confusing
4 thing is the word "base line," there is a layperson's
5 understanding of the base line and then very specific
6 legal definition for anti-degradation law of what base
7 line means.

8 Base line means, by law, whether you want it --
9 whether we ideally want it to or not, it does mean the
10 highest water quality since 1968. Unless it's been
11 lowered by this Board through a process consistent with
12 anti-degradation policy. And we don't have perfect
13 information. And it's not expecting us to have perfect
14 information.

15 What we're asking for that is not currently in
16 the groundwater assessment report is some determination of
17 what the base line is for anti-degradation policy
18 purposes. That is different than what the base line is
19 today or what it was when they did the CEQA analysis.

20 What we're looking for is for anti-degradation
21 purposes an establishment of the base line. My
22 understanding of the law is not only is that legally
23 required, you know, there is understanding you're not
24 going to have perfect information. You don't have the
25 exact measurements. So you do the best you can. That's

1 fine. But there needs to be a some attempt to do it. And
2 right now, there is no requirement or any mechanism that
3 is referenced to that anti-degradation base line. Or at
4 least it's not clear. And actually, the bigger concern is
5 that there is a reference to base line, but it uses
6 existing conditions. And that is totally inappropriate
7 and absolutely illegal according to what the court just
8 ruled. The court made very clear that the base line for
9 anti-degradation policy is 1968. That doesn't mean the
10 best since 1968. You're not going to have perfect
11 information, but you at least need to have some basis and
12 some determination of approximately what that is.

13 In order -- and the reason that this is so key
14 and we're asking to bother doing this is because you can't
15 determine what level of degradation you're allowing if you
16 don't know what you're measuring from. If you're
17 measuring from today versus if you're measuring from -- if
18 you're measuring from 44 parts per million versus if
19 you're measuring from ten, that's a very different level
20 of degradation than -- so that base line -- establishing
21 that base line for anti-degradation purposes is really
22 key. It's not required at all in any of the documents in
23 the groundwater assessment reports or the trend monitoring
24 plan. We don't have -- we're not -- I'm not led to it
25 being precisely in one of those or another. But it needs

1 to be somewhere.

2 CHAIRPERSON LONGLEY: Carmen has wanted to talk
3 for a long time, and then I'd like to hear a reply to that
4 from one of our attorneys. Go ahead, Carmen.

5 BOARD MEMBER RAMIREZ: Pamela --

6 EXECUTIVE OFFICER CREEDON: I just want to point
7 out in our Groundwater Monitoring assessment Report, one
8 of the main objectives is to provide and gather all
9 available applicable and relevant data and information,
10 and that would give us the information that she's asking
11 for.

12 Does it specifically tie it to anti-degradation?
13 No. But if it's available and it's relevant, then they
14 would provide that. We would at least have the background
15 information. So that is required. It is part of this
16 plan.

17 MS. FIRESTONE: But the determination isn't
18 required.

19 CHAIRPERSON LONGLEY: Carmen.

20 BOARD MEMBER RAMIREZ: My question was kind of a
21 legal question. And that was whether or not our legal
22 department reads that the base line has to be the 1968
23 standard, number one.

24 And number two, could we internally in our own
25 document define what base line will be for purposes of

1 this document? So for example, you know, the base line
2 might be defined internally in the document as the first
3 full set of data points related to water quality that's
4 collected as part of this. So, you know, those are my two
5 questions.

6 CHAIRPERSON LONGLEY: So Lori, there's those two
7 questions. And if you could address that in the context
8 of what Laurel Firestone stated.

9 LEGAL COUNSEL OKIN: I do agree that the court
10 said that the anti-degradation policy requires the base
11 line to be 1968. The 1968 base line can be adjusted up or
12 down based on degradation that was approved under our
13 permitting authority in compliance with the
14 anti-degradation policies. If for some reason water
15 quality improves, then the base line would go down. If
16 it's -- if degradation has been approved, then the base
17 line goes up.

18 In addition, when you're making the determination
19 of whether something is high quality, the anti-degradation
20 policy says you look at the quality existing as of the
21 time the policies are established. So if there are water
22 quality objectives that we're looking at that were
23 established after 1968, the base line is still 1968, but
24 the determination of whether or not it's the water is high
25 quality for a particular constituent may happen at a

1 different time.

2 In the case on the Dairy Orders, the Agua case,
3 there was nothing in the case about when particular water
4 quality objectives were established. So the court used
5 1968, which makes sense here because there's so many water
6 quality objectives involved. There are so many water
7 bodies involved that it just really doesn't make a lot of
8 sense to parse everything out to that level.

9 So no, we can't come up with a different
10 definition of base line. And if there are still
11 references in the Order to base line being existing
12 conditions, then I'd like to see that because we did go
13 through the Order after the decision came out to try to
14 change any language along those lines.

15 In terms of whether we either have to do an
16 inventory of where the high quality waters are or quantify
17 the amount of degradation that's being allowed, there's no
18 guidance in this sort of context where we're issuing waste
19 discharge requirements that cover such a variable set of
20 practices over such a vast area. It just -- we create a
21 chicken and an egg problem if we're trying to establish
22 this base line with that level of precision and before we
23 start regulating anything that's going to protect those
24 waters. If we need that before we can start imposing
25 requirements, then we can't impose the requirement. It

1 just becomes very circular.

2 So what the court said in the Agua case, they
3 looked at all the areas where there were dairies. They
4 sent some of that water is high quality. Therefore, you
5 should have complied with the anti-degradation policy and
6 you didn't.

7 It never got to the question of once you get the
8 Order back how to implement that. There was nothing in
9 the Order that requires any sort of inventory or
10 quantification.

11 So to avoid some of these issues with data, with
12 resources, with the number of dischargers involved, the
13 order essentially assumes that -- it doesn't assume that
14 all water is high quality, because clearly that's not the
15 case. But for waters that are high quality, we have to
16 make the anti-degradation findings that it's in the
17 maximum benefit of the people to allow degradation. That
18 finding was made, and it's applied throughout the
19 geographical area of the Order.

20 The second part is that you have to require best
21 practicable treatment or control. And that's required
22 also for all of the discharges within the scope of the
23 Order, because even if the water is poor quality, under
24 State Board authority, you still have to impose
25 essentially the same requirements. It's called best

1 efforts instead of best practicable treatment or control.
2 But whether the water is high quality or low quality, we
3 still recognize the same sort of controls are necessary to
4 protect surface and groundwater.

5 It wouldn't serve any purpose to do that sort of
6 an inventory.

7 CHAIRPERSON LONGLEY: So what language change, if
8 any, would you recommend to address this particular issue?

9 LEGAL COUNSEL OKIN: I don't think we need to
10 make any changes unless we missed some of the references
11 to base line being current conditions. Because there was
12 some language to that effect before the case came out.

13 CHAIRPERSON LONGLEY: On this one, we would have
14 to go through the document and remove any language on
15 current conditions if that was missed; is that correct?

16 LEGAL COUNSEL OKIN: I think we did that, but may
17 be we missed some.

18 MS. FIRESTONE: So the place I'm concerned about
19 is -- so that the groundwater trend monitoring, it says
20 the objectives are to determine the base line quality of
21 groundwater relevant to irrigated ag. So the objectives
22 of the trend monitoring is to determine the base line.
23 There's no reference to how that's going to be done or
24 whether -- it looks to me like that actually meant to say
25 what the existing conditions are, more than what the base

1 line is. And I think that that should be changed, if
2 that's what it meant.

3 And I also think that -- I think that if
4 that's -- if that meant the existing conditions, that you
5 shouldn't use the word base line. And I think that either
6 way, you need to have some mechanism and I think it would
7 be appropriate to do it through the Trend Monitoring Plan
8 because that's what the information sheet says is going to
9 help determine whether degradation is occurring. The only
10 way to determine whether degradation is occurring is to
11 have some idea of what you're measure from. Otherwise,
12 you don't know whether degradation is occurring.

13 CHAIRPERSON LONGLEY: Exactly. Any comment on
14 that, Lori? Sounds to me like that language is somewhat
15 general and that maybe it needs to be tightened up.

16 LEGAL COUNSEL OKIN: Yeah. We'll look at the
17 language.

18 BOARD MEMBER SCHNEIDER: I think what was meant
19 was existing conditions. Groundwater is always a
20 difficult one because we have the existing conditions.
21 We've got what's in the zones above the groundwater level
22 that are going to probably take another ten or 15 years to
23 50 years to reach the groundwater level. And that's going
24 to be one trend. And then all the best management
25 practices that our farming community is committed to is

1 going to take a long time before we see the benefits of
2 that.

3 To some extent, I think that's already begun. So
4 we kind of got those three periods of time that we're
5 trying to integrate into this order. So measuring the
6 effectiveness of what the farming community is doing is
7 not easy. I appreciate the work you're doing.

8 CHAIRPERSON LONGLEY: Well, the trend monitoring
9 language though, if it is not specific enough, I think we
10 need to address that. And how long would it take you to
11 determine that?

12 LEGAL COUNSEL OKIN: Certainly before you start
13 deliberating.

14 CHAIRPERSON LONGLEY: Okay. Okay. And then the
15 last item, which was the issue on failing to comply with
16 anti-degradation requirements. You said correct
17 compliance limitations.

18 MS. FIRESTONE: So there was so -- I guess there
19 is a couple of things on this I have some specific
20 proposed changes because I'm trying to help speed this up.

21 So, first of all, the footnote that says -- that
22 allows -- the footnote on the groundwater limitations,
23 which I think it's on page 17 -- that basically says that
24 you can violate those groundwater limitations so long as
25 you're following a Groundwater Management Plan and that

1 can allow up to ten years, that is not -- so that should
2 be deleted for -- and what should be -- the qualification
3 needs to be that the basin plans only allow that for
4 constituents -- that for water quality objectives and
5 water quality criteria adopted after the effective date of
6 the appropriate basin plan update basically.

7 So right now, for example, nitrate, that's a
8 really old objective. That's been set since at least the
9 70s. And according to the basin plans that govern this as
10 well as the anti-degradation policy, you can't allow for
11 up to ten years to comply with that. And if you want to
12 change that, you need to change the basin plan or you need
13 to change the law. But that's what the law says.

14 So I think there may be some water quality
15 objectives and criteria that are more recent for some
16 chemicals. There may be some pesticides or things that
17 are more recent where that is allowed under the basin
18 plan. And that's fine if you want to add that in for
19 those. But to have it be a blanket footnote for all --
20 allowing pollution for up to ten years for every
21 consistent is not legal.

22 And the other key issue is that the limitations
23 only -- so while you're saying that only limited
24 degradation will occur -- and the findings that you're
25 making on degradation is that it's to the maximum benefit

1 of the people of the state to allow some limited
2 degradation. But what the limitations say is that
3 actually you can do the full amount of degradation up to
4 the water quality objectives. That's more than a limited
5 amount of degradation. That is the full maximum amount of
6 degradation that you are legally allowed to do. There
7 hasn't been consideration of that.

8 And so instead, you need to make sure that the
9 receiving water limitations reflect a better goal than
10 just water quality objectives or nuisance or pollution.
11 And that should be -- I have a couple ideas of what that
12 could be. So I'm trying to -- it's not ideal of what we
13 would like, but you could have it shall not cause
14 exceedances of limit degradation or contribute to a change
15 in water quality that sees the highest water quality of
16 water consistent with the maximum benefit of the people of
17 the state. There I'm giving you guys some way out.

18 CHAIRPERSON LONGLEY: Let's -- okay. Counsel.

19 MS. FIRESTONE: Or you can incorporate the
20 performance standards that you have in there.

21 CHAIRPERSON LONGLEY: Counsel.

22 LEGAL COUNSEL OKIN: The Porter-Cologne Act
23 allows the Board to include time schedules for compliance
24 in waste discharge requirements. The NPDES rules are very
25 restrictive in terms of what kind of compliance schedules

1 you can use and when. But those rules don't apply to
2 waste discharge requirements that are strictly under state
3 law.

4 The whole idea of a time schedule is that a
5 discharger needs time to come into compliance because
6 they're not meeting the water quality objectives or the
7 receiving water limitations, which means, by definition,
8 they are causing temporary pollution and nuisance. It's
9 temporarily limited and it would be anti-thetical to the
10 whole notion of allowing compliance schedules to say you
11 could never have any degradation during the compliance
12 schedule period. I think that was all taken into account
13 in determining how long of a compliance schedule to allow.
14 But you can -- that's permissible.

15 CHAIRPERSON LONGLEY: Thank you.

16 That was for the first issue for the timetable
17 you're saying.

18 And then for the second issue, which is the
19 limitations needing to be something lower than water
20 quality objectives to be consistent with the findings of
21 only allowing limit degradation, but not having
22 groundwater limitations that make any reference to limited
23 degradation or minimizing degradation.

24 LEGAL COUNSEL OKIN: After the compliance period
25 is over.

1 MS. FIRESTONE: So that's what I'm suggesting is
2 for degradation you could have the compliance period.

3 And I think what -- so basically what I'm
4 suggesting is the second suggestion is there needs to be
5 incorporated into the groundwater limitations some
6 reference to only allowing limited degradation.

7 Right now, you're allowing the full degradation
8 to occur. So you can allow -- so there needs to be added
9 to the groundwater receiving water limitations some
10 limitation to limited degradation. But you can -- for
11 that, you can do that footnote that allows up to ten years
12 and because that is consistent with the basin plan.

13 EXECUTIVE OFFICER CREEDON: Dr. Longley, that's
14 something we don't typically do in our waste discharge
15 requirements. Where we control limited degradation is a
16 number of ways. Our limits in our groundwater permits are
17 typically the objectives set, and then we allow some
18 degradation. We set effluent limits or we set narrative
19 requirements, which we have here in this Order.

20 And then we monitor that through our monitoring
21 program. And our monitoring program consists of a number
22 of things, which includes the trend monitoring but also
23 this Management Effectiveness Program where it would
24 include a variety of different mechanisms, including
25 possibly groundwater monitoring, vadose monitoring or

1 modeling of some sort where we make the determination on
2 what leaves the root zone and what happens to that once it
3 leaves the root zone. And that's where we will measure
4 and evaluate the ability to -- how much degradation will
5 occur. And then through evaluation of knowing which
6 practices are in place or not in place and us taking --
7 the implementing -- the growers implementing the
8 appropriate practices. It's a package deal for us to take
9 this evaluation.

10 But it is not typical for us to start changing
11 the objectives in the receiving water limitations. It's
12 done through the specifications, the monitoring. Where we
13 don't allow degradation, that's in either our prohibitions
14 or in terms of Title 27, which this is not subject to, we
15 then do specify you cannot have a degradation occurring in
16 groundwater.

17 That's not what we have here. This Order is
18 allowing degradation to occur. The Board so wishes to
19 make it so it's a prohibition, that's what we would have
20 to do.

21 CHAIRPERSON LONGLEY: The last one here on this
22 slide that's up "and shall minimize percolation of waste
23 to groundwater and excess nutrient application relative to
24 crop need."

25 EXECUTIVE OFFICER CREEDON: That is a discharge

1 standard that's already in the Order.

2 CHAIRPERSON LONGLEY: I believe so. I saw that
3 somewhere.

4 BOARD MEMBER COSTANTINO: So I just want to make
5 a quick comment.

6 Pamela, thanks for that response, because Laurel,
7 when I read through this, I had the same reaction you did.
8 You're allowed to degrade up to the maximum. It reads
9 kind of funny. But I appreciate your response that's
10 really not what happened in reality. Even though there is
11 no other sort of lower level that back stops, looks like
12 you're allowed to just let it go all the way to the stop.

13 EXECUTIVE OFFICER CREEDON: The Board can set a
14 limit that's less than the objective. It's within the
15 Board's discretion to do that. If you so choose, you
16 could establish a limit. Ten is for nitrate. You could
17 make it five. It's up -- the Board can direct us to do
18 that. That's not what we typically do.

19 CHAIRPERSON LONGLEY: But this language is
20 elsewhere.

21 Yes, Alex. Go ahead.

22 LEGAL COUNSEL MAYER: I just would add a comment
23 about the characterization that this Order authorizes full
24 dead up to the water quality objective. I would disagree
25 with that categorization.

1 And in fact, there are provisions in this permit
2 that trigger the designation of an area from a low
3 vulnerability area to a high vulnerability area, if there
4 is a trend of degradation that is detected by the trend
5 monitoring.

6 And if that -- if the characterization goes to
7 high vulnerability, then automatically a Groundwater
8 Management Plan would be required and the coalition would
9 have to identify management practices that are -- and I
10 don't want to put words -- I'm looking to staff for at
11 least some additional guidance. But there is a provision
12 in there that ratchets down requirements when a trend of
13 degradation is detected. Not just -- you know, these
14 requirements don't just kick in when a water quality
15 objective is being exceeded. Additional requirements kick
16 in when degradation trends are detected.

17 CHAIRPERSON LONGLEY: I guess for clarification
18 for all the ag representatives, when the degradation is
19 associated with agricultural practices. Just so you
20 understand.

21 CHAIRPERSON LONGLEY: Thank you. Any questions
22 or comments at this point before we move on?

23 BOARD MEMBER COSTANTINO: How are we moving on?
24 Are we going to deal with the public?

25 CHAIRPERSON LONGLEY: I'm going to ask Tess to

1 come up in a minute.

2 CHAIRPERSON LONGLEY: Yes, Bob.

3 BOARD MEMBER SCHNEIDER: I just want to thank the
4 folks that testified for the bullet points and the
5 information and the ability to work through the issues to
6 the extent we.

7 CHAIRPERSON LONGLEY: Laurel, could you take a
8 seat up here? Tess.

9 BOARD MEMBER RAMIREZ: I would like to thank
10 Laurel for her thoughtful reading of this and for her
11 comments to the Board.

12 CHAIRPERSON LONGLEY: I'd like to ask your
13 comments on what you've been hearing.

14 MS. DUNHAM: That's pretty open-ended.

15 First, dealing with the first where had you some
16 fairly extensive discussion with respect to additional
17 public comment or posting on a number of the different
18 items, we would be very concerned with changing the Order
19 to accommodate that for a couple of different reasons.

20 First of all, it does add in an additional level
21 of bureaucracy that makes it difficult for us to continue
22 forward and to accomplish what we need to accomplish. I
23 think it also -- it would be unprecedented for a number of
24 these items in that you have hundreds of permits in this
25 region that have work plans and monitoring requirements

1 and monitoring reports and, you know, work plans that go
2 to staff all the time that are not required to be publicly
3 posted in the manner that is being suggested here. So it
4 would be treating this program absolutely differently for
5 these types of documents, as you do most of your other
6 programs that you have.

7 The other comment I would make with respect to
8 that is, you know, I think you need to understand that she
9 lumped the templates, which are subject to this posting
10 thing. As we discussed last Friday, there are six
11 different types of templates I think is what we counted or
12 between the management plans which there may be 25. As
13 Perry said, you could have a number of management plans.
14 Those already have to be posted.

15 I think there are three or four templates. So
16 those have to be posted. If you add in the Groundwater
17 Assessment Report and the Trend Monitoring Work Plan and
18 the Management Effectiveness Program and some of the other
19 things, and that's just for one coalition, you're talking
20 potentially 15 different types of reports that get
21 publicly posted for some public period before the EO and
22 the staff can do their thing.

23 And I would also comment that, you know, your
24 staff and your staff's job and the EO's job is
25 representing the public. So the fact that -- and I think

1 they do a very good job of trying to be balanced and
2 represent the public. And they're not going to
3 willy-nilly accept something they think is going to be
4 problematic. And I think as your EO said, she does reach
5 out to these communities even on an informal basis. We
6 think it's very problematic and would be unprecedented.

7 CHAIRPERSON LONGLEY: And the other one is to put
8 a little bit more specificity into the Trend Monitoring
9 Plan.

10 MS. DUNHAM: Yeah. I would be very -- the whole
11 discussion about going back to some type of determination.
12 What I understood Ms. Firestone to be asking with that is
13 we want you, the East San Joaquin, we want you to go back
14 for all of your groundwater basins however we end up
15 defining them and make a guess. Even if you don't have
16 the data, make a guess as to what you think was the best
17 water quality since 1968.

18 CHAIRPERSON LONGLEY: I think you're on something
19 else. You heard our discussion on that.

20 But the point was made on the Trend Monitoring
21 Plan.

22 And Laurel, I may ask your help on this again.
23 On the Trend Monitoring Plan, you felt that was too
24 general in the language?

25 MS. FIRESTONE: Yeah, so the Trend Monitoring

1 Plan is supposed to determine the amount of degradation
2 over time. And first of all, there is no -- there's no
3 way that you can determine the amount of degradation when
4 you don't know what base line you're measuring from.

5 CHAIRPERSON LONGLEY: Maybe I'm long. You heard
6 our discussion --

7 MS. FIRESTONE: There was also --

8 CHAIRPERSON LONGLEY: The second point.

9 MS. FIRESTONE: That there need -- well, there
10 also needs to be some ability for -- to include all
11 constituents of concern in this interim monitoring rather
12 than just the minimum that's laid out there.

13 Basically, what the court says is you have to
14 have some mechanism to detect degradation in order to
15 ensure you're complying -- ensuring whether it's occurring
16 or not. If you're not monitoring for something, you're
17 not detecting it. You have no mechanism to determine. So
18 there should be also incorporation of all the constituents
19 of concern. And right now that's excluded under this
20 Order.

21 CHAIRPERSON LONGLEY: Lori.

22 LEGAL COUNSEL OKIN: I do agree the
23 anti-degradation analysis has to consider all constituents
24 of concern. The court was clear on that. The court
25 didn't say how to do that. There could be indicator

1 parameters. In some cases, actual groundwater monitoring
2 isn't required or isn't the only way that you assess
3 whether degradation is occurring. So there's no
4 particular way that you have to address all constituents
5 of concern, but you do have to address them all.

6 CHAIRPERSON LONGLEY: So the language should
7 address that in the order and it doesn't now; is that
8 correct?

9 LEGAL COUNSEL OKIN: That I don't know.

10 MS. DUNHAM: I would just comment I think if I
11 recall there was some recommendations for a specific list
12 of additional constituents. And I don't think that would
13 be appropriate. I think what you could do is you could --
14 I think it would be appropriate based upon the groundwater
15 assessment report for the coalitions to each determine on
16 their own what are the appropriate constituents of
17 concerns that need to be monitored. That is one of the
18 purposes and the reasons behind the assessment report and
19 that we shouldn't now prejudge what those constituents
20 would be in those areas.

21 MS. FIRESTONE: We would be fine with that. So
22 we think that's exactly appropriate. It's just that
23 whatever those constituents of concern are should be part
24 of the Trend Monitoring Plan.

25 CHAIRPERSON LONGLEY: So maybe Joe, how do we do

1 that?

2 PROGRAM MANAGER KARKOSKI: Well, I think it's
3 done already. I mean, we have the Groundwater Quality
4 Assessment Report, which as I mentioned hours ago during
5 our talk, includes looking at constituents of concern. So
6 it's general.

7 Now, once they do that, they use that
8 information. Obviously, this report gets submitted to us
9 for EO approval. The EO has the final say on what the
10 high vulnerability areas are for which particular
11 constituents of concern.

12 So if they're in a high -- so if we identify a
13 consistent of concern, that's going to trigger a
14 Groundwater Quality Management Plan. Part of the
15 Groundwater Water Management Plan includes a groundwater
16 element. That's the way to go about addressing
17 constituents of concern to sort of in a blanket way
18 include, you know, a constituent of concern that might be
19 relevant for one relatively small area and say, well,
20 we're going to require you to monitor that throughout the
21 whole watershed.

22 I think we'd have trouble justifying the burden
23 that that would put on the coalition. Because we do have
24 a mechanism, if it's really a consistent of concern, to do
25 the monitoring to make sure they're doing the

1 implementation to address the problem to the extent ag is
2 responsible for that problem.

3 So the trend monitoring is really looking at sort
4 of general overall regional trends. And you know, we
5 talked about this quite a while ago. The Groundwater
6 Monitoring Advisory Work Group the technical experts we
7 consulted with said nitrate is a really good indicator of
8 what those general regional trends are.

9 CHAIRPERSON LONGLEY: I'll tell you what. I
10 think we're about done with this session. What I would
11 like -- and we're going to take a short break and then
12 we're going to come back to CalSPA.

13 But real briefly, I would like you and you to
14 talk. And I'd like to hear if you agree that we cover
15 constituents of concern, because this is a long Order.
16 It's very complex. And we'll see where that goes.

17 So it's now 3:45. We'll be back here at five to
18 4:00.

19 (Whereupon a recess was taken.)

20 CHAIRPERSON LONGLEY: It's 3:55. We're back in
21 session.

22 Mr. Karkoski, Ms. Firestone, if you could explain
23 to me if you do have agreement or if there are still some
24 issues.

25 MS. FIRESTONE: We had a good conversation I

1 think everyone is very tired. We appreciate your patience
2 and time.

3 So I think what our understanding is that -- my
4 understanding from this is that for the trend monitoring,
5 the only requirements for trend monitoring is the specific
6 few handful of constituents that you've listed. But any
7 other constituents of concern are not included in the
8 trend monitoring. And the only monitoring that would
9 happen for those would be through the Groundwater
10 Management Plan but only in high vulnerability areas.

11 So the gap that we were seeing is that there is
12 no mechanism to do -- there is no mechanism for
13 constituents of concern for trend monitoring outside of
14 those handful that you have and particularly for anything
15 that's not in a high vulnerability area.

16 I think the purpose of the trend monitoring is to
17 get more broadly at what overall regional degradation is
18 happening. It needs to happen for all constituents of
19 concern. But right now, it's only happening for a handful
20 of specified ones.

21 CHAIRPERSON LONGLEY: Joe.

22 PROGRAM MANAGER KARKOSKI: So there are a couple
23 of important points where I think we need to pull back and
24 look at the Order as a whole and not focus on one part and
25 decide, well, does it or does it not do what the Order as

1 a whole is supposed to do.

2 So part of this is when you look at the practice
3 information that we're going to be collecting, that would
4 be an indicator of is there a potential trend of
5 degradation. Do you have the practices in place that are
6 essentially BTC, or best efforts, standard.

7 We're going to figure that out based on doing the
8 Management Practices Evaluation Program and through other
9 methods, looking at literature and that sort of thing,
10 what are the best practices in given situations for given
11 crops. So you just want to point that out. There is that
12 information flow that we're going to have.

13 The trend monitoring is one aspect of the
14 information that we're going to be gathering, and it's
15 looking at regional trends. Okay. We didn't use the
16 right word. We're talking about going from current
17 conditions moving onward. And like I said -- and Clay can
18 speak to this as well because it was his Groundwater
19 Monitoring Advisory Work Group that said, you know, when
20 you're doing that sort of trend monitoring at a regional
21 scale, it makes the most sense to focus on something like
22 nitrate, which you know is ubiquitous and you can actually
23 track a trend, versus say if you went to pesticides, there
24 probably wouldn't be any trend to track because it's going
25 to be non-detect. And we have people from DPR that could

1 speak to that.

2 But from what I've seen from their summary of
3 data, you know, it's rare that you see pesticides in
4 wells. So tracking non-detects is not going to give you a
5 trend.

6 The Groundwater Quality Assessment Report will
7 require the coalition to identify those high vulnerability
8 areas and the constituents of concern. So should one of
9 those constituents be a pesticide, they will, for the high
10 vulnerability areas, need to develop a Groundwater Quality
11 Management Plan which would include monitoring for some
12 other feedback mechanism so we could track whether as that
13 plan is being implemented whether water quality is
14 improving.

15 So again should you have a pesticide in a certain
16 case where monitoring is required, then we would be
17 tracking the trend in that specific area.

18 CHAIRPERSON LONGLEY: I think that in a different
19 way that the Order address your concern. You may disagree
20 with me, but we will get to constituents of concern as we
21 sort out, as I understand it, the high vulnerability and
22 low vulnerability areas.

23 BOARD MEMBER SCHNEIDER: Carl, I'm certainly
24 ready to move on. I still have questions about the
25 reporting and posting and when. And I don't want to be

1 overly burdensome to our stuff or, you know, so complex
2 that it's ineffective. And so I haven't figured that part
3 out. But I think we should move on and hear from the
4 rest.

5 CHAIRPERSON LONGLEY: Let me plan tell what you I
6 plan to do. We'll take the rest of the testimony and
7 questions as appropriate.

8 Then when we get to the end, we are going to
9 restrict discussion to Executive Officer, our legal
10 counsel, and ourselves. And we'll go through it bit by
11 bit ss we put it together. Thank you.

12 MS. FIRESTONE: Thank you so much for your
13 consideration.

14 CHAIRPERSON LONGLEY: Ready for testimony by
15 CalSPA.

16 (Thereupon an overhead presentation was
17 presented as follows.)

18 MR. JENNINGS: Good morning. Good afternoon. I
19 should say Chairman Longley.

20 Bob, I was having a flashback to 2003 when the
21 Board was listening to tapes trying to figure out what it
22 had it done the previous day.

23 I've been involved on this a long time. Fifteen
24 years ago, we were writing the initial petition to re-send
25 the 82 waivers and preparing the legislation that

1 ultimately sunset it.

2 Bill Jennings, California Sportfishing Protection
3 Alliance. Also representing California Water Impact
4 Network. I've taken the oath.

5 First, I'd like the incorporate the excellent
6 written and verbal comments made by Community Water
7 Alliance.

8 Second, I'd like to clarify our written remarks.
9 We previously submitted hundreds of pages of comments on
10 the various components that were transported into these
11 WDRs and didn't feel the need to restate on our brief
12 comment letter. Our incorporating them by reference seems
13 to have led to some confusion of staff, and I'd like to
14 provide some clarification.

15 The proposed east side WDRs themselves will have
16 significant impact on the environment, because they
17 violate the State's as plans and policy, including CEQA,
18 anti-degradation nonpoint source control policies and
19 basin plan requirements to implement the numeric and
20 numeric standards.

21 There is simply no evidence they will work or
22 they assure that covered farmers will discharge more
23 pollution without fear of being detected or doing anything
24 about it.

25 The WDRs are predicated on the ILRP PEIR which is

1 seriously deficient, being contested by most parties.
2 Pages two through 49 of our September 10 letter to the
3 Regional Board, pages 3 through 58 of our May 2011
4 petition to the State Board, and pages 24 through 30 of
5 our May 2011 petition to superior court all speak
6 specifically to the inadequacy of the PEIR and
7 consequently the inadequacy of relying upon the PEIR for
8 proposed WDRs.

9 The PEIR did not describe the east side area
10 adequately. A subsequent EIR is required to adequately
11 describe the details to the east side coalition's water
12 pollution control features, including rotation of
13 discharges, affected water bodies, types of farms,
14 pollutants being discharged, existing and proposed BTCP,
15 presence of listed or sensitive species and so on.

16 The PEIR does not analyze impacts of proposed WDR
17 on specific water bodies included in the coalition area.
18 Site-specific impact assessment is necessary.

19 The PEIR punted all cumulative impacts to the
20 individual WDRs. The Board needs to review existing water
21 quality in the area, coupled with a list of current and
22 future projects that could effect water quality by the
23 same pollutants.

24 It needs to look at other facilities like sewage
25 plants, municipalities, consider the cumulative impacts of

1 all other discharges along with the discharges from
2 irrigated lands.

3 High quality water is, in fact, the best quality
4 water achieved since '68 adoption of the state's
5 anti-degradation policy. You know, many chemicals used in
6 agriculture were not in existence or widespread use until
7 after 1968. You know, prethorage (phonetic) didn't come
8 on board until the 70s. I think chlorpyrifos wasn't even
9 licensed until '65. And didn't get into widespread use
10 until some years after that.

11 In any case, the Board found in 1982 that the
12 waivers -- the unconditional waivers that agriculture was
13 not causing any problems.

14 The Board must make a formal determination
15 constituent by constituent of which waters into the area
16 are high quality or not. This is the first step -- first
17 required step to implement the anti-degradation policy.

18 The WDRs violate resolution 6816 of the anti-deg
19 and high quality waters policy because they cannot
20 determine or evaluate best practical treatment or control,
21 especially given ever-changing chemical use each cropping
22 patterns.

23 The inability of the approach included in the
24 WDRs for identifying and evaluating BPTC are extensively
25 discussed on almost every page from 2 to 63 on our

1 September 2010 letter to the Regional Board; pages 2 to 51
2 of our May 2011 petition to the State Board; and pages 3,
3 4, and 12 and 20 through 35 of our May 2011 petition to
4 the superior court.

5 The components of the proposed WDRs violate all
6 five key elements of the State's nonpoint source control
7 policy as detailed in pages 4, 12, 15, 18, and 20
8 through -- 18 through 20 our September 2010 letter to the
9 Regional Board; pages 8, 13, 16 through 18 of our May 2011
10 petition to the State Board; and pages 2, 4 5, 21, 22, and
11 31 through 33 of our May 2011 petition to the superior
12 court.

13 The inadequacy of the WDR monitoring program and
14 its ability to detect when degradation is occurring and to
15 evaluate management measures are detailed in pages 2
16 through 33, 39 through 45, 51 through 62 of our September
17 2010 letter to the Regional Board; pages 2 through 4, 7
18 through 9, 11 to 35 to 36 and 43 to 51 of our May 2011
19 petition to the State Board. They're detailed in Steve
20 Bonds' September 2010 letter that's in the record.

21 I note that the ILRP adoption hearing, at that
22 hearing, three former Regional Board staff testified that
23 regional monitoring would not be able to protect surface
24 water or groundwater or evaluate management measures.

25 The WDRs economic considerations violate water

1 code sections 13236, 13241 because they have serious
2 errors of omission in commission that violate generally
3 accepted standards of practice that apply to this type of
4 economic analysis as detailed in the September 2010 report
5 from Econ Northwest, which is in the record, at pages 13,
6 23, 28, 29, 41, 50, 56, 60, and 61 of our September 2010
7 letter to the regional Board; and pages 10, 23, 29 to 31,
8 46, and 56 to 58 of our May 2011 petition to the superior
9 court.

10 Staff never responded to Econ Northwest.
11 Analysis is noted at pages 2-29 of the FEIR.

12 The economic analysis for the PEIR was neither
13 intended nor did it evaluate the economic impacts of the
14 proposed WDRs. Water resources cannot be protected by
15 simple declaration that activities that degrade water
16 quality are prohibited.

17 Degradation cannot be justified as a maximum
18 benefit to the people of California simply because the
19 WDRs purport to generally prohibit further degradation.

20 Water resources cannot be protected by a simple
21 declaration that WDRs will result in implementation of
22 best practicable treatment or control. The State has no
23 formally approved list of BMPs. Only site-specific
24 monitoring of management measures, whether they're
25 implemented, and whether they are effective, coupled with

1 site-specific monitoring of receiving water can protect
2 water quality.

3 Monitoring a subset of constituents in receiving
4 waters with a frequency of representing programs less than
5 one-tenth of one percent of stream flow, as much as 20 to
6 40 miles from a discharge point to detect chemicals at
7 frequently occurred as intermittent pulse flows and that
8 can be as toxic and low parts per billion and which cause
9 impairment of exceedance more than once in three years
10 cannot protect surface waters.

11 And I'd like to close by noting two of
12 substantive's response to comments. Staff in responding
13 to our comments identified examples of management measures
14 the east side coalition claims to have implemented. We
15 reviewed the east side coalition April 2012 management
16 update report and find no information on the efficacy of
17 the measures or their effectiveness in preventing
18 pollution.

19 In any case, the new measures in the first and
20 second priority watersheds amount to about 4100 acres,
21 which was about one percent of the coalition area.

22 And staff also claimed that the east side
23 coalition has been able to quantify and document
24 measurable progress towards improved water quality between
25 2006 2011. It observed that C. dubia toxicity declined

1 from 16 to two percent but failed to acknowledge that
2 zooplankton HS tecca (phonetic) toxicity increased from 14
3 to 20 percent and exceedances from chlorpyrifos were down,
4 which was to be expected, given the 82 percent reduction
5 in use.

6 However, farmers have shifted to cheaper and more
7 effective toxic products that are not reflected in the
8 monitoring.

9 And so, you know, there is no chronic toxicity
10 monitoring. The acute toxicity monitoring fails to
11 capture episodic events when toxics are most likely to be
12 present.

13 And it was just for the record. I thank you for
14 your time.

15 CHAIRPERSON LONGLEY: Thank you very much.

16 Questions or comments members of the Board?
17 Thank you very much.

18 I have a -- we're going now to interested
19 parties. I think that's where we are. Yes, we're going
20 to interested parties. I have a card from Gail Delihant.
21 Gale had to leave. She represents Western Growers.

22 I have a card from Christopher Valedéz.

23 MR. VALEDEZ: Thanks, Dr. Longley and members of
24 the Board.

25 Chris Valedéz with the California Grape and Tree

1 Fruit League.

2 Thank you for the additional comment --
3 opportunity to comment from the last one, which was in
4 Bakersfield just not too long ago.

5 First, I'd like to go back to a reference, Mr.
6 Karkoski's presentation specifically, when the Board was
7 with questioning Mr. Karkoski on all various mechanisms by
8 which the member through the coalition and through the
9 reporting process is going to ultimately be required to
10 show compliance with the Order.

11 I think in Mr. Karkoski's slide he was able to
12 solidify sound reasoning why if the Order is to go forward
13 in the form which I was most familiar with, which was a
14 form before not only the late revisions but the late, late
15 revisions and the late, late, late revisions, some of
16 which may be adopted by this Board today, a process which
17 by those representing effect stakeholders such as my
18 organization is going to be extremely difficult to track
19 at the end of the day, pending what your body ultimately
20 decides.

21 But using his slide and his rationale, I would go
22 back to the conversation where you left it, which is a
23 fertilizer assessment report or a per-form fertilizer
24 report, why that wouldn't work, we would echo staff's
25 reason, support staff's regulating moving forward why that

1 should be included.

2 But if I may direct a question to staff through
3 the Board. In looking at the revisions provided to the
4 public under Attachment A, information sheet, page 19
5 under discussion on rationale for Groundwater Quality
6 Management Plans, there is a discussion on the Groundwater
7 Quality Management Plan expectation for a time schedule
8 within which the employment of implementation practices
9 the expectation would be provided those would come into
10 compliance.

11 The next lines leads, for example, ratio --
12 setting up the ratio which is under the nitrogen
13 management plan a total nitrogen available to that of crop
14 consumption or nitrogen which is protective of water
15 quality may not be known for different site's conditions
16 and crops.

17 My question through the Board to staff is if in a
18 member's employment of the management practices effected
19 or evaluation program, those practices which have been
20 studied and can be extrapolated to the different
21 conditions. So if a member is properly employing those
22 practices has completed their farm evaluation, yet in
23 their example for whatever site-specific condition may
24 exist there, their Nitrogen Management Program may not or
25 will not allow them to ultimately formulate a ratio which

1 I think the sentence recognizes.

2 My question is does that in any way invalidate
3 their Nitrogen Management Plan? Because the next line
4 then goes and the rational under the Groundwater Quality
5 Management Plan, the part of the purpose of this is to
6 show that you're obviously protective of water quality,
7 both at the surface and groundwater levels. And a part of
8 doing that would be that Nitrogen Management Plan through
9 which you would say you back out the surface or your
10 irrigation water nitrogen, which is already in that water
11 which you'd back away.

12 So the question is if for some reason if you're
13 not able to get to that ratio, does that invalidate the
14 Nitrogen Management Plan?

15 CHAIRPERSON LONGLEY: Ask either Mr. Karkoski --

16 PROGRAM MANAGER KARKOSKI: I'm we're still trying
17 to figure out what you're referring to exactly. Could you
18 say it again or show me.

19 MR. VALEDEZ: Sure.

20 CHAIRPERSON LONGLEY: Can you reference for the
21 record can you reference where you are?

22 MR. LAPUTZ: Page 19 of the late revisions of
23 Attachment A, the revisions dated December 5th, first
24 paragraph.

25 PROGRAM MANAGER KARKOSKI: Can you restate your

1 question?

2 MR. VALEDEZ: I'm attempting to understand this
3 section looking for if the member is complying or
4 attempting to comply with the Order, and so through the
5 broad element of the Management Practices Evaluations
6 Program and their work to come up with a ratio through the
7 Nitrogen Management Plan, this section inserts that a
8 ratio -- you may not be able to come with a ratio in all
9 instances. So for those instances is a Nitrogen
10 Management Plan invalidated. What is the interpretation
11 by staff?

12 PROGRAM MANAGER KARKOSKI: No. I mean a Nitrogen
13 Management Plan is required of all members.

14 So part of what we are trying to get at here is
15 that, you know, the Management Practices Evaluation
16 Program, as we've talked about, it sort of a long-term
17 process. So it may take a while to figure out for
18 different crops under different conditions what sort of
19 that appropriate ratio is or if it's ratio is the right
20 thing or there might be other parameters.

21 What we are trying to point out is that there are
22 practices that could be put in place earlier that get you
23 towards that standard of minimizing excess application of
24 nutrients relative to crop need.

25 So the example we gave is that, you know, from

1 what I've heard, everybody understands that knowing the
2 nitrate in your irrigation water is sort of a best
3 practice because then you can sort of back off on your,
4 say, application of fertilizer. You account for that.
5 You may not know for a while what sort of the ideal number
6 or range of numbers are for the ratio or even if that's
7 the best kind of parameter to look at.

8 MR. VALEDEZ: So to clarify, Joe, that section,
9 it's built into that time flexibility to come up with that
10 additional information.

11 PROGRAM MANAGER KARKOSKI: And you're looking at
12 the information sheet. So there aren't requirements
13 there. It's just trying to explain --

14 MR. VALEDEZ: That's what the confusion was the
15 information and why it was inserted there in the
16 information sheet.

17 CHAIRPERSON LONGLEY: Thank you very much.
18 Questions or comments by Board members?

19 We're going to be going through a lot of people.
20 I don't want to say it each time. If you want to talk
21 when they finish, please push the button.

22 Next card I have is Luis Medellin.

23 MR. MEDELLIN: Caught me off guard. I was back
24 there. Hello. My name is Luis Medellin. I live in
25 Lindsay, California. I'm a Community Outreach Coordinator

1 for (inaudible)

2 EXECUTIVE OFFICER CREEDON: Could you get closer?
3 There's chatter over here. I have a hard time.

4 MR. MEDELLIN: Is that better?

5 CHAIRPERSON LONGLEY: Have you taken the oath?

6 MR. MEDELLIN: No, I haven't.

7 (Whereupon the witness was sworn)

8 MR. MEDELLIN: Like I was saying last week when
9 we spoke at the one in Bakersfield, we do need something
10 to be approved that will benefit these communities that
11 don't count on clean drinking water and just something
12 that we can really start moving on with right now.
13 Something we can really use in the short term.

14 I know it's a long process. We understand that.
15 But we do need to move forward and get these people clean
16 drinking water. And we're very supportive and these
17 communities do need something to happen now. That's all I
18 to have say today.

19 CHAIRPERSON LONGLEY: Thank you very much for
20 your testimony.

21 Camaria Garcia. And then next will be Rubin
22 Alonzo.

23 BOARD MEMBER COSTANTINO: Please come forward and
24 we'll cut down the time in between folks.

25 MS. GARCIA: I'm here in representation of --

1 I've forgotten. I'm nervous. I'm here in representation
2 of the Field Workers Union. Yes.

3 THE INTERPRETER: Interpreter correction.

4 MS. GARCIA: From Tulare (inaudible) from Tulare.
5 Just need to tell you that we need the water. We need the
6 water to be in a way that we can use it of good use to us.
7 This water is not fit. The water is not good. That's
8 what I'd like. I'd like all of you not to just make a
9 quick decision -- not to make a quick decision like that.
10 Take your time to decide. So in the future the water will
11 be good water. The water will be under the conditions in
12 which it needs to be for us. I think that's all.

13 CHAIRPERSON LONGLEY: Thank you very much.

14 BOARD MEMBER COSTANTINO: Thank you very much.

15 CHAIRPERSON LONGLEY: I called Ruben Alonzo. I
16 understand that he's passing.

17 Mercy Alonzo. And then the next one after that
18 is Bertha Martinez.

19 MS. ALONZO: Hello, ladies and gentlemen. You
20 have to excuse me. I'm a little nervous. I'm here. My
21 name is Mercy Alonzo. I live in Woodville, California, of
22 course. Our drinking water --

23 CHAIRPERSON LONGLEY: Have you taken the oath?

24 MS. ALONZO: No, sir.

25 (Whereupon the witness was sworn)

1 MS. ALONZO: We get letters often in my small
2 town stating that there is feces in our water. Now, for
3 me to have to be paying water, plus I have to go and buy
4 fresh water, it's pretty hard you know for all of us.

5 Also, I was listening to the conversation that
6 they were having. And apparently, this has been going
7 through the last five years or so. Well, I live where
8 there is very many dairies. And I see a lot of water that
9 they're using the feces from the cows to go into their
10 fields. And it's going to go straight down into -- we
11 have -- as you know, there's water going underneath. But
12 it's going to go into our water. I mean, the smell is
13 terrible.

14 And if this has been going on for five years, I
15 don't see no different. I don't see anything changing at
16 all you know. Five years is a long time.

17 And all I ask is that we take a little more time
18 to think about this because, you know, this is going to be
19 a long process. And I understand this.

20 But it's just a lot. You know, I have to go
21 through these dairies smelling all this. And I see the
22 water coming out of these -- they're like cement. And
23 it's dirty, filthy water going back into the field so
24 where is it going? It's going straight down.

25 You know, and all I'm here is just to say think

1 about it, please. I appreciate it. And just take your
2 time about it.

3 And thank you very much for listening to me.
4 Have a good day and a Merry Christmas.

5 CHAIRPERSON LONGLEY: Thank you very much.

6 Bertha Martinez. And next will be Erasjd Terran.

7 MS. MARTINEZ: Good afternoon. My name is Bertha
8 Martinez. I'm here representing woman Farmworkers Women's
9 United.

10 We want more clean water. The water in Tulare is
11 really dirty and bad. We have to buy bottled water,
12 because we can drink water from the faucet. We're humble
13 people. And we don't have enough resources to sustain
14 ourselves. And water is really, really bad. Bad
15 conditions.

16 So I have a son who works with the water, and
17 there has been occasions when we receive notice and people
18 tell us not to drink water from the faucet, because of all
19 the chemicals that are found in the water. So for this
20 and many reasons, we can't drink the water. So we have to
21 buy bottled water. That's really expensive for us.

22 It's been said what a beautiful harvest. But
23 nobody talks about what a good water we could have because
24 we don't have it. Because of so many years of
25 fertilizers. And we need to reduce the use of fertilizers

1 so we can say not only, you know, what good harvest we
2 have, but also what a great water we have.

3 And I have a daughter who lives in Hanford. And
4 half her people can't not even take showers because they
5 need to have their own system. Because the water smells
6 rotten and stinks the whole house. And my daughter took
7 her daughter to take a shower and my granddaughter
8 fainted. And we took her to the doctor and the doctor
9 said it was because of the smell in the water. So she had
10 to take a quick shower.

11 And that's all I have to say. Thank you.

12 CHAIRPERSON LONGLEY: Thank you very much.

13 Mr. Terran. And next is Sandra Garcia.

14 MR. TERRAN: Good afternoon. I was with you last
15 Friday in Bakersfield.

16 I've been following this process that you're
17 doing. And I'm glad you're taking into consideration the
18 different points that need to be taken in action.

19 I hope that all of become conscious about the
20 conditions of all the small communities, because you have
21 the great power to make a big decision. Because it's
22 about time we have different studies from more than 50
23 years ago. And these decisions need to be made more than
24 20 years ago. And how much longer do we have to take --
25 do we need in order to have something concrete to make

1 good decisions.

2 And it's about time. It's about time to take
3 these good decisions. And I thank you for taking your
4 time for making the right decisions thinking about the
5 small communities.

6 Thank you and have a good afternoon.

7 CHAIRPERSON LONGLEY: Thank you.

8 Sandra Garcia. And next is Senita Aguliar.

9 MS. GARCIA: Good afternoon. My name is Sandra
10 Garcia.

11 I would like to ask you to please take your time
12 to make the right decisions for especially for the farm
13 worker community.

14 And I would like to remind you that we as farm
15 workers work with this great industry and we don't want to
16 effect them. But in these 35 years that I have been
17 working in the fields, I seen many people dying and one of
18 them has been my mother. And my children were not able to
19 enjoy their grandmother because of all the chemicals and
20 the pesticides that her body absorbed. And I would like
21 to be able to see my grandchildren.

22 There is a lot of childrens that are going to
23 school. At their schools, they're asking us to for them,
24 for the children, for the students to take bottled water.
25 I wouldn't like for my grandchildren to also be affected

1 by these issues, because it has happened to me before and
2 I would like for you to pay attention and to collaborate.
3 And I would like for everybody to cooperate.

4 And I come for Popular and Tulare County. And
5 our water conditions there is very bad. By the time we
6 receive the notices that says our water is contaminated
7 with nitrate and many other chemicals, it's already been
8 three months and it's already late.

9 So our children are being sent home because
10 they're sick and nobody knows what's going on with them.
11 And that is why we would like for you to make a -- take a
12 good decision to find solutions and take your time.

13 Thank you. Thank you for listening to us.

14 CHAIRPERSON LONGLEY: Thank you very much.

15 BOARD MEMBER RAMIREZ: I'd like to just kind of
16 comment in general to the people who have spoken so far
17 and many of the people who have testified have said they
18 want us to take our time. Don't rush through this. Make
19 a right decision.

20 And I would like to communicate to them a lot of
21 time has gone into this program. And we're balancing the
22 importance of having built this program, even if it takes
23 time, with the urgency of understanding the plight of what
24 a lot of you are going through. So I guess I would like
25 to assure you as a member of the Board and being familiar

1 with the Order that --

2 CHAIRPERSON LONGLEY: That wasn't translated. Do
3 you want to say it in Spanish?

4 BOARD MEMBER RAMIREZ: If it's okay with the
5 Board, I'll respond in Spanish.

6 (Whereupon Board Member Ramirez responds in
7 Spanish.)

8 MS. AGUILAR: My name is Senita Aguilar. I'm
9 here to representing the community of Tonyville.

10 CHAIRPERSON LONGLEY: Have you taken the oath?

11 MS. AGUILAR: No.

12 CHAIRPERSON LONGLEY: Raise your right hand,
13 please.

14 (Whereupon the witness was sworn)

15 CHAIRPERSON LONGLEY: I think in the future when
16 we are going to do this, we're also going to have to do it
17 in Spanish at that part of the hearing.

18 EXECUTIVE OFFICER CREEDON: I understand the
19 interested parties are not obligated to be under the oath.

20 CHAIRPERSON LONGLEY: Okay. So advised.

21 EXECUTIVE OFFICER CREEDON: Just the designated
22 parties that are giving testimony.

23 CHAIRPERSON LONGLEY: Good. That's all right.

24 Go ahead and testify, please. And the next
25 person.

1 MS. AGUILAR: Our water is -- we can't even use
2 it for anything. And you know, we're surrounded by
3 fields. And there is a lot of chemicals being used around
4 and being sprayed.

5 And all my children are farm workers. And you
6 know, it's really expensive for us because we have to buy
7 bottled water and we still have to pay for our water we
8 can't even use. And everything we want is clean water to
9 keep living.

10 I think that's everything. Thank you very much.

11 CHAIRPERSON LONGLEY: Thank you very much. And
12 the next speaker is Martha Carrillo and following that is
13 Michael Prado.

14 MS. CARRILLO: My name is Martha Carrillo. And
15 I'm also here representing the Farm Worker Women United.

16 And I live in a very small town, but with very
17 hard working people. I'm a little bit nervous. Once we
18 had the water from the toilet was mixed with the drinking
19 water. And they let us know until two weeks later. All
20 of that cause a lot of disease. And we want better water
21 quality. Thank you.

22 CHAIRPERSON LONGLEY: Thank you very much.
23 Michael Prado. And next will be Abigail Solis.

24 Sir, you don't have to take the oath we found
25 out. So I'm informed by counsel.

1 All right. Hello. My name is Michael Prado,
2 Senio. I serve on the Water and Sewer Board in Sultana,
3 California, which is in Tulare County. And I'm also a
4 member of the Aqua Coalition.

5 And I'm here today to ask you, the Regional Water
6 Board, not to adopt the resolution set before you today
7 until more information is gathered. This has taken
8 forever. And this is not going to be holding nothing up
9 by getting the information gathered and facts together
10 before the adoption is done.

11 And thank you, Mr. Chair, fellow Board members
12 and have a happy holiday.

13 CHAIRPERSON LONGLEY: Sir, before you leave, I'd
14 like a staff reply to the issue of more information needed
15 before we make a decision today, or if the Executive
16 Officer would like to answer that.

17 PROGRAM MANAGER KARKOSKI: I'm not exactly sure
18 what more information we can get, absent an Order. I
19 guess that would be my answer.

20 CHAIRPERSON LONGLEY: What you're saying, Joe --

21 PROGRAM MANAGER KARKOSKI: We've done our best to
22 gather the relevant information and analyze it to get to
23 this point. To get any other information --

24 CHAIRPERSON LONGLEY: So what I'm hearing you say
25 is we need the Order to be able to get the information.

1 PROGRAM MANAGER KARKOSKI: Yes, sir.

2 CHAIRPERSON LONGLEY: Because of the studies that
3 are required.

4 BOARD MEMBER RAMIREZ: I guess I would ask Mr.
5 Prado what kind of information he thinks that we're
6 lacking.

7 MR. PRADO: I've been here hearing that I guess
8 when Ms. Firestone was up, here she was requesting some
9 information back from I guess '68. And she was told that
10 that could not be brought forward or something. And then
11 I guess after a little conversation that was done, seems
12 like there's not a problem. That can be brought up.
13 Let's look at it and before we make decision is what I'm
14 getting.

15 CHAIRPERSON LONGLEY: Appreciate if you'd answer
16 that, Mr. Karkoski. Because there is a misunderstanding
17 here, I think. I'd like to clear up that
18 misunderstanding.

19 PROGRAM MANAGER KARKOSKI: Right. So what Laurel
20 was asking for is that the Order be changed so that there
21 would be additional analysis done with the information
22 gathered through what we're referring to as our Water
23 Quality Assessment Report. Whether the Board decides to
24 add that or not is up in the air. But the data would not
25 be provided unless we actually adopt the Order or Board

1 adopts the Order.

2 MR. PRADO: That would be basically amending it,
3 is that what you're saying?

4 PROGRAM MANAGER KARKOSKI: What Ms. Firestone was
5 asking was that the requirements be amended to add some
6 additional analysis. So that's what she was asking for.

7 MR. PRADO: Okay. I think that's what I meant
8 when I said.

9 CHAIRPERSON LONGLEY: Thank you very much.

10 MR. PRADO: Thank you guys. Have a nice
11 holidays.

12 Abigail Solis and then Maria Diaz.

13 MS. SOLIS: Good afternoon. My name is Abigail
14 Solis. I'm also with the Community Water Center.

15 I'm like to thank all for taking the time to
16 listen to everyone's comment.

17 I'd just like the tell you that the people who
18 spoke before you today left their house about 5:30 a.m.
19 this morning to be here before you. As you can tell, this
20 means a lot to them.

21 I brought 15 because I'm driving a 15-passenger
22 van. If I had bigger van, there would be more people.

23 So I say that because I want you to understand
24 how important this is to many people. And I'm here before
25 you representing the many communities I work with every

1 day who have to live with the decisions that this Board
2 has made in the past and will make in the future.

3 So I ask you to consider everything that was said
4 today, specifically the request from Ms. Firestone
5 requesting to hold off before we make any decision and
6 consider the things that she brought forward.

7 I think what everyone here is trying to say is
8 that, yes, we waited far too long. I don't know if you
9 know this but California not only has a lot of people who
10 are drinking unsafe drinking water at work and at home,
11 but we also have the highest number of schools delivering
12 unsafe drinking water to their students. And you know,
13 being California, that's not something to be proud of.

14 So we've waited far too long, and there is too
15 many things going on that shouldn't be. I think if we
16 wait a little while longer to make sure that we consider
17 what Ms. Firestone has said, it's not going to change too
18 much. That's really what we want. We want to make sure
19 when we adopt an order, it's a good one.

20 So thank you very much for your time. And I
21 appreciate you listening to my comments.

22 CHAIRPERSON LONGLEY: Thank you very much.

23 Maria Diaz and Omar Carillo.

24 MS. DIAZ: Good afternoon. And I'm also here
25 representing Farm Worker Women United. And the reason

1 because I'm here because we would like to have clean water
2 that is not polluted. So it will be the harming our
3 health. Thank you.

4 CHAIRPERSON LONGLEY: Thank you.

5 Omar Carrillo and then Walter Ramirez.

6 MR. CARRILLO: Hello. My name is Omar Carrillo,
7 Community Water Center. Policy analyst. I'll make my
8 comments short.

9 There's been a lot discussed today, and there was
10 a lot more discussed or equal amount was discussed just
11 last week. And staff has worked really hard to
12 incorporate and to take into account a lot of the comments
13 that the EJ community has had on this topic. And I think
14 we've done a lot in the last couple weeks. It's great.
15 But we still need time to make sure that we dot our I's
16 and cross our T's. And to do that and to take into
17 account every single thing that you have done and staff
18 has done and the EJ community has done, we do think there
19 should be a continuance. To take into account and make
20 sure that we do this right. Because this is an example
21 for the State -- actually, no. It's an example for the
22 nation. This is the first of its kind.

23 So I'd like to leave you with those comments, and
24 I thank you very much for your time.

25 CHAIRPERSON LONGLEY: Thank you.

1 BOARD MEMBER SCHNEIDER: Carl, you know, I was
2 pretty happy with this agreement when I got here and I
3 still am. I think we talked about some changes that we
4 might discuss or adopt or not adopt.

5 But my intention -- I'm just letting people
6 know -- would be to move forward with this today and get
7 on the ground fixing stuff as soon as we can.

8 CHAIRPERSON LONGLEY: That's what I hope to see.

9 MS. CID: In the interest of time, we're
10 requesting permission for Walter Ramirez and Ampero
11 (inudible) and Netty who is to speak at the same time if
12 that's possible to comment.

13 CHAIRPERSON LONGLEY: So Netty and Walter am pair
14 oh all three card that I have here. Good.

15 LEGAL COUNSEL MAYER: Can you identify who you're
16 with

17 MS. CID: I'm Amparo Cid with California Rural
18 Legal Assistance Foundation. I'm the Director of the
19 Sustainable Rural Communities Project.

20 I really wanted to thank the Board and the staff,
21 and I really do appreciate the time that has gone into
22 everything.

23 And I also appreciate the opportunity to provide
24 these comments.

25 We're here because a lot with these community

1 members, individual from Fairmeed, individuals throughout
2 have these very real water issues. And we really do want
3 to urge this Board to give, you know, really great
4 consideration to what Ms. Firestone provided today. And
5 for us, that would really be the difference between just
6 moving forward with this. I think there is just three
7 minimum points. And if you could please consider those,
8 we would really appreciate that.

9 Thank you so much for your time.

10 CHAIRPERSON LONGLEY: Thank you. Next card is --
11 and thank you for combining your comments.

12 Next card is for Ernest Conant.

13 Then the next one is for Lisa Coleman. And
14 following that will be Renee Pennil.

15 MS. COLEMAN: My name is Lisa Coleman. I'm a
16 senior engineer with the city of Sacramento.

17 Dr. Longley, I'd like to request an additional
18 two minutes, if possible.

19 CHAIRPERSON LONGLEY: Give you one minute.

20 MS. COLEMAN: Thank you very much.

21 On behalf of the Sacramento River Source Water
22 Protection Program, thank you for the opportunity to
23 provide comments today. The Sacramento River Source Water
24 Protection Program strives to protect the quality of the
25 Sacramento River water supplies of the cities of

1 Sacramento and west Sacramento, Sacramento County
2 Department of Water Resources and East Bay Mud for current
3 and future generations.

4 We serve drinking water to more than 600,000
5 people in northern California. We have been tracking the
6 development of the Eastern San Joaquin River Watershed
7 Order because we anticipate that it will be
8 precedent-setting for other Orders in the Irrigated Lands
9 Regulatory Program.

10 We reviewed the July version of the proposed
11 order and had no comments. Based on our review of the
12 November and December versions, we have two comments.

13 First, the revision eliminated stakeholder input
14 on the selection of pesticides for monitoring. Irrigated
15 lands monitoring is an important means to ensure
16 protection of our drinking water. Our Source Water
17 Protection Program tracks development of drinking water
18 health information on pesticides and evaluates pesticide
19 use in the Sacramento River watershed. We conduct this
20 work based on scientific information from sources
21 including U.S. EPA and DPR.

22 We believe we should have the opportunity to
23 bring this type of information to the Water Board and to
24 participate in the conversations about pesticide
25 monitoring priorities for the orders in our watershed.

1 In the Monitoring and Reporting Program, the term
2 "stakeholder review" was removed and replaced with the
3 term "qualified scientists." If the term is used, it
4 should be defined and allow for participation by
5 stakeholders as discussed in the fact sheet. We are open
6 to better clarification and suggest the following
7 definition:

8 Qualified scientist: A person when has earned a
9 professional degree in a scientific discipline that
10 relates to agronomy, engineering, environmental science or
11 chemistry with additional expertise related to pesticides
12 and water quality. This person should be familiar with
13 the related local, State, and federal regulations.

14 For our second comment, a lot bit of background
15 is farm evaluations are required for all farms with those
16 designated as low vulnerability areas updating the
17 valuation once every five years and those on high
18 vulnerability areas updating annually --

19 CHAIRPERSON LONGLEY: Before you go on, the first
20 point.

21 PROGRAM MANAGER KARKOSKI: You're asking whether
22 we'd be okay with that definition?

23 CHAIRPERSON LONGLEY: Yes.

24 PROGRAM MANAGER KARKOSKI: I think that
25 definition would work fine for us.

1 CHAIRPERSON LONGLEY: You're batting 100 so far.
2 Second point place.

3 BOARD MEMBER RAMIREZ: It's actually batting a
4 thousand. Batting 100 is not so good. Sorry.

5 MS. COLEMAN: So the farm evaluations are
6 required for all farms within designated as low
7 vulnerability areas updating the valuation once per five
8 years and those on high vulnerability areas updating
9 annually. However, there is additional text which allows
10 reductions in frequency of updates for high vulnerability
11 areas if they show minimal changes over time. No time
12 limited is specified, so we recommend that Board staff add
13 text to show a limit, for example, three years reduction.

14 We would like to thank the Regional Board staff
15 for their diligence on protecting Central Valley water
16 quality and we look forward to continued stakeholder
17 participation in the irrigated lands regulatory program.

18 CHAIRPERSON LONGLEY: Okay. The second point?

19 PROGRAM MANAGER KARKOSKI: I'm not sure that we
20 want to restrict our ability in terms of the reporting
21 frequency.

22 Again, the overall context is that if year to
23 year changes are minimal and practices are in place that
24 are effective at protecting water quality, do we want to
25 keep having that particular reporting burden? So we'd

1 like to retain our flexibility. You know, especially if
2 you've got something like a permanent crop where if
3 they've got the practices in place that are effective at
4 protecting water quality, do they really need to keep
5 saying over and over again the same sort of thing.

6 CHAIRPERSON LONGLEY: Okay. The Board members
7 any comment? Thank you for your testimony.

8 I'm sorry. Renee Pennel, is she here?

9 MS. PENNEL: I can pass.

10 CHAIRPERSON LONGLEY: You pass. Carey Fischer.
11 And following Carey will be Bill Thomas.

12 MS. FISCHER: My name is Carey Fischer, counsel
13 with the California Farm Bureau Federation. And the Farm
14 Bureau appreciates the opportunities to comment today on
15 the East San Joaquin WDR Order.

16 We do have a few concerns. And many of them have
17 already been heard today, so I'm going to make them short
18 and sweet, but just point them out for the record for our
19 concerns.

20 First off, one of our concerns is a procedural
21 concern with just the fact that the written comment period
22 was closed in August, and then we had three substantial
23 releases of revisions, including the November release with
24 quite a few substantial changes as well as the LIRAS
25 release on December 6th and then the LIRAS release of this

1 morning's changes as well.

2 These changes are quite significant, not only to
3 the overall contents of the Order, but they also have
4 significant legal connotations. We would have preferred
5 an opportunity to make some of those comments in writing
6 prior to this hearing today.

7 Another concern we have is with the Nitrogen
8 Management Plans. The last-minute revision going back to
9 requiring all members, regardless of vulnerability
10 classification, to prepare a Nitrogen Management Plan.
11 This is also inconsistent with portions of your Order and
12 it's rational in its entirety.

13 With your response to comments that was just
14 released a handful of days ago, Master Response Number 5
15 provides the valid rational requiring Nitrogen Management
16 Plans only for those in high vulnerability areas. That
17 response has not been changed, although other responses
18 were changed with the release yesterday. So therefore,
19 your staff's rational is still that Nitrogen Management
20 Plans is only required for the high vulnerability areas.

21 With regard to comments made today regarding work
22 plans for public comment, we'd like to echo the concerns
23 raised by Tess Dunham regarding the unprecedented nature
24 of requiring these plans for public comment and review,
25 when many other Regional Board programs do not have these

1 similar requirement.

2 And then a final concern is just stressing the
3 need for flexibility. As of right now, the Tulare draft
4 is essentially the same. And we'd just like to echo
5 concerns. You'll hear later about the need for
6 flexibility between all of these WDRs, given the various
7 geographical difference. Thank you.

8 CHAIRPERSON LONGLEY: Any questions? Thank you.
9 Bill Thomas. And next Jennifer Spaletta.

10 MR. THOMAS: Thank you, Mr. Chairman, members.

11 Of course, I represent South San Joaquin Water
12 Quality Coalition, which has been almost on a parallel
13 track and recent hearings have been in Bakersfield and
14 other places have been on both. This is, of course, today
15 action item or potentially the action item on the East San
16 Joaquin.

17 We are troubled with a lot of the late amendments
18 over the last two days, today, and maybe some that are
19 emerging now. The four packets of changes that I had sent
20 to me down at Aqua yesterday involved at least 39 pages,
21 57 sections significantly amended.

22 Certainly, two and a half of those improve things
23 from our perspective regarding access, which I think
24 you've fixed. Ag ditches, which you came close to fixing.
25 One or two little hick-ups. And farm template review.

1 But it gave rise to about 14 new concerns. You
2 have heard and will continue to hear some of those where
3 we've gone backwards, removed the important distinction
4 between high vulnerability and low. And this brand-new
5 mass balance calculation that is about 48 hours new.

6 Also, of grave concern and also new, never been
7 discussed is on page 2. I think it's Finding 5 where it
8 attempts to add language to self-authorize yourself to
9 deal with field water that is below the root zone but is
10 not in aquifers. That's inconsistent, of course, with the
11 jurisdiction of the Board. Factually incorrect as well.
12 That is new and of grave concern.

13 I point these out as areas that we would like to
14 continue for the South San Joaquin to talk with you and
15 your staff over the next couple months as the South San
16 Joaquin Order is dealt with. We don't want to be for
17 closed on that because you may vote those changes into the
18 East San Joaquin today.

19 Thank you.

20 CHAIRPERSON LONGLEY: Before you sit down, Bill.

21 Lori, can you or Alex talk about number five?

22 What I'm hearing is that it's not within the Board's
23 jurisdiction. Did I characterize that correctly?

24 MR. THOMAS: Yeah. Field water below the roots
25 which may be three inches down, if you have strawberries,

1 isn't a water of the State. It's clearly not a water of
2 the State, field water.

3 LEGAL COUNSEL OKIN: All water in California is
4 water of the State. People have to right to use it
5 through various mechanisms, but it's still water of the
6 State.

7 What the revised find implement says is this
8 order is not intended to regulate water quality as it
9 travels through or remains on the surface of a member's
10 agricultural fields or the water quality of soil pore
11 liquid within the root zone. And what was added was
12 within the root zone.

13 And I don't know the background of that change,
14 but I just don't see any problem with that language. I
15 mean, we're regulating the practices that are being
16 implemented. We're regulating surface water quality,
17 groundwater quality, waste as it travels through the root
18 zone and down to the aquifers. So the concern is lost on
19 me. I'm sorry.

20 MR. THOMAS: Field water has never been
21 considered waters of the State. Once it starts to get to
22 usable waters or aquifers, it is waters of the State.

23 The waters of the State you have limited
24 jurisdiction over. But so those new added three or four
25 words are troublesome to me. We will talk further about

1 at we go to our --

2 CHAIRPERSON LONGLEY: I'm sure we will.

3 EXECUTIVE OFFICER CREEDON: He is referring to
4 the vatosse zone and unsaturated zone that is not
5 technically in groundwater yet. He's claiming we don't
6 have any authority over regulating that portion of the
7 soil and we do not agree with him on that at all.

8 CHAIRPERSON LONGLEY: Thank you.

9 MR. THOMAS: We'll talk further about it.

10 CHAIRPERSON LONGLEY: I'm sure we will.

11 MR. THOMAS: It will have to be the Legislature
12 and courts to make that decision.

13 CHAIRPERSON LONGLEY: Jennifer Spalleta and then
14 Gabriel Ludwig, I think is not -- she left, didn't she?
15 Okay. Then Bruce is here. Okay.

16 MS. SPALLETATA: Good afternoon. Jennifer Spalleta
17 representing San Joaquin County and Delta Water Quality
18 Coalition.

19 I join the comments, particularly of Carey
20 Fischer from the Farm Bureau, but I want to emphasize a
21 couple of things that haven't been emphasized.

22 Following up on what Mr. Thomas said, I think
23 you're going to find as you get into these individual
24 orders that one of the reasons you need to be very open
25 and flexible as you go from one region to another is that

1 what happens between the root zone and usable groundwater
2 is going to be very different in different parts of the
3 Central Valley. And it's going to effect how likely it is
4 that there is any usable groundwater that will be
5 contaminated or degraded from irrigated agriculture.

6 And so the urge from those of us who have these
7 unique circumstances is please be cognizant of this and
8 understand that if you're going to exercise your
9 jurisdiction, that you do so carefully so that you're not
10 imposing very expensive requirements just for the sake of
11 doing so, but that you're actually targeting what will be
12 usable groundwater, and not just groundwater that happens
13 to be a few inches below the root zone.

14 That will become extremely important as we move
15 into different areas of the valley, and in my coalition's
16 case, particularly in the delta, where you have very
17 shallow groundwater that is not usable but is very close
18 to the root zone and in many cases in the root zone of the
19 plant.

20 The second comment I wanted to make is one that
21 just continues to bug me, which is that the cost study
22 that you are relying on is from 2010 and includes no
23 specific evaluation of the actual reporting that is
24 required by individuals who join up for these programs on
25 the time frame and with the contents that you now have in

1 this draft WDR.

2 The current cost estimate for individual farm
3 reporting is 71 cents per acre per year. For a 20-acre
4 farm, which is what I happen to farm in one area, that is
5 \$14. And I can pretty much guarantee you that I cannot
6 for \$14 fill out the reports that are required on an
7 annual basis. The cost study is wholly inadequate. It
8 clearly does not address what you currently have in this
9 order.

10 Whether are you choose to actually update he cost
11 study, I don't know if you will. But what I ask of you is
12 that as these programs continue that you are mindful of
13 the cost and that you ask your staff to continually update
14 you on how much it's actually costing people to comply
15 with your Order.

16 I was relieved to see changes that allow for time
17 periods between reporting and discretion in changing those
18 time periods, as you see that the reporting is showing you
19 there is not a risk of degradation. And I hope that you
20 use that flexibility wisely to keep the cost of these
21 programs down and to use the resources we have to target
22 the areas that clearly do need to have assistance in
23 achieving better quality. Thank you.

24 CHAIRPERSON LONGLEY: Thank you very much.

25 EXECUTIVE OFFICER CREEDON: Dr. Longley, if I

1 could can clarify one thing.

2 CHAIRPERSON LONGLEY: Sure.

3 EXECUTIVE OFFICER CREEDON: We are not calling
4 the water that seeps, the leachate, that goes below the
5 root zone -- when I said with don't agree with Bill
6 Thomas, we're not calling that waters of the state. Those
7 are not water of the state. But those are the water and
8 the waste, the discharge, that could impact our receiving
9 water. And the receiving water is where we actually have
10 the groundwater table. That's the water we are
11 protecting.

12 But that area between the root zone and the top
13 of the water table, we do regulate that to make -- that's
14 where we make the determination on the amount of
15 degradation, the amount of the ability. That's the threat
16 to impair our water quality. So we're not calling that
17 water waters of the State. But that's the very water
18 we're regulating to make sure it doesn't cause a problem
19 in our receiving water. So there is a difference there in
20 how -- the way that woman -- I'm sorry I missed her name.

21 CHAIRPERSON LONGLEY: Jennifer Spalleta.

22 EXECUTIVE OFFICER CREEDON: The way she described
23 that.

24 CHAIRPERSON LONGLEY: Bruce Houdesheldt and then
25 will be Casey Kramer.

1 MR. HOUDESHEDT: Mr. Chairman, before I make my
2 comments on water quality, the things I like most about
3 life is the unexpected discoveries.

4 Carman is obviously a baseball fan, right.

5 BOARD MEMBER RAMIREZ: A's fan.

6 MR. HOUDESHEDT: Oh, well, there you go. So the
7 winter meeting just concluded. And earlier today, there
8 was speculation about the life cycle or the -- life cycle
9 is not the right word -- about your Executive Officer and
10 Mr. Karkoski. She committed, Carmen, to a long-term
11 contract. I think you ought to lock her down. Okay.
12 That's all I got to say about that.

13 BOARD MEMBER RAMIREZ: I could be her agent for
14 ten percent.

15 CHAIRPERSON LONGLEY: You've got a problem.
16 She's an A's fan and she's a Giant's fan.

17 MR. HOUDESHEDT: Anyway, thank you very, much
18 Mr. Chairman.

19 Bruce Houdesheldt, Northern California Water
20 Association, which represents, along with the twelve
21 sub-watersheds, the Sacramento Valley Water Quality
22 Coalition, 8600 growers, about 1.2 million irrigated
23 acres. Rice has their own coalition.

24 I just wanted to make some general comments,
25 really kind of give you a sense of our value. Some of you

1 heard this before. State some obvious things and
2 expression some appreciations.

3 The values are this. Water quality is important.
4 It's important to drinking water. It's important to the
5 eco system. It's important to agriculture. So we all
6 have a common purpose here.

7 Water quality is complex. Anyone who sat through
8 a CV salts process knows that. Anyone who has been
9 participating in the MUN designation process understands
10 that.

11 I do want to echo the comments that were also
12 said by Jennifer Spaletta and others and express my
13 appreciation to Perry expressing this early on. One,
14 appreciate Perry going first in this whole process.

15 There is common ground between the coalitions,
16 but there are significant differences between the
17 coalitions. So while there might be things that are
18 appropriate in this WDR and monitoring and reporting,
19 we're going to sit down and have our discussions in
20 Sacramento Valley.

21 And one of those things I had a call earlier the
22 week I sent to Adam. Had a wet lands owner of wet
23 lands -- and wet lands are enrolled in our coalition. And
24 he said, "Well, how am I going to figure out this nutrient
25 management plan. What am I going to fill out?" Well, I

1 guess he's not going to fill out anything. All right.
2 What about my farm evaluation? What am I going to fill
3 out? So there are these unique differences that are very
4 important.

5 I want to express appreciation to your staff, to
6 you. I came here just about four years ago. Be four
7 years in February this process was starting. You have and
8 your professional staff and you as stewards of water
9 quality represent the public. And Tess said it the best.
10 You represent the public. Every discussion we've had with
11 your staff, whether it's on a management plan, whether
12 it's on a monitoring report isn't looking at agriculture.
13 It's looking at all of the beneficial uses that need to be
14 protected by water quality. That's a way to say I don't
15 think you need to bog the process down. Your staff is
16 doing a damn fine job.

17 So if you post things, I think you might have
18 some unintended consequences. All of this is taking
19 place. And your staff has tried to navigate a very narrow
20 passage here. They're trying to make sure that they don't
21 duplicate other processes that exist. They're trying to
22 provide assurances to the public which they represent in a
23 world that's changing, in a world in which sustainability,
24 food safety, sustainability audits, whether they're
25 organic or not, are very important.

1 And I want to express appreciation for your staff
2 and to you for trying to navigate that very, very changing
3 water. Thank you very much.

4 CHAIRPERSON LONGLEY: Thank you for your
5 comments, Bruce. Casey and then David Corey.

6 MR. KRAMER: Thank you, Mr. Chairman.

7 Casey Kramer representing the California Cotton
8 Growers, California Cotton Ginners and Western
9 Agricultural Processors Association.

10 I made comments down in Bakersfield. I won't
11 repeat those same comments.

12 I do have a new-found appreciation for Executive
13 Officer Creedon. Haven't found out if she's a Giant's
14 fan. I worry about what my college in my office is going
15 to say when he comes up here. I'm guessing he's probably
16 going to mention the Rams and not anything about his
17 Dodgers.

18 Obviously, we have some concerns with the late
19 revisions on the low vulnerability areas requiring
20 Nitrogen Management Plans. A group of agriculture groups
21 and coalition groups met, and we come up with some
22 agreements and we came up with some solutions. Worked
23 with Regional Board staff with how to come up with
24 solutions to where they what they're legally required to
25 do and something else that worked for us. Requiring these

1 plans, the paperwork in low vulnerability areas, is not
2 just filling out one sheet and putting it on the shelf.
3 These are very complex operations, meaning different row
4 crops that are grown, the diversity from almonds to cotton
5 to tomatoes to wheat to lettuce. We have growers that
6 grow up to 30 different crops throughout the season. That
7 is a very complex process.

8 And I would hope that the Board on this late
9 revision change -- maybe we can take this part back.
10 Let's go back. And we'll meet with our group again and
11 meet with the staff and come up with a workable solution
12 to come up with what is BPTC for these areas versus this
13 last-minute change going forward and being adopted.

14 We're also concerned with some of the changes in
15 the MRP on the Management Practices Effectiveness program.
16 We're committed to a scientific process. We'll let
17 science guide that process, not politics guiding that
18 process.

19 So we're concerned with some of the changes that
20 might restrict us in coming up with scientific solutions.
21 So we could ask some of those changes be left out as well.
22 We're ask with some of the other late, late changes. We
23 appreciate the fact some of those late changes at our
24 request. We appreciate those requests. However, there
25 are some other late changes we haven't been able to fully

1 analyze and properly make comments on.

2 In closing, I just want to say we appreciate the
3 continued dialog and the improved dialog we've had with
4 staff. And we are committed to that process going
5 forward. We will work together to come up with solutions
6 to these problems, not just fight them and delay them.
7 Thank you very much.

8 CHAIRPERSON LONGLEY: Thank you. David, if you
9 don't mind, I should have grouped Roger Isom with Casey.
10 Roger. And then you'll be next.

11 MR. ISOM: Good afternoon. Roger Isom with
12 California Cotton Ginners and Growers and Western Ag
13 Processors Association. But today representing the
14 agricultural and commodity group coalitions that have been
15 working on this.

16 Let me first defend myself. Yes, I'm a Dodgers
17 fan. So I'm sorry. But don't count that against us.

18 Let me also apologize in Bakersfield when I spoke
19 about the ag coalition work we had done with the staff, I
20 unintentionally left off Clay Rodgers. I've been
21 chastised by my colleagues ever since. So Clay, thank you
22 for your help on that as well.

23 What I really wanted to focus on and it's the
24 message that's being said without being said. And that's
25 if you were in Tulare and where ag was, I'll say ag being

1 the commodity groups, we were way over here. And the
2 Regional Board was way over here. If you were in
3 Bakersfield this last week, you can see that with the help
4 of Pamela and the staff, ag has moved a long ways towards
5 accepting this.

6 Somebody asked a question do we like it, no. We
7 don't like it, the overall program. But we think that the
8 changes that have been made have provided us the
9 flexabilities and in a lot of cases especially for the
10 smaller growers and that, the time to be educated and to
11 learn what it takes that they need to do to change the
12 practices, if necessary, and especially in those critical
13 areas.

14 So again I just want to reiterate how thankful we
15 are to that work and working with us over the last two
16 months. It's been a feverish time for us to work with you
17 guys and the staff.

18 There are a couple points. One in particular
19 that Mr. Kramer mentioned. That's with regards to the
20 NMPs in the low vulnerability areas. I will assure you
21 that Pamela has worked with us this week in trying to find
22 some alternative. We don't want you to drop that effort.
23 We don't know what that alternative is going to be. We
24 haven't had enough time to really analyze it. But we are
25 committed to working with this and not dumping this whole

1 thing just over that one issue. We want to find something
2 that's going to work.

3 Again, I appreciate the time. And thank you for
4 the opportunity.

5 CHAIRPERSON LONGLEY: Thank you, Roger. David.

6 MR. COREY: Chairman Longley, members of the
7 Board, David Corey representing the West Side Coalition.

8 You know this effort that we're undertaking, it's
9 an ominous task, looking at this with enormous challenges
10 for growers and for the coalitions, with very large costs
11 and expenses associated with it. That's just really
12 looking at the surface water program we're already
13 implementing. When you throw the complexities of
14 groundwater into this thing, I can't really even get a
15 handle on what we're engaging in at this point forward. I
16 know it's going to be difficult. There are going to be
17 many challenges as we go along. It's going to be
18 significantly more expensive than it has been.

19 Does that mean we shouldn't do it? No. But I
20 think we need to realize there are going to be hick-ups.
21 We need to have the flexibility that I think this Order
22 generally allows in there. I think we need the
23 flexibility amongst coalitions. And at the Bakersfield
24 meeting, there was a commitment to have different tailored
25 Orders toward the coalitions specific, and I appreciate

1 that.

2 I really am not going to speak to this particular
3 Order, because it really is the East Side's Order. It's
4 not directly applicable to the west side.

5 I want to talk about one aspect of this that I
6 think could be overlooked. There are time lines in here
7 that are hard time lines. And two of them I look at are
8 the 60-daytime line to come up with a management plan for
9 60 days from the time you get a water quality exceedance
10 back from the lab, the coalition has to generate a
11 management plan.

12 In some instances, if it's something you've
13 already dealt with and it happens to be a new water body,
14 if it's a fairly simple thing, you may be able to put a
15 plan together that is effective and appropriate in a
16 60-day period.

17 But I could see many situations in which coming
18 up with a management plan, an effective management plan,
19 within 60 days just isn't doable. I mean, that's not very
20 much time to get something done, especially when you're
21 talking about when it's 60 days, not from the Executive
22 Officer's requested it, when you get that slip back from
23 the lab saying you've exceeded a water quality objective.

24 The other dates that could cause some problems
25 are the 120 days for folks to confirm their participation

1 in the coalition. Depending upon when these orders come
2 out and when you're validated as a coalition, that may or
3 may not be done. It depend upon the timing, what's going
4 on in the ag community, and the specifics of the
5 coalition.

6 What I'm suggesting is it may make sense to give
7 the Executive Officer some ability to give some exceptions
8 to provide some leeway on that, if she finds it
9 appropriate.

10 Now, I don't expect that Pamela is going to do
11 that willy nilly. I like that word so I figured I'd use
12 it again. Willy nilly. I think she's going to be very
13 judicious in doing that.

14 But putting Board staff in a position where it
15 just doesn't make sense to require the management plan
16 within 60 days or if a particular coalition needs more
17 than 120 days to get all of their people to sign up,
18 giving her the ability to extend that under her discretion
19 I think may make sense and make your staff's life
20 significantly easier.

21 CHAIRPERSON LONGLEY: Give some discretion to
22 Executive Officer.

23 MR. COREY: On time lines.

24 CHAIRPERSON LONGLEY: On time lines. You think
25 that's really a hob goblin of an idea?

1 MR. COREY: No, I don't.

2 CHAIRPERSON LONGLEY: For --

3 MR. COREY: If you need me to explain it to
4 you --

5 CHAIRPERSON LONGLEY: For those of you who were
6 not in Bakersfield, David used that word in Bakersfield.
7 I'm sorry.

8 MR. COREY: Thank you very much.

9 CHAIRPERSON LONGLEY: Thank you.

10 Jennifer Clary, and then I have card for JP. Is
11 there anybody else who desires to talk as an interested
12 party that I haven't called?

13 MS. CLARY: Thank you, President Longley and
14 Board members. My name is Jennifer Clary. I live in
15 San Francisco. I've taken the oath.

16 I want to reinforce some of the things that I
17 said last week and that Laurel said in her presentation
18 today. Just to say we understand this is an unprecedented
19 order and that you want to build a lot of flexibility in
20 it. But that's one of the reasons why we're asking for
21 transparency, that you're doing something now that you're
22 going to need to tinker with all through the process. And
23 so we need to understand what's going on so that we can be
24 sure that our constituents are being protected. So we
25 really, really think that the public notice requirements

1 are important. And in fact, we assume that the Board is
2 going to be reviewing this Order, although the Executive
3 Officer has very most of the powers in the Order. Or has
4 a lot of power the change things.

5 I do want to say that still want to go on pick at
6 that degradation piece, because my understanding is that
7 the degradation issue is actually a part of groundwater
8 limitations in other Orders, specifically the Dairy Order.
9 And so in this Order currently, I'm not clear -- and maybe
10 Joe can explain because I've talked to him I think every
11 day for the last two weeks. And every day, I learn a
12 little bit more. And I have to think of another question.

13 But if you guys want to allow a limited
14 degradation, you need to say somewhere in an enforceable
15 way you're going to allow limited degradation. You need
16 to define that. And I think it needs to be in the
17 limitations piece. And I would really appreciate it if
18 you would do it.

19 Other than that, we've told what you we want.
20 And I think you said what you're interested in doing. I
21 thank everyone for their work on this. And I look forward
22 to seeing what kind of work I'm going to be doing over the
23 holidays.

24 CHAIRPERSON LONGLEY: Thank you. Thank you,
25 talking about the Executive Officer and the authority

1 vested in the Executive Officer.

2 I've heard other people complain about the
3 Executive Officer having this authority or that authority.
4 The Executive Officer works for the Board. And looking at
5 a more general sense at Executive Officers throughout the
6 State over a long period of time, successful Executive
7 Officers -- and Pamela Creedon in my opinion is a
8 successful Executive Officer -- keep their Board informed.
9 Otherwise, they don't keep their jobs very well typically.
10 She's been here for a long time. And 62 now, she's not
11 leaving when she's 62. It's going to be much longer than
12 that. But with that said, JP. JP Cativiela. Do I that
13 right, JP?

14 MR. CATIVIELA: You did perfect, Chairman.
15 Dodger's fan.

16 I'm wearing my hat today representing Central
17 Valley Dairy Representative Monitoring Program, which is
18 one of the third parties I think would be the best way the
19 describe it. We run a monitoring program for the dairies
20 to help them characterize whether the management practices
21 that are in the Dairy Order are, in fact, protecting
22 groundwater.

23 And I was very interested in the comments today
24 and hope even though I don't have a cow in this fight, I
25 want to make it real clear that when you get past all of

1 this part, you know, the getting the Order written right
2 and whatever legal challenges and all that stuff, there is
3 actually a whole bunch of work that we have to do. And
4 that work, some of it can be done concurrently. But a lot
5 of it is very technical, very complicated, on a very
6 compressed time frame. These guys are cracking the whip
7 on us to get things done by certain times.

8 I talked to Clay all the time about you have to
9 have this into us by then and then where is that coming.
10 And it's very complex. In the last year, I can't tell you
11 how much contracts our group has had to sign with drilling
12 firms, surveyors, laboratories, field services, there's
13 procurement of those services through RFPs. There's legal
14 contracts. There's liability and risk management. It is
15 a big job.

16 So although it doesn't apply to me, I would be
17 very, very careful about 30-day public comment
18 requirements on documents being a thing you throw out
19 there as being you have to do it every time for
20 transparency.

21 We have had a good record working with the Water
22 Board on this. Pamela makes us circulate things for
23 public comment, even though she's not required to when it
24 makes sense. And that's worked out well. To be honest,
25 on these type of technical documents that we've put out

1 for public comment, the public comments we've gotten back
2 have been few and often not on point.

3 For example, you know, a 400-page document on
4 well specs and where the wells are going to be and why
5 they're there and what that's supposed to get for us, the
6 only comment we get back is we don't think that you're
7 monitoring for the right constituents. That's not even
8 part of that document. That's something else. That's a
9 policy comment made about something else entirely.

10 But we have to stop for 30 days in this. And we
11 can't send out our RFPs and we can't do all that stuff.

12 So as somebody who has been through that little
13 war, I would suggest you not hamstringing your Executive
14 Officer and make her just as a matter of course send out
15 everything for 30 day -- nothing against posting it.
16 Nothing against the public seeing it or any kind of
17 transparency. But to actually uphold decision making and
18 process because of that you could have three, four, five
19 times a year where you're stopping work for 30 days. And
20 we just don't have that in the time lines that you've
21 outlined. So I wanted to share that.

22 CHAIRPERSON LONGLEY: Thank you. Any questions?

23 BOARD MEMBER RAMIREZ: No, but I would say that's
24 the position that I would be leaning towards as well.

25 CHAIRPERSON LONGLEY: Okay. At this point in

1 time, we're ready for closing comments by CalSPA. I don't
2 believe Mr. Jennings is here.

3 David, do you want to make -- you said before you
4 could represent him. We'll move on to environmental
5 justice.

6 MS. FIRESTONE: Thanks. I appreciate you
7 considering all of the points. And I just want to
8 re-emphasize we're not asking for public review and
9 holding up the process willy nilly on every document.

10 We laid out three foundational key documents that
11 set all of the substantive requirements for this Order.
12 Not having an opportunity for public review would go
13 against everything and the way we've been working for the
14 past four years. It's not a lot to ask. No one is asking
15 to even require us stop things and have a long comment
16 period. But we do need to be able to see things before
17 they're approved. I think that's not too much to ask.

18 And it's interesting that, you know, I hear a lot
19 from the dischargers wanting to be consulted and have a
20 lot of input and flexibility, but they want to stop having
21 any input from any of the people that are affected. And I
22 hope you'll take that seriously.

23 The other -- and then, you know, I still think,
24 you know, on a basic level if you're limiting it to just
25 limit degradation, you need to have something that

1 actually says that in an enforceable way. Right now, the
2 limitations in the Order -- the groundwater limitations in
3 the Order allow it all the way up to the full amount of
4 degradation. I still think that's a fatal flaw in this
5 and something that I don't know that the Board -- I would
6 hope that you would at least ensure that they could pin
7 point where there is enforceable limit that's just at
8 limited degradation, if that's what they're telling you
9 you're approving. Because I think the Board needs to be
10 informed about what they're actually approving.

11 Thank you so much for your consideration.

12 CHAIRPERSON LONGLEY: Thank you very much.

13 Closing comments by Eastern San Joaquin Coalition.

14 MS. DUNHAM: Thank you. Tess Dunham for East San
15 Joaquin.

16 We have already made our comments with respect to
17 the public review and number of these documents. I don't
18 find it necessary to repeat those again. I think others
19 have made them as well.

20 I do want to re-emphasize and I think Joe did a
21 good response when we were talking about the limited
22 degradation issue Laurel brought up I think it is really
23 important that one of the things that was added to this
24 order in many discussions is the whole issue that, you
25 know, management plans in the past have always been issued

1 based upon triggers and exceedance of water quality
2 directives or water quality targets.

3 And one of the things that has been added is if
4 there is a trend so that getting back to that limited
5 degradation issue, if there is a trend of an -- again,
6 that has to be of a high quality water right. That's one
7 where for that consistent it's better than the water
8 quality objective. If you're starting to get a trend
9 towards exceeding that objective, then the Regional Board
10 then automatically kicks and requires upon finding of a
11 trend that management plans are required.

12 So I absolutely think that this document or that
13 this proposed order is protective with that respect. And
14 any change to the receiving water limitations in the
15 manner that Laurel has suggested I would think would be
16 very detrimental to the program. And it is definitely
17 something that would cause us great concern and
18 consternation and would not be consistent with when you
19 look at the receiving water limits that you are all used
20 to and the other WDRs, receiving water limits are
21 basically based upon the objectives themselves. They're
22 not set at lower than the objectives that's what other
23 provisions within the permits are for.

24 And then lastly, I just want to make a really
25 important point that, you know, Perry said that for the

1 East San Joaquin that we believe that while this Order is
2 absolutely onerous it is going to be expensive. It's
3 going to take a lot of work, a lot of time and a lot of
4 effort. But it is what the East San Joaquin feels is
5 something that is workable for them and them only.

6 I think it's absolutely important this Board
7 reiterate and remind as a policy understand that as they
8 go forward and look at all the different orders that what
9 works at BPTC for us may not work as BPTC for others. And
10 it would be I think very important for you to make sure
11 that adopting -- if you chose to adopt this order today,
12 that it's clearly noted and recognized that it is as it
13 applies to the East San Joaquin and it doesn't necessarily
14 mean that it is lock, stock, and barrel for every other
15 coalition down the road. So thank you.

16 CHAIRPERSON LONGLEY: Thank you very much.
17 Closing comments by staff?

18 BOARD MEMBER SCHNEIDER: Tess is asking us to be
19 inconsistent and site specific in this case.

20 MS. DUNHAM: I've never asked you to be
21 consistent, have I?

22 CHAIRPERSON LONGLEY: Thank you for putting words
23 in Tess's mouth.

24 PROGRAM MANAGER KARKOSKI: I guess I'll make some
25 closing remarks.

1 Well, I think I'll go back to about six hours ago
2 and when I finished up our presentation. And I kind of --
3 I still feel, even after the testimony, we're currently
4 aware I ended that presentation. That is it's really
5 difficult and everybody I think agrees to really find that
6 balance between minimizing the costs burden while making
7 sure that we are achieving our mission in protecting water
8 quality.

9 And there is no way -- I don't think we could go
10 over this for another year or so searching for that
11 balance. I don't think we would find it because we have
12 to start. It's the nature of all of our programs.

13 You know, we can't be pressioned of knowing
14 exactly what is going to be perfect until we start trying
15 to implement the program and learning and adapting as we
16 move forward. And I think for many of our programs,
17 including with the conditional waiver starting in 2003,
18 2006 and going forward, we've made changes as we found out
19 what worked and what didn't work.

20 So you heard from Tess and Perry that for the
21 Eastern San Joaquin they believe this is a workable
22 approach. I think that's fundamentally what I would hang
23 my hat on from our perspective that, you know, we believe
24 it's a workable approach and moves us forward in getting
25 that on-the-ground implementation that I think everybody

1 wants to see.

2 CHAIRPERSON LONGLEY: Thank you very much.

3 Closing comments by the Executive Officer.

4 EXECUTIVE OFFICER CREEDON: So you've heard a lot
5 today, and I do want to emphasize again some of the
6 comments about the very late changes. And those were
7 logical outcome of comments received and the continued
8 comments because we continue to work with people. And so
9 a logical outcome of all those conversations are changes.
10 If we were to be bound by additional comment periods for
11 those changes that are in response to people's comments to
12 us on an ongoing basis, we would never be bringing this to
13 you before the Board.

14 The one thing that has been a drastic change was
15 going from nutrient management to taking it out to putting
16 it back in. And that was all because of the need to
17 address anti-degradation in those areas where we have high
18 quality waters. And this Order, the way it was written,
19 with the removal of nutrient management would have been --
20 had this Board setting a standard without any mechanism to
21 demonstrate compliance with the BPTC requirement of
22 anti-degradation.

23 Does that mean that nutrient management is the
24 only control measure that we can use? No. There can be
25 others. But right now, today as we know it, nutrient

1 management happens to be that way.

2 You've heard a lot of discussion about need for
3 delay, need for more data. This order brings that in to
4 gather that information. Many of the things that we're
5 asking for, many of the things that they want us to
6 demonstrate we have to have beforehand are things that are
7 provided to them through the groundwater assessment
8 through the management practice evaluation. So we're
9 going to be getting all of that through this Order. And I
10 think we build enough flexibility.

11 In terms of public disclosure, of course, I think
12 it's important that the public get a chance to review all
13 our document. All our documents are always open to the
14 public. They can always comment on them. They can always
15 come before the Board during a public forum and ask you
16 take this up. We have a very public process demonstrated
17 by today. We're not taking any of that away with this
18 Order we issue.

19 In terms of making everything fit the same, we
20 clearly understand that there are different conditions in
21 the different areas of the region and different conditions
22 even within the regions we're regulating even under East
23 San Joaquin that would dictate that we do something
24 different simply because the conditions are different in
25 the certain areas within the area we're regulating.

1 We fully understand that. That's why we've built
2 the Order the way we have so the coalitions with
3 justification and data and information to substantiate
4 their claims that we can regulate it appropriately given
5 the site conditions we're trying to regulate, the crops
6 we're trying to regulate and that.

7 So I think we've built flexibility. There is
8 nothing that stops us from coming back to the Board with
9 recommended changes if we find there is a need. So we'll
10 continue to work with the groups. But we need to get this
11 Order going so we can get moving on this program.

12 So I recommend with all the late changes and some
13 changes still to be made that the Board adopt this Order
14 today.

15 CHAIRPERSON LONGLEY: Thank you very much. And
16 I'm going to close the hearing. I'm sure Board members
17 have questions of you. So certainly I would like the
18 attorneys and for you to be available as we go through
19 this discussion.

20 There were a number of suggestion made today for
21 changes. I need to go back through my notes and figure
22 out what is the pleasure of the Board as we go through
23 this.

24 There was, first of all, I think with the
25 presentation by Laurel Firestone, the first issue it seems

1 to be a big issue that's been touched on before was one
2 about more transparency --

3 BOARD MEMBER COSTANTINO: Dr. Longley, can I
4 just -- I have my list what I think was outstanding as
5 opposed to going through one by one.

6 CHAIRPERSON LONGLEY: I have a list, too. Let me
7 go through my list and then you go through your list.

8 The first three items here that these reports, is
9 there any --

10 BOARD MEMBER MOFFITT: I have -- so first and
11 foremost for the first item that Ms. Firestone talked
12 about with the public review, I feel pretty strongly that
13 we make sure that all documents that are necessary be
14 posted online. But that there be no 30-day review comment
15 for those documents, as she requested.

16 I do know that staff has been very diligent and
17 has picked a few items that are available for public
18 review. I think staff has been very considerate of time
19 and workload. And I don't want to be bogged down in
20 administrative stuff when there are water quality
21 objectives we would like to move forward and start
22 reaching. And I worry that a 30-day review process on a
23 live document is going to slow is down.

24 CHAIRPERSON LONGLEY: And then could I add the
25 that, this Board would certainly like feedback if the

1 folks don't feel that's not working. Very good.

2 Bob.

3 BOARD MEMBER SCHNEIDER: This is probably one of
4 the most difficult issues for me. But I wanted to thank
5 Jennifer for her comments, because I think she expressed a
6 lot of what I'm feeling at this point in time. Really
7 tried to explore this in my own mind, the relationship
8 between public transparency and the ability to review
9 documents and the time and the effort to move to forward.

10 Some of the things that weigh in on my judgment
11 are that the past performance of the coalition, the people
12 that are managing that coalition, and not just in this,
13 but in other water quality issues, the job they've done
14 pulling that together and doing a good job.

15 And our staff. I think you've got to put some
16 trust in the staff we have in this at this point in time.
17 And I really appreciate the hard work they've been doing.

18 I certainly expect everything to be posted online
19 and accessible. And I think the Board has been extremely
20 responsive when people bring issues forward. Maybe that's
21 a little after the fact, but I think it can be effective
22 in this case.

23 One question that I want to explore with the
24 staff and the Board a little bit is the concept of maybe a
25 more specific time to just bring this particular entity

1 back for review. And maybe it's piggy-backing as we move
2 forward with some other of the WDRs. But I think it might
3 be helpful to certainly indicate our interest in being
4 sure we bring this back within a year or something along
5 those lines.

6 EXECUTIVE OFFICER CREEDON: The general order or
7 just the documents there of interest?

8 BOARD MEMBER SCHNEIDER: I think just that's a
9 big question. To bog it down in another six or eight --

10 EXECUTIVE OFFICER CREEDON: Part of the Executive
11 Officer report, there has already been extensive
12 discussion that discusses it. We started it last year --
13 few years ago when we were going through -- beginning this
14 process and keeping the Board up to date on compliance
15 with the existing waiver. Obviously, the Executive
16 Officer report will continue to provide that information
17 to the Board. But we can bring back. I don't know
18 quarterly, but maybe for this one give regular updates to
19 the Board maybe every twice a year until we hear.

20 CHAIRPERSON LONGLEY: That would be fine. You
21 already committed earlier to information item and that's a
22 point the Board would like to look at.

23 BOARD MEMBER SCHNEIDER: Something within a year.

24 EXECUTIVE OFFICER CREEDON: Within a year.

25 BOARD MEMBER SCHNEIDER: It's hard to have a

1 hearing and everybody needs to be here but involved with
2 it. I think because it's the first one there is certainly
3 advantages and some disadvantages to being the first one.
4 I think getting out of the gate and being as flexible as
5 we can to see how it works is something we need to be
6 doing. And in response to this concern over the posting,
7 I'm willing to go with that.

8 CHAIRPERSON LONGLEY: Now another part --

9 BOARD MEMBER SCHNEIDER: I'm wondering on -- but
10 that's what I'm thinking about.

11 CHAIRPERSON LONGLEY: I'd like to know what your
12 pleasure is. I'm hearing posting. I having that
13 requirement as part of the Order, recognizing that folks
14 aren't going to be here forever.

15 BOARD MEMBER SCHNEIDER: I think we can leave it
16 because we can always just make that statement if we chose
17 to.

18 CHAIRPERSON LONGLEY: Okay. Someone is going to
19 be around for a while.

20 BOARD MEMBER SCHNEIDER: I'd rather leave it as
21 an indication from the Board we do want this to come back
22 to us on a regular basis and certainly within a year.

23 CHAIRPERSON LONGLEY: Any discussion on this?

24 EXECUTIVE OFFICER CREEDON: If I could point out
25 with the more increased use of the electronic age, we are

1 posting more and more and more. We don't need our Orders
2 to do that. It's a general unwritten policy -- I can't
3 even use that word I guess -- unwritten practice of the
4 Board we post most of it on the web.

5 BOARD MEMBER COSTANTINO: I would just comment on
6 the posting public notice. I think I'm in agreement with
7 both Board members who have spoke on this already that
8 there has to be some trust in the system.

9 The system has a whole is conservative and there
10 is a difference between transparency and bureaucracy. And
11 so I would express as a Board member my desire to make
12 sure everything is posted, whether it's in -- I don't need
13 it in the regular, but I know -- and the Order, but I know
14 it will be posted because that's just the way life works
15 these days.

16 And so just for the record, I would be fine with
17 that.

18 And I agree with the Board Member Schneider about
19 coming back within a year. And I wouldn't limit it to
20 coming back to this Order. I think as we move forward,
21 this is a big enough program that an annual update, annual
22 item even though it's going to be in the Executive Officer
23 report that says here's how, why your program is going, we
24 have so many coalitions, so many things, this is what's
25 going on. And it's just a big enough issue that as this

1 thing gets moving, it could be -- I don't want to say a
2 standing item, but it's going to come before the Board
3 enough that --

4 EXECUTIVE OFFICER CREEDON: I hope you remember
5 over the next year, two years, you'll get these nearly
6 every Board meeting. You'll have plenty of opportunity to
7 weigh in on irrigated land.

8 CHAIRPERSON LONGLEY: There's also the issue that
9 a Board member at any point in time can request --

10 BOARD MEMBER COSTANTINO: I agree. There is a
11 difference as we go over the next twelve months we're
12 going to see many of these. But that's going to be like
13 this. And that's a lot different than you guys coming
14 back to us and saying this first plan was submitted. This
15 first day came and wen. The first number of people
16 actually enrolled. So that's the kind of information I
17 think we're looking for.

18 BOARD MEMBER SCHNEIDER: It's going to be this
19 with site-specific.

20 CHAIRPERSON LONGLEY: That's right. The second
21 item was the --

22 BOARD MEMBER RAMIREZ: I'd like to comment on
23 this. Sorry, Dr. Longley.

24 And I think Sandra has been trying to press her
25 button, too, over there.

1 I would like to see it in the Order. And that's
2 because, you know, there seems to be consensus. And what
3 I would like to see it say the item be posted as is
4 practice or whatever. The reason I'd like to see it in
5 writing is because this is the first of probably more
6 Orders to come. And I just wouldn't like to see that this
7 issue be discussed every time or that we would have to
8 justify or try to rationalize why it is we're putting it
9 online.

10 You know, I think people are honest. Don't think
11 people say that's not part of the Order. But just for the
12 sake of not having to deal with this issue multiple times.
13 If it's in the Order, it's kind of established. So I
14 would like to see that the documents get posted. I
15 don't -- I'm not necessarily pushing for a commitment of a
16 certain period for time to respond.

17 I wouldn't like to see people staff feeling
18 delayed like they can't take action because they have to
19 wait for a certain period to expire. But like I said, I
20 think posting the documents would be sufficient.

21 And I trust that Ms. Firestone and other
22 interested people will tell us when something alarming has
23 happened, if we don't hear it from the staff first. So my
24 preference would be that it would be put into the
25 documents will be posted would be put into the Order.

1 CHAIRPERSON LONGLEY: Sandra.

2 BOARD MEMBER MERAZ: I concur with Carmen, but I
3 would like o hear from Laurel on the issue you.

4 CHAIRPERSON LONGLEY: The hearing is closed.

5 BOARD MEMBER MERAZ: I'm sorry.

6 EXECUTIVE OFFICER CREEDON: Could you repeat the
7 question that --

8 EXECUTIVE OFFICER CREEDON: When you -- my
9 assumption -- and may be is that the posting would happen
10 after it's been approved. But maybe we would post the
11 document -- were you intending it to be posted before or
12 after or both.

13 BOARD MEMBER MERAZ: What is the answer?

14 EXECUTIVE OFFICER CREEDON: I'm asking the Board
15 what the --

16 BOARD MEMBER COSTANTINO: My assumption was
17 after.

18 BOARD MEMBER MOFFITT: Yeah.

19 BOARD MEMBER RAMIREZ: My assumption was before
20 upon receipt.

21 EXECUTIVE OFFICER CREEDON: So you could
22 really -- I wish I could have you spend a day with staff.
23 But you know, we get these documents. And they go through
24 a number of iterations before. So what we get initially
25 may not look what we actually approve. So I guess I would

1 say, you know, to say post it as soon as we get it, it
2 would just -- that may not be the most appropriate.

3 BOARD MEMBER COSTANTINO: I think that could be
4 confusing. And also you're posting things that aren't
5 final. And what does that mean to someone who is looking
6 at it and there are several versions and they got the
7 wrong link.

8 I just think if transparency -- this is what we
9 did, this is what was approved, we're going to live with
10 it. And everybody can argue over it or fight over it.
11 But to post something we're still looking at really causes
12 staff problems.

13 BOARD MEMBER RAMIREZ: Okay. I can see the
14 danger of that someone looking at it or relying on it or
15 thinking guidance when it's going to be changed. So that
16 reasoning seems reasonable to me. So I could withdraw
17 that feeling.

18 CHAIRPERSON LONGLEY: Bob, what's your feelings
19 on that?

20 BOARD MEMBER SCHNEIDER: Again, I said this is a
21 tough one for me. I think the Executive Officer needs to
22 review this and with staff and set up the final copy,
23 approve it and post it.

24 CHAIRPERSON LONGLEY: Lori -- do you have your --

25 LEGAL COUNSEL OKIN: I just wanted to clarify,

1 are we talking about posting the five items that Laurel
2 mentioned in her presentation or a larger set of
3 documents?

4 CHAIRPERSON LONGLEY: No. Those items that were
5 mentioned which I think are three.

6 BOARD MEMBER MOFFITT: I think it was five.

7 CHAIRPERSON LONGLEY: Five. Okay.

8 BOARD MEMBER MOFFITT: There were three initially
9 and a couple more added on. I would not like to see those
10 put into the Order though or put a requirement that we
11 make the posting.

12 I think -- I don't know. I'm not a lawyer. I
13 would say that opens up some legal issues.

14 EXECUTIVE OFFICER CREEDON: Actually, it is an
15 order on us and not on them. So I mean, if we're going to
16 do anything for full disclosure, I was going to recommend
17 it just be ORDERED. If you're going to want to adequately
18 add into the information sheet, that's where we lay out
19 what our intent is and that's where it would best fit is
20 in the information sheet, if we put it somewhere.

21 It's not needed, but if you're more comfortable
22 with that and the Board so chooses, we can add it there.

23 I should clarify we have a number of documents,
24 the templates and whatnot that she's not -- that we have
25 offered for 30-day public comment. And those, when

1 they're fine, would be on the posted as well. We'll post
2 nearly all the documents that we have online, including
3 the management plans, whether they have the exceedances,
4 those will be posted as well.

5 CHAIRPERSON LONGLEY: Okay. And then the second
6 item was the inadequate requirements for base line had to
7 do with the base line issue. We discussed that in some
8 detail. And if I heard the Board's pleasure, at that
9 point, the Board was not inclined to make any changes. Or
10 am I wrong?

11 VICE CHAIRPERSON COSTANTINO: I agree with what
12 you said.

13 CHAIRPERSON LONGLEY: Thank you.

14 LEGAL COUNSEL MAYER: I think there was just that
15 one clarification language related to the MRP groundwater
16 monitoring trend report was to establish a base line. And
17 there was some confusion whether that's the appropriate
18 term or whether we're talking about anti-degradation.

19 So there was some discussion of using a different
20 term for instead of base line you would say current water
21 quality conditions. So there was that one issue that kind
22 of was related to that one.

23 LEGAL COUNSEL OKIN: That is our recommendation
24 to determine base line shouldn't be used in that context.
25 There are two instances that we have to change, so Alex,

1 if you could point out the page numbers or section
2 numbers.

3 LEGAL COUNSEL MAYER: I wrote down the page
4 numbers that you would need to make the changes to.

5 So the first change is where we were looking at
6 the MRP section. You have it open. It's on page 16 of
7 Attachment B in your agenda package. Under the section C
8 one the first sentence of C1 says, "The objectives of
9 groundwater quality trend monitoring are: 1. To
10 determine base line quality of groundwater relevant to
11 irrigated agriculture. Instead of saying "to determine
12 base line quality," you would instead say, "to determine
13 current water quality conditions of groundwater."

14 CHAIRPERSON LONGLEY: The problem with that, I
15 don't really think that gets to the-anti degradation
16 issue. That's fine. That gives us current, but where the
17 record shows earlier water quality.

18 LEGAL COUNSEL MAYER: I don't think that the
19 recommendation is in terms of Ms. Firestone's
20 anti-degradation concerns. It's in terms of her concern
21 about that term being misleading or confusing and she was
22 seeking a different term. That was my understanding.

23 And Lori, you can weigh in as well.

24 LEGAL COUNSEL OKIN: That's right. This was an
25 issue in the Order. The wrong term is used. This is for

1 measuring trend going forward so the Board can ensure that
2 the anti-degradation provision in the Order are being
3 complied with.

4 LEGAL COUNSEL MAYER: That was the first instance
5 of that term. There were two other instances. One is the
6 information sheet which is Attachment A at page 16 in your
7 agenda package.

8 So basically we would be using the same exact --
9 I don't know if worth while to really point the each
10 specific example other than identifying the page number
11 and promising that staff would make the conforming changes
12 to replace every reference to base line quality with
13 current water quality conditions. So there is an example
14 on page 16 of the information sheet and there is also in
15 your agenda package and there is also an example of that
16 language in the Tentative Order of your agenda package at
17 page 16. And staff could go through upon adoption of the
18 Order and make --

19 CHAIRPERSON LONGLEY: So those are going to be
20 included in the Order; is that correct? Those page
21 numbers will be included in the Order; is that correct?

22 LEGAL COUNSEL MAYER: The revision to those page
23 numbers.

24 CHAIRPERSON LONGLEY: The revision to the page
25 number. Thank you, Alex.

1 LEGAL COUNSEL OKIN: I think we should take a
2 break and look at the language because the term base line
3 is allowed in a lot of different context.

4 CHAIRPERSON LONGLEY: How long will the break
5 take? Can you identify those and we can go on with our
6 discussion?

7 LEGAL COUNSEL OKIN: Alex, is it limited to one
8 section the term base line in one specific session?

9 STAFF COUNSEL MAYER: It's one specific sentence
10 in each example. It doesn't take too much time.

11 LEGAL COUNSEL OKIN: If it's limited to one
12 section, we can do a global change.

13 STAFF COUNSEL MAYER: It's the recommendation
14 we'll do a global change, the same exact usage of the term
15 in all three instances.

16 LEGAL COUNSEL OKIN: We're checking.

17 CHAIRPERSON LONGLEY: We'll go with it. Fine.
18 Let's move on while you do that.

19 The last point that she made was fails to comply
20 with anti-degradation requirements. And she simply wants
21 to correct the compliance limitations. In fact, she had
22 pretty simple language for that. What's your pleasure?

23 BOARD MEMBER COSTANTINO: I didn't hear the Board
24 suggest any changes on that end.

25 LEGAL COUNSEL OKIN: I think that was the

1 reference to deleting paragraphs C&D of paragraph 20 on
2 page -- either on Page 19 or 20.

3 CHAIRPERSON LONGLEY: And we agreed to do that.

4 LEGAL COUNSEL OKIN: This is actually a question
5 for staff. I think there is a footnote 18 that has some
6 time schedule language tied to those two paragraphs. I
7 don't know if that language needs to be moved to the
8 surface water limitation and groundwater limitations or
9 taking out C&D makes that footnote unnecessary.

10 PROGRAM MANAGER KARKOSKI: Taking out C&D makes
11 the note unnecessary.

12 CHAIRPERSON LONGLEY: It was pointed out to me it
13 was Tess and not Laurel.

14 So getting back to Laurel's statement, where she
15 wanted to correct a compliance limitations and this was
16 addressed later by Jennifer Clary who stated that limited
17 degradation. We need to say so, not to allow the full
18 limit.

19 BOARD MEMBER COSTANTINO: On that one, I thought
20 the response how we ended it was that when you look at the
21 whole of the regulation as opposed to this individual part
22 that it's protective. That was Pamela's response. I was
23 happy with that response. We don't have any other
24 discussion after that. I didn't hear.

25 CHAIRPERSON LONGLEY: So the Board is happy

1 with -- do I hear anyone who objects to -- who is unhappy
2 with the Order as it now stands in regards to that
3 particular issue?

4 Okay. Moving on, my list is --

5 LEGAL COUNSEL MAYER: Dr. Longley, I did identify
6 those other examples for the use of word "base line water
7 quality." Is now a good time to go through those?

8 CHAIRPERSON LONGLEY: Sure.

9 LEGAL COUNSEL MAYER: So in your agenda package,
10 page 30 of the tentative Order near the top of the page
11 there is a paragraph three entitled "Groundwater Quality
12 Trend Monitoring Work Plan." Does everybody see that?

13 Now, the third sentence of that paragraph reads,
14 "The overall objectives have the groundwater trend
15 monitoring are to determine base line quality of
16 groundwater relevant to irrigated agriculture," and then
17 it goes on further.

18 So the reference base line quality of groundwater
19 would be replaced with current water quality conditions of
20 groundwater. So it would be the same change as I
21 previously mentioned in the MRP. That same terminology
22 would be used in that part of the sentence. And there is
23 one other location and that's increased Attachment A at
24 page 16. Attachment A of the tentative Order.

25 The second paragraph first sentence says the

1 trend monitor program is designed to determine base line
2 quality of groundwater in the third party area and then
3 the sentence guess on and again the reference to base line
4 quality would be replaced with the one that we mentioned
5 previously. So those are the three instances where the
6 text would be changed the address the concern raised by
7 Ms. Firestone.

8 CHAIRPERSON LONGLEY: Okay. Do we have
9 agreement? Or objection to that?

10 Thank you.

11 The next item David Corey mentioned giving some
12 discretion to the Executive Officer on time lines. And
13 this management plan would be an example. 60 day
14 requirement there. And if for good reason it would appear
15 that the 60 days isn't going to do it, is there discretion
16 in there now? Or do we have to have language for that?

17 PROGRAM MANAGER KARKOSKI: I'd just like to make
18 a comment on that. And the context of the east San
19 Joaquin, they currently have a general surface water
20 quality management strategy which addresses all of their
21 water bodies and constituents that have exceedance.

22 So they have a comprehensive strategy and we just
23 ask them to update that once a year. So that 60-day
24 trigger which really applies to individual management
25 plans doesn't apply in that case for their surface water

1 quality program.

2 Now on groundwater quality, we also have a
3 provision that gives them an option of rather than
4 developing separate Groundwater Quality Management Plans
5 each and every time you trigger that requirement is to
6 have a comprehensive strategy. And they've indicated
7 that's the approach that they're going to take. So I
8 don't -- they themselves have not complained that that's
9 an issue.

10 David Corey raised it. And so if that's an issue
11 when we get to the last item, I'm sure we can address it
12 there. I'd be really cautious, with all due respect to my
13 EO, giving global discretion because this is one of the
14 things we talked about like with the member requirement.
15 There is 120 days to sign up directly with the coalition.
16 So it helps when we're going out to those non-members if
17 you say we have 10 days, unless we find it's really hard
18 for you to do that or unless our EO says you have more.
19 So that's one of the things we want to sort of be careful
20 about giving global discretion on.

21 BOARD MEMBER COSTANTINO: I was going to say the
22 exact same thing on the 120 days that's there. And I read
23 from the documents as an incentive. And there is a fee if
24 you don't do it in time. And so I wouldn't want to loosen
25 that back end for sign up because that's part of inputting

1 the program. So I would agree with you there.

2 BOARD MEMBER RAMIREZ: I would agree also with
3 what Joe said it's a concern from somebody else who is not
4 necessarily be affected by this Order today. And the
5 people who are being subjected to this Order hasn't raised
6 the issue so I wouldn't be inclined to make a change at
7 this time.

8 CHAIRPERSON LONGLEY: Okay. I have some other
9 comments to make I will say later. You had some points,
10 Jon, that you wanted to discuss.

11 BOARD MEMBER MOFFITT: I think there was one last
12 issue that was brought up that we wanted to -- we talked
13 about may be adding was just changing the record request
14 to a written request.

15 CHAIRPERSON LONGLEY: Oh, yes. Yes.

16 BOARD MEMBER COSTANTINO: I would agree.

17 CHAIRPERSON LONGLEY: And that goes into the
18 Order; am I correct?

19 EXECUTIVE OFFICER CREEDON: That would be on --
20 actually, it's in the late revisions.

21 CHAIRPERSON LONGLEY: Are there any other --

22 BOARD MEMBER CONSTATINO: Going through my list,
23 I think that was all the -- well, all the changes that I
24 had listed other than that was all the changes. There was
25 late changes where the mass balance and the nutrient

1 management plan were the two that were -- I had that were
2 somewhat controversial. But everything else seemed to be
3 okay with everybody. I just wanted to make sure that when
4 we voted, we were taking those two into consideration as
5 part of the package.

6 BOARD MEMBER RAMIREZ: Jon, are you talking about
7 what was brought up by Tess?

8 BOARD MEMBER COSTANTINO: In Joe's six, four ago
9 he listed each.

10 PROGRAM MANAGER KARKOSKI: Seven.

11 BOARD MEMBER COSTANTINO: In going through, all
12 but two seemed like they were universally accepted.

13 But even at this, the Nutrient Management Plan
14 and the mass balance were accepted by the East San
15 Joaquin. I'm not suggesting any changes. I wanted to
16 make sure we pointed out those were all included.

17 BOARD MEMBER RAMIREZ: I'd like to make sure that
18 Pamela -- I think that early on when Tess brought up the
19 issue of three separate WQS for performance standards the
20 effect of deleting the other two we had said it's not a
21 problem. So I would just like for the record to show that
22 in my consideration of supporting this issue that I
23 understand that that is has also been taken into
24 consideration.

25 EXECUTIVE OFFICER CREEDON: Exactly.

1 MR. LAPUTZ: There was also some discussion on
2 qualified scientist and definition for qualified
3 scientist, I'd like to remind you, about from the city of
4 Sacramento.

5 CHAIRPERSON LONGLEY: And you agreed to what I
6 heard was an agreement to including that in the
7 definitions, which I think is what? E or F or something
8 like that?

9 MR. LAPUTZ: Attachment e.

10 CHAIRPERSON LONGLEY: Attachment E. Okay.

11 EXECUTIVE OFFICER CREEDON: I'm assuming we have
12 that language. Is it there. Okay.

13 LEGAL COUNSEL MAYER: We should read it.

14 EXECUTIVE OFFICER CREEDON: Read it because those
15 are not accepted into the record. So you should read it.

16 PROGRAM MANAGER KARKOSKI: We can read it into
17 the record so we can reread it as the definition.

18 EXECUTIVE OFFICER CREEDON: We need to be
19 specific where in the Order it will be changed. So while
20 you're finding that location, on page 36 of the late
21 revision you were handed will be the last page before you
22 go into the late revisions regarding the General Order,
23 December 5th, late revisions under recordkeeping
24 requirements, Section X or 10 Roman 10, X, page 36, in the
25 middle of that paragraph, we have made some changes to the

1 sentence that begins, "The maintained records -- reports
2 or records, including electronic information shall be made
3 available to the Central Valley Water Board upon request
4 of the Executive Officer" -- between the words "upon
5 requested," add the word "written" so it would be upon
6 written request of the Executive Officer.

7 CHAIRPERSON LONGLEY: Are you ready to read back
8 to us about the change we made to attachment E?

9 MR. LAPUTZ: Yes. It would be to page 4 of
10 Attachment E. Directly after the definition for
11 pollution. The definition I have it right here. Would be
12 more qualified scientist. A person who has earned the
13 professional degree in a scientist discipline and that
14 relates to engineering, environmental or chemistry with
15 additional experience related to pesticide and water
16 quality. This person should be familiar with the related
17 local, State, and federal regulations.

18 CHAIRPERSON LONGLEY: Thank you.

19 Any more discussion or recommendations by -- Jon.

20 BOARD MEMBER COSTANTINO: This is not a
21 recommendation. This is a final comment more than a
22 change or a motion. So I wanted to let that opportunity
23 go first. Before I make a comment.

24 CHAIRPERSON LONGLEY: I don't see anything else.

25 BOARD MEMBER RAMIREZ: I don't have any more

1 changes.

2 BOARD MEMBER COSTANTINO: Do you want a motion
3 first?

4 STAFF COUNSEL MAYER: I have other changes.

5 EXECUTIVE OFFICER CREEDON: There was a comment
6 made by Jennifer about we didn't change our response to
7 comments. So we do need some changes to our -- I don't
8 think that has to be in regards to the nutrient management
9 plan.

10 STAFF COUNSEL MAYER: I looked at that issue and
11 we would want to change the response to comments before
12 the Board acts. And so let's talk about that one now.

13 CHAIRPERSON LONGLEY: Where is it?

14 LEGAL COUNSEL MAYER: In your agenda package
15 there is a response to comments document. And it's page
16 starts with page 13. It's master response five. Annual
17 nitrogen budget.

18 CHAIRPERSON LONGLEY: Must be the wrong place.

19 LEGAL COUNSEL MAYER: There is a response to
20 comments document. And that follows all of the appendices
21 in the Order. Appendix MRP 2 is the one proceeding the
22 response to comments document.

23 CHAIRPERSON LONGLEY: Okay. Go ahead.

24 LEGAL COUNSEL MAYER: So on page 13 of that
25 document, there is a master response five. And what

1 Ms. Fischer pointed out was that there was a statement in
2 there that says the Order would require Nitrogen
3 Management Plans to be developed in high vulnerability
4 areas only. And that does not reflect the proposed Order
5 in front of you, which would require Nitrogen Management
6 Plans in both high and low vulnerability areas. I would
7 suggest the first -- I'm going to wait for everybody.

8 CHAIRPERSON LONGLEY: I'm looking on here.

9 LEGAL COUNSEL MAYER: The sentence of the
10 response on page 14 is a long paragraph that says
11 "requiring all members in high vulnerability groundwater
12 areas to develop Nitrogen Management Plans is a reasonable
13 requirement." And then the sentence goes on. If you
14 deleted the part of the sentence that says "in high
15 vulnerability groundwater areas," then the sentence would
16 be accurate.

17 It would read, "requiring all members to develop
18 Nitrogen Management Plans is a reasonable requirement."
19 And so that would be an accurate reflection of what the
20 proposed Order requires. And I did go through the rest of
21 the response, and I couldn't find any other inconsistent
22 statement in there. So I think by making that revision we
23 would be addressing the concern raised by Ms. Fischer.

24 CHAIRPERSON LONGLEY: Good. Was that okay with
25 Board members. Thank you. Any other thing before we ask

1 for a motion?

2 LEGAL COUNSEL MAYER: There are some other ones.
3 It's in terms of the Board seemed to indicate a preference
4 that somewhere in the information sheet we would be
5 directing staff or the Executive Officer staff to post
6 certain documents on the our website. So I have not
7 located the best location yet. But I do have some
8 language. If staff could help me look for a possible
9 location for that language for language and the
10 information sheet to direct posting of a groundwater
11 assessment report changes to high or low vulnerability
12 areas reductions in monitoring report frequency trend
13 monitoring plans and the NMP work plan. I mean --

14 EXECUTIVE OFFICER CREEDON: I would like o make
15 sure the Board really wants that added. That would
16 restrict us. I could see it now. If we don't identify a
17 report and we post it, they could demand that we remove it
18 and just post reports. So I would -- it's obviously if
19 you want it in there, we can put it in there and just make
20 it a general statement that we'll post public the
21 documents to the website.

22 CHAIRPERSON LONGLEY: I prefer the more general
23 statement.

24 EXECUTIVE OFFICER CREEDON: Okay. Thank you.

25 BOARD MEMBER COSTANTINO: I would agree.

1 LEGAL COUNSEL MAYER: So in terms of the
2 location --

3 CHAIRPERSON LONGLEY: Where do you want to put
4 that? Either up front or after?

5 PROGRAM MANAGER KARKOSKI: Alex, it looks like on
6 page 23 we have a section on technical reports, 23 and 24.

7 CHAIRPERSON LONGLEY: Yeah.

8 PROGRAM MANAGER KARKOSKI: So --

9 LEGAL COUNSEL MAYER: Maybe the last paragraph on
10 of that, technical reports. Might that be a good location
11 at the very end? You know, there was a paragraph that
12 says the Order on page 24 says the Order --

13 BOARD MEMBER COSTANTINO: Aren't we doing plans
14 and reports? And it's more general than just technical
15 reports; correct? I'm okay with a broader statement
16 somewhere in the main --

17 EXECUTIVE OFFICER CREEDON: We can add a
18 sub-section right after that called reports -- reports and
19 plans and just put in there that the Board staff will post
20 a few documents to the website.

21 CHAIRPERSON LONGLEY: Let's do that, core water
22 quality objectives.

23 LEGAL COUNSEL MAYER: So there would be a
24 separate paragraph called reports and plans. And then the
25 sentence would read --

1 EXECUTIVE OFFICER CREEDON: All approved.

2 LEGAL COUNSEL MAYER: Staff will post all
3 approved plans and reports on the website on the Board's
4 website upon approval.

5 BOARD MEMBER MOFFITT: Can we make it relevant
6 plans and reports or -- because all approved plans and
7 reports could be kind of all-encompassing.

8 LEGAL COUNSEL MAYER: Yeah, I mean, the other
9 option is to just have Executive Officer promise to post
10 these documents. It's hard to come up with perfect
11 language right now.

12 CHAIRPERSON LONGLEY: Let's go with all reports
13 and plans at this point. If we have to modify it later,
14 we will. And/or would you do -- you have other language
15 you would like Alex?

16 EXECUTIVE OFFICER CREEDON: I think that staff
17 will post all relevant plans and reports on the Board's
18 website upon approval.

19 LEGAL COUNSEL OKIN: I would suggest taking out
20 relevant because it's too subjective.

21 BOARD MEMBER COSTANTINO: Required?

22 LEGAL COUNSEL OKIN: There's only a certain
23 number of a plans that need approval.

24 BOARD MEMBER COSTANTINO: How about required
25 reports. If you're required to do it then --

1 EXECUTIVE OFFICER CREEDON: I think may be Lori
2 just said the words, that all plans that required EO
3 approval by this Order will be posted upon approval.

4 BOARD MEMBER COSTANTINO: Perfect.

5 CHAIRPERSON LONGLEY: Good. Anything else?
6 Alex, anything else?

7 LEGAL COUNSEL MAYER: Yeah. There was one --
8 there was one typo changed that we're suggesting to the
9 late revision dated December 7th. And if everybody has
10 that in there, and it's page 15 the last page of December
11 7th late revision. And there is a double underlined and
12 bolded sentence in the bullet. So I'm looking at the
13 third bullet under the heading B1 objectives. The bullet
14 reads develop --

15 CHAIRPERSON LONGLEY: This is what attachment?

16 LEGAL COUNSEL MAYER: This is -- these are the
17 late revisions dated December 7th, 2012

18 CHAIRPERSON LONGLEY: Right.

19 LEGAL COUNSEL MAYER: The last page of that
20 packet.

21 CHAIRPERSON LONGLEY: Okay.

22 LEGAL COUNSEL MAYER: Page 15. So the third
23 bullet under B1, objectives, the second sentence of that
24 bullet reads, a mass balance and a conceptual model of the
25 transport, storage, and

1 degradation/chemicals/transpiration mechanisms for the
2 constituents of concern. And then there is a double
3 underlined and bolded part of that sentence that says or
4 equivalent method approved by the Executive Officer. I
5 would be moving that whole clause to follow immediately
6 after constituents of concern. And there would be a comma
7 before that begins so it would be constituents of concern,
8 or equivalent methods approved by the Executive Officer,
9 must be provided. It's just to make the sentence more
10 grammatically correct. Did you follow that edit?

11 BOARD MEMBER RAMIREZ: Yes.

12 LEGAL COUNSEL MAYER: That would be another
13 recommended revision.

14 CHAIRPERSON LONGLEY: Any comments? Good. We'll
15 accept it.

16 Anything else, Alex?

17 LEGAL COUNSEL MAYER: I don't have anything. I
18 would have to go through my list. I don't it available
19 right now.

20 CHAIRPERSON LONGLEY: This is your last chance.
21 I think we've covered everything.

22 CHAIRPERSON LONGLEY: Good. Thank you for your
23 input.

24 With that said, any more comments, members of the
25 Board, before I ask for a motion?

1 BOARD MEMBER COSTANTINO: Just one or two small
2 ones. And I just want everybody to hear that, you know,
3 as a Board member, I did hear the idea that each of these
4 will be unique in their specifics based on what region and
5 the parameters that are needed. And so my vote is with
6 that in mind that each one will come before us. And we'll
7 have a nice detailed discussion like we did today about
8 the specifics.

9 I had one comment about process. The idea that
10 the public comment period closed four months ago and there
11 was several revisions doesn't necessarily sit exactly well
12 with my view of how the process should work. I get late
13 revision. In fact, you need them because things change at
14 the last minute.

15 I would just caution that we try not to have
16 three sets of major revisions four months after a comment
17 period was closed. It just I think it's problematic at
18 certain levels.

19 But the parties today seemed to discuss how they
20 benefited from many of them, and they can live with them.
21 I think workable and very close and can live with it with
22 the three different terms that were used.

23 So then there was a request about if there was
24 new cost estimates as these things move forward. If those
25 are used, I would not direct the staff to do anything.

1 But I want to highlight if we do get new information that
2 we use the most current that we have. That we're not just
3 stuck with the same numbers forever, especially if this
4 takes two more years to complete all these and that's it.

5 CHAIRPERSON LONGLEY: Thank you. Any other
6 comments?

7 BOARD MEMBER MOFFITT: I guess before we take a
8 vote, I just wanted to take a moment to commend staff and
9 all the stakeholders for all of their involvement
10 throughout the past at least four years working on this.
11 It's not the ideal document, I guess, that one would want.

12 But I think Joe put it very correctly, that I
13 think we could spend another 20 years working on it and no
14 one would be everyone would be happy. So I think we have
15 a very good workable document that I'm glad to see.

16 I appreciate all of the comments that we've heard
17 today. I appreciate all of the involvement that people
18 have been through.

19 As far as the late revisions, while it's
20 difficult and challenging, I think it's a very good
21 indication that staff has been very open to stakeholder
22 involvement throughout this process. So I appreciate
23 the -- even as challenging as it is, I appreciate the late
24 revisions because it does indicate that staff has been
25 very working very hard to make this the best plan that we

1 could possibly make it.

2 CHAIRPERSON LONGLEY: Okay.

3 BOARD MEMBER SCHNEIDER: I just wanted to say it
4 was nice to have been here in 2003 when a lot of the
5 process started and to be here now. It was particularly
6 nice to have a five-year break. Thank you all for your
7 consider work and participation.

8 CHAIRPERSON LONGLEY: We're going to work you
9 this next year, bob. Before I ask for -- do you want to
10 talk?

11 BOARD MEMBER MERAZ: I just would like to thank
12 everybody that's here and to the staff that's done all the
13 hard work, Pamela, Ms. Creedon and all of the
14 organizations, the communities, and all of the people that
15 are here and waited this long for us to be able to
16 understand and get down to the -- what we'd say
17 nitty-gritty of all. To Alex working pretty hard over
18 there with us. And just thank you. And have a Merry
19 Christmas.

20 CHAIRPERSON LONGLEY: I support the Order. Think
21 that's been obvious in my comments today. I do have
22 concerns on the transparency issue, but I'll be voting for
23 this. I think it's something -- like other provisions,
24 there are things that we're going to have to judge as we
25 go down the road.

1 On the issue of the late revision, something like
2 this, I don't know how you can avoid them. We did give
3 folks a chance in Bakersfield to make comments. That's
4 why I saw a lot of changes today, Jon, was based upon
5 input by folks in Bakersfield, when we initially opened
6 this hearing. If we tried to do this in one day and not
7 two, I don't know if we could have done it. But to be
8 honest with you. With that said, do I have a motion?

9 BOARD MEMBER COSTANTINO: I move the Order with
10 all the changes that were outlined in our detailed
11 discussion.

12 CHAIRPERSON LONGLEY: With all the revisions
13 late, late, late, and late, late, late. Okay. Do I have
14 a second?

15 BOARD MEMBER SCHNEIDER: Second.

16 BOARD MEMBER RAMIREZ: I'll second.

17 CHAIRPERSON LONGLEY: Okay. It's been moved and
18 seconded. Jon moved.

19 BOARD MEMBER RAMIREZ: My name is Carman.

20 CHAIRPERSON LONGLEY: I can't think of my own
21 name. I have a motion. And this is a voice vote. All in
22 favor state so by saying aye.

23 (Aye.)

24 CHAIRPERSON LONGLEY: Opposed say no. Motion
25 carries. Thank you all very much.

(Whereupon Agenda Item 21 concluded at 6:26.)

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CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of February, 2013.

TIFFANY C. KRAFT, CSR, RPR
Certified Shorthand Reporter
License No. 12277