



California Regional Water Quality Control Board Central Coast Region



Linda S. Adams.
Secretary for
Environmental Protection

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

Arnold Schwarzenegger
Governor

MINUTES REGULAR MEETING Friday, October 23, 2009 Central Coast Regional Water Board

Chairman Jeffrey Young called the meeting of the Central Coast Water Board to order at 8:30 a.m. on Friday, October 23, 2009, at the Santa Barbara County Supervisors Hearing Room, 105 E. Anapamu Street, Santa Barbara, California.

Friday, October 23, 2009

1. Roll Call Executive Assistant Carol Hewitt

Board Members Present:

Chairman Jeffrey Young
Vice Chair, Russell Jeffries
John Hayashi
David Hodgkin
Monica Hunter
Tom O'Malley
Gary Shallcross

2. Introductions Executive Officer Roger Briggs

Executive Officer Briggs introduced staff and asked parties who wished to speak to complete testimony cards and turn them in. Mr. Briggs introduced and welcomed our State Board Liaison, Frances Spivy-Weber. Supplemental sheets that were prepared after the agenda was sent out are as follows: Item 6, 12, and 21.

3. Approval of August 31, 2009 Minutes Board Motion

MOTION: Russell Jeffries moved to approve the August 31, 2009 minutes.

SECOND: John Hayashi

CARRIED: Unanimously (7-0)

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

State Board Liaison Frances Spivy-Weber reported on the adopted Cal Am Cease and Desist Order, the Enforcement Policy, and the Once-through Cooling Policy. Ms. Spivy-Weber hopes to see some of the Board members at the Water Quality Coordinator Committee meeting next week. She also was happy to announce that Walt Pettit was recently appointed to the State Board. A new Executive Officer, David Gibson, has been hired for the San Diego Regional Board.



5. Uncontested Items Calendar Board Motion

Executive Officer Briggs noted Items 12 through 18 are recommended for the consent calendar.

MOTION: Gary Shallcross moved to approve the consent calendar.

SECOND: David Hodgin.

CARRIED: Unanimously (7-0)

6. Former Castle Vegtech, Santa Clara County Board Approval

Water Board staff engineer Katie DiSimone gave a brief introduction to the June 1997 Settlement Agreement between the Central Coast Water Board and various parties, including the members of the Castle family, and case history. She presented the staff recommendation that the Board uphold the Executive Officer's July 3, 2009 determination that the Castle Family had not complied with the terms of the Settlement Agreement. In response to questions from the Board members, Ms. Frances McChesney (legal counsel to the Board) stated that Water Code Section 13304 is used to name responsible parties in cleanup cases and can include past and current landowners. Ms. McChesney also indicated that cleanup agreements, such as indemnification agreements, made between private parties do not need to be considered in naming, or not naming, responsible parties under California Water Code 13304, the legal basis for the orders against the Castles.

Board member Hodgin and Chairman Young expressed that the interest calculations for the liabilities may need to be recalculated based on simple interest rather than compounded. Staff stated they would recalculate the amounts due, in consultation with the California Attorney General's Office, if the item moves forward.

Ms. Nancy Buchanan, a Castle Family member, did not contest staff's presentation of the facts, but expressed that the amount of liability exceeded the family's resources. She asked to have the Board consider options for reducing the liabilities, in light of current financial hardships faced by her family. She noted provisions in the Settlement Agreement to support her case.

Ms. McChesney stated the amount of liability and interest assessed did not need to be exactly quantified during this Board meeting, rather the issue for consideration was whether the Executive Officer abused his discretion under the terms of the Settlement Agreement. The amount of liability, should the Board find in favor of the Executive Officer's determination, would be worked out as part of the Attorney General's collection process.

Mr. Michael Tansy, current property owner, reiterated the points made in his letter dated October 5, 2009 (provided to the Board in a supplemental sheet for this agenda item). Mr. Tansy disputed the financial hardship claimed by the Castle Family. He estimated future cleanup costs to be \$500,000 to \$2 million. He stated he faces financial issues since there is currently a lien on the property for cleanup oversight.

Family member James Castle stated the Castle family had invested substantially in the cleanup and generally complied with the orders during the time the Castle Family owned the property. He disputed staff's assertion that quarterly groundwater monitoring reports were not submitted during the Castle family ownership. Mr. Castle stated the subsequent property owners damaged wells and destroyed areas where soil cleanup had made progress. Mr. Castle believes Mr. Tansy is currently realizing financial benefit from tenants on the property.

MOTION: Russell Jeffries moved to approve the staff recommendation to uphold the Executive Officer's determination. An amendment was proposed to require reconsideration of the appropriate amounts owed in accordance with the terms of the Settlement Agreement,

with respect to interest calculations and proportionate distribution of the liabilities due. Mr. Jeffries accepted the amendment.

SECOND: Tom O'Malley

CARRIED: Unanimously (7-0)

7. Enforcement Report Status Report

Executive Officer Briggs noted that this is a written report and pointed out that this particular report included an annual report requirement for notices of stormwater non-compliance. There were no questions on the report.

8. Low Threat and General Discharge Cases Information/Discussion/Board Approval

Executive Officer Briggs reviewed the information items and asked if anyone had questions. There were no questions.

9. Recommended Case ClosuresBoard Approval

Executive Officer Briggs reported that the Grefco underground storage tank site met cleanup objectives for all locations with one monitoring well exception. Mr. Briggs provided details on the status of the monitoring well.

(Chairman Young announced a break at 10:05 a.m. The meeting reconvened at 10:23 a.m.)

10. Toro Creek Canyon Oil Facility, Santa Barbara County Status Report

Executive Officer Briggs gave credit to the State Board for approving funds earlier this year to the County for the prevention of oil overflows into Toro Creek at the facility. There were no questions on the item.

11. City of Santa Barbara Sanitary Sewer Collection System..... Status Report

Water Resources Control Engineer Ryan Lodge summarized the staff report and introduced City of Santa Barbara (City) Water Resource Division Manager, Rebecca Bjork. Ms. Bjork presented information regarding the City's sanitary sewer management program including information about the overflows from the City's system, maintenance operations, the sewer lateral program, and the City's capital improvement program. Board Chair Young asked about the difference between category 1 and category 2 sewer spills. Ms. Bjork explained that spill over 1,000 gallons or that make it to surface water are category 1 and all others are category 2 spills.

Kira Redmond of Santa Barbara Channelkeeper stated that the Water Board should take meaningful action to stop sewer spills rather than taking the wait and see approach. Ms. Redmond indicated that the number of spills was unacceptable and that the Water Board needed to take action.

Chairman Young asked if the City had the most spills in the Central Coast Region. Mr. Lodge indicated that the City does have the most spills in the Region, but that category 1 spills have not increased over the last five years. Furthermore, many of spills are less than 100 gallons and many

do not discharge to surface water. Mr. Lodge indicated that Water Board staff looks at what the City is doing when considering whether to pursue enforcement action and the City has an aggressive sewer later program and a comprehensive capital improvement program.

Board member Hodgin asked if other municipalities are reporting all of their spills. Mr. Lodge explained that as far as staff knows, municipalities are reporting all spills, but not all municipalities have been reporting for the two years discussed in the staff report. The result being that the numbers used in the staff report may not provide a fair comparison, but that staff is never really sure if municipalities are under reporting spills.

Board member Hunter asked about the relationship between debris from laterals and the City's stormwater management program. Mr. Lodge indicated that lateral debris was primarily from lateral replacement and repairs not construction sites and so the City's stormwater program would not be relevant. Ms. Bjork confirmed that lateral debris issues are related to lateral repairs and replacements.

Chairman Young asked Supervising Water Resources Control Engineer Harvey Packard about enforcement issues associated with sewer overflows. Mr. Packard indicated that staff members prioritize enforcement based on the size of the spill, impacts on water quality, impacts on the public, and patterns of violations. Mr. Packard reminded the Water Board that they have seen enforcement for spills against the California Men's Colony and City of Arroyo Grande in the recent past.

Ms. Bjork discussed the competing priorities of the collection system and an aging wastewater treatment plant. The City increases fees annually to cover capital improvement costs.

Board member O'Malley asked about challenges of working and digging around trees and their roots while not harming trees. Ms. Bjork indicated that she did not see significant issues or cost increase due to the numerous trees in the City when it comes to repairing or replacing sewer lines.

Chairman Young asked that staff provide another City sewer collection system status report at the next Board meeting scheduled in Santa Barbara.

19. Public Forum Board Direction

There were no speakers for the Public Forum item.

20. Reports by Central Coast Water Board Members Status Report

Board member Hodgin reported that he was recently elected 2010-2011 Chair for the Central Coast Association of Water Agencies. Chairman Young congratulated Mr. Hodgin.

21. Executive Officer's ReportInformation/Discussion

Agricultural Order (Ag Order) Renewal

Staff updated the Board members on the development of the new Ag Order as part of the Executive Officer's Report on Program Status and Budget Cut Ramifications. Staff told the Board that the current public input forum, the Agriculture Advisory Panel, was no longer working and the panel decided to not continue with the existing format, and staff would be determining a new public input process. Staff also informed the Board that we transitioned project management of the new Order to new staff and assigned additional staff to the project team. The new staffing coordinates the project more efficiently with current Ag Order implementation and increases team experience establishing

orders. Staff reminded the Board that staff is proceeding to develop the new Order on schedule and will propose the new Order to the Board in July 2010. Staff also reminded the Board that staff intends to develop an Order that directly addresses the major water quality issues by including requirements that eliminate toxicity, reduce nutrient discharges to surface water and groundwater, minimize sediment discharges to surface water, protect aquatic habitat. Staff told the Board they were developing the Order to measure compliance and water quality improvement.

Board members asked questions and commented on the following: build on success of first Order; provide adequate and transparent stakeholder participation; hold at least two Board workshops- one in the north and one in the south of the region; acknowledge the challenges for agriculture to address food safety; agriculture industry must work with our staff; have stakeholders provide recommendations or information to inform recommendations earlier than April so the Board can engage well; make all data understandable and accessible; recognize this as a bump in the road and we'll get back on track; structure workshops to allow broad discussion.

(Chairman Young announced a break for lunch and closed session at 12:15 p.m. The meeting reconvened at 1:03 p.m.)

Representatives from agricultural organizations commented on the following: process was successful until staff changed direction; workshops will provide public input but make sure to allow enough time to hear from your staff and researchers and other interest group; focus on finding water quality improvements that allow farming to continue; the first program got agriculture moving in the right direction and the current program has broken trust; agriculture is now like a scattering herd; the Board should look at what worked before and reinstate the former program instead of the current regulatory program; the Agriculture industry will bring solutions through a cooperative agriculture effort by April and will engage environmental groups in this process; outcomes must be reasonable and realistic to achieve, given the complexity of agriculture; agriculturalists are hesitant to work with staff but will work with the Board. A group of stakeholders, including several agricultural organizations and one agricultural organization gave the Board a letter and read part of it as public comment.

Representatives from environmental groups commented on the following: participated and had positive expectations because 1) the former process had a positive outcome and included clarity that unresolved issues would be addressed when Order renewed, 2) the purpose of the Order renewal process and expectations were clear in the Letter of Invitation to Panel Members sent in December 2008; the process was productive but broke down because members did not understand the purpose or expectations as explained in the December 2008 letter; the Ag Regulatory Program must be strengthened to protect beneficial uses; the current Order is administrative; the Board should add individual monitoring to make the Order enforceable; we support the direction staff is taking and the clear goal to develop a more robust Order.

Staff stated they will present the revised public input process to the Board in a status report for the December Board Meeting.

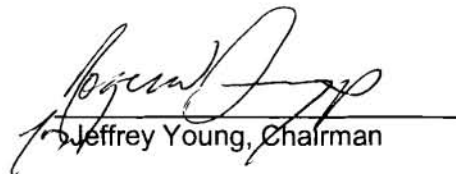
Joint Effort to Develop Hydromodification Control Criteria

The Executive Officer introduced the item and the Chair invited public comment concerning the Joint Effort to Develop Hydromodification Control Criteria. Three speakers, representing dischargers, homebuilders, and environmental interests, expressed support for the Joint Effort and identified potential challenges. Board members discussed the need for continued education of decision makers regarding the Water Board's vision of healthy watersheds and how the Joint Effort, and potentially other staff initiatives, can advance the vision and bring benefits to communities throughout the Central Coast.

Board member O'Malley emphasized the need for participation by city and county elected officials in the collaborative process and that the municipalities should take a lead role in the development process. He believes additional outreach is needed from our Board. Dr. Hunter suggested that the Board coordinate efforts with other agencies that are currently doing the same type of work so efforts are not duplicated. The Board is interested in working with municipalities and their development of hydromodification ordinances to help to guide industry and would be in a good position to take a lead role. Mr. Briggs discussed the ideas that were brought forward and noted the time availability for the Board members. Chair Young asked Mr. Briggs to put together a proposal with some options for the Board.

Chairman Young adjourned the meeting at 2:40 p.m. The next Board meeting will be held on December 10, 2009 in San Luis Obispo, California.

The meeting was audio recorded and the minutes were reviewed by management and approved by the Board at its December 10, 2009 meeting in San Luis Obispo, California.


Jeffrey Young, Chairman

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