

STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING/HEARING
(Portion)

JANUARY 20, 2015

Coastal Hearing Room - Second Floor
1001 I Street
Sacramento California 95814

scribed by: Kathryn Davis CSR No. 3808

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STATE WATER RESOURCES CONTROL BOARD
BOARD MEMBERS

- Chair Felicia Marcus
- Vice-Chair Frances Spivy-Weber
- Board Member Tam M. Doduc
- Board Member Steven Moore
- Board Member Dorene D'Amamo

1 PORTION OF TRANSCRIPT OF PROCEEDINGS

2 2:13:40 - 2:34:09

3 --oOo--

4 CHAIR FELICIA MARCUS: All right. Mr. Howard,
5 Item No. 6. I know we are spending a fair amount of the
6 afternoon on this. So perhaps just the -- as your
7 plan -- about the other stuff.

8 JOHN O'HAGAN: The update -- John O'Hagan.

9 CHAIR FELICIA MARCUS: Great.

10 JOHN O'HAGAN: Good morning. I'll wait to put
11 up my Power Point.

12 I'm going to give you a brief update for the
13 Board's approval. I thought I would start with the
14 activities that are in progress right now that the
15 Division is working on. First off, we are improving the
16 drought website.

17 CHAIR FELICIA MARCUS: That is great.

18 JOHN O'HAGAN: We are trying to make the
19 information more easily accessible so that the public
20 can get to items through a tabular-type format.

21 CHAIR FELICIA MARCUS: Good.

22 We are also working on the Dry Year Report that
23 is due at the end of January.

24 CHAIR FELICIA MARCUS: Can you just say, again,
25 for the people listening, what that is because the title

1 is not that self-explanatory.

2 JOHN O'HAGAN: It was a report that we were
3 looking back on what we did and how to improve our work
4 for the drought as required by the Board's regulations.
5 And we are trying to improve how we do things and how --
6 what information that we can provide to the public so
7 that the system works better.

8 CHAIR FELICIA MARCUS: I appreciate all the time
9 you've spent meeting with stakeholders and the massive
10 binder of comments that you've gotten.

11 JOHN O'HAGAN: Yes. The next thing is Petitions
12 for Temporary Urgency Changes and transfers. We are now
13 getting those in for renewals for Temporary Urgency
14 Changes. So we have two that will be issued this week.

15 We are also performing --

16 BOARD MEMBER STEVEN MOORE: What are those two?
17 You said there was two. You didn't mention who.

18 JOHN O'HAGAN: Yes. One would be the City of
19 Thousand Oaks, which is a renewal of a Temporary Urgency
20 Change. And then a Department of Water Resource
21 transfer that involves an exchange of water with stored
22 State Water Project -- water stored in Kern River
23 Bank -- in exchange for water being pumped at the Delta
24 to serve -- let me look who did the survey -- pardon me.
25 I have to think who it is going to. I'll have to get

<http://www.yeslan.net/hagp>

1 back to you.

2 BOARD MEMBER STEVEN MOORE: That is okay. That
3 is a lot of detail.

4 CHAIR FELICIA MARCUS: You got the idea of it

5 JOHN O'HAGAN: Contra Costa. I apologize.

6 We are also preparing the Statewide Notice of
7 Potential Curtailment. This week it will be likely
8 going out. This notice is a heads-up for people to plan
9 ahead, as we did last year. It includes the
10 instructions to make sure that they access our drought
11 web page and also sign up for our Lyris noticing
12 process, so they can get realtime information.
13 Additional information on the notice includes our
14 complaint process and the website access for the
15 complaints.

16 We continue to do QA/QC of diversion demand
17 data. And that is meeting with stakeholders and then
18 also improving our data because we are using 2013 data
19 that we've gotten in now. And we are looking at that as
20 well. So we are getting more data. We are doing more
21 QA/QC for the curtailment analysis. And then we have
22 ongoing enforcement cases.

23 CHAIR FELICIA MARCUS: You do? Okay.

24 JOHN O'HAGAN: I wanted to give you an idea of
25 the activity from last year to this year. As you know,

1 the Delta, that's the project Temporary Urgency Changes,
2 we had one order and 18 revisions -- or eight revisions.

3 Other TUCs and transfers, there were 17 issued
4 and 27 this year. Now, that encompasses 53 petitions
5 last year and 88 additions in 2014.

6 Emergency regulations for water rights, we
7 adopted two: The curtailment regulation and the fishery
8 protection regulations. Water rights receiving orders
9 of curtailments, that was the two orders in Deer Creek,
10 so it affects 49 water right holders.

11 Water rights receiving notice of curtailments,
12 2013, we didn't do it but 2014 there was 9,500 water
13 rights affected.

14 Complaints received, we've gone from 54 to 172.
15 We are still evaluating those. Compliance inspections,
16 from 187 to over 947 water rights inspected this year
17 compared to last year. And that is not even a full year
18 for the 2014 number. Drought information orders, we
19 have issued one. It affects 30 water rights. That is
20 the San Joaquin Order.

21 And then notices of cease and desists and ACLs,
22 last year 289 cease and desist notices, 49 ACL
23 complaints. This year, 375 notices have been issued; 42
24 ACLs issued as of 1/14/2015.

25 So that gives you an idea of the increased

1 workload. We are likely going to be faced with the
2 same, if drought conditions persist this year.

3 VICE-CHAIR FRANCES SPIVY-WEBER: I have a
4 question on that. First of all, this is great. This is
5 a really helpful slide because I get these questions.
6 And so this will be nice to, you know, when I meet with
7 folks out on the road.

8 So compliance inspections, could you talk a
9 little bit more about that, specifically with respect to
10 the issue of for those that filed in response to the
11 notice. I know you were inspecting, even if individuals
12 indicated that they were complying, as opposed to those
13 that did not respond. Did this encompass both
14 categories?

15 JOHN O'HAGAN: Yes. That encompasses the
16 workload that was done by our staff. And it has been
17 told to me, from our stakeholders, that the field
18 presence that we presented with our resources was a
19 great deterrent for letting people know that we, indeed,
20 intended to enforce those notices of curtailment. But
21 the number is for both the nonresponders and the
22 responders on the notice for the curtailment list.

23 BOARD MEMBER DORENE D'AMANO: Could you separate
24 that out, responders versus nonresponders?

25 JOHN O'HAGAN: I can and I can provide you that

1 at a later date, yes.

2 BOARD MEMBER DORENE D'AMANO: Okay. All right.
3 Thanks.

4 JOHN O'HAGAN: The next slide.

5 I wanted to give you an idea of the process for
6 enforcing failure to file, for these are the online
7 reports that we relied on water availability analysis.

8 So for permits and licenses only -- this does
9 not include statements -- the number of reports that
10 were due for 2013 reporting was over 12,000. And we
11 received 74 percent of the reports. For those 373 that
12 we had not received, we issued 373 draft notices of
13 curtailment -- draft notices of CDO. They had an
14 opportunity for hearing or completed task. Otherwise, a
15 final CDO would be issued. So the next step, final CDO.

16 So 57 out of the 373 -- 15 percent -- failed to
17 take action under the draft CDO. And then after final
18 CDO and ACL complaint can be issued, we have thus far
19 issued 42 ACL complaints for violation of the CDOs. The
20 difference between the others will be revocations and/or
21 ones that have not been able to be served and we need to
22 process serve.

23 So that's the process just for failing to file
24 permits and licensing reports.

25 CHAIR FELICIA MARCUS: So that is just for the

1 juniors or is it also for the seniors?

2 JOHN O'HAGAN: No. That doesn't include
3 stakeholders.

4 BOARD MEMBER DORENE D'AMANO: Okay. And on the
5 12 percent of non-filers, I assume you are targeting the
6 larger water users?

7 JOHN O'HAGAN: Each year we get deeper and
8 deeper. So these represent 100 acre feet or greater on
9 the amounts under the water right. The previous year
10 was 200 acre feet. The year before that was 500 acre
11 feet. So we keep moving down.

12 As you can tell, there is a great deal of water
13 right holders that have less than 100 acre feet that
14 have failed to report.

15 The informational order on the San Joaquin, this
16 is the status we are at right now. There is 30 water
17 rights affected and we received from six of those, or 20
18 percent, all information. Whether that information
19 produces a base right or not, that is not identified
20 here.

21 We got information, but received late, that was
22 the 7 percent. Incomplete information received, another
23 40 percent. Not received at all -- so 20 percent of the
24 people that we asked for information did not send it in
25 and then -- but they had to be remailed. Those are the

1 ones that probably have to be served by process server.
2 And then the last one is no response at all, 13 percent.

3 So we are actively preparing enforcement on this
4 at this time.

5 VICE-CHAIR SPIVY-WEBER: Have you let Mr.
6 O'Laughlin know this? Because this is usually a
7 question that he asks.

8 JOHN O'HAGAN: Well, we could let him know we
9 are working on it, as I have been telling him in the
10 past. As you can see, we have been doing other
11 enforcement actions, but they take time to develop.

12 And that is all I have for this presentation.
13 Do you have any questions?

14 BOARD MEMBER DORENE D'AMANO: I do. On the
15 informational order, incomplete information received,
16 that is pretty high, 40 percent. So is there just
17 confusion out there? What can be done to help people
18 along so that once they, you know, if they are intending
19 on complying, to get them into a position so that it is
20 a complete response.

21 JOHN O'HAGAN: This has always been a problem
22 with complaints and the process. We get people claiming
23 a right that they are aware of but they don't have any
24 of the background information to support, like the year
25 of first use and continued beneficial use of a pre-'14

1 right.

2 The riparian plan claim, if it is detached, how
3 do they assert a riparian claim to a parcel that is now
4 detached? They need to have some deeded information
5 that supports that a riparian status was reserved
6 through parcel subdivision. That's the kind of
7 information that we do not get. And if we have to
8 produce that, it takes even more time.

9 CHAIR FELICIA MARCUS: Sometimes you've found it
10 for people.

11 JOHN O'HAGAN: Yeah, we try to. In our
12 analysis, if we can get that information, we determine
13 it. But as a claimant of a water right, you should be
14 able to have that information available to prove-up on
15 your right. After all, all these rights are claimed
16 unless they have been adjudicated.

17 CHAIR FELICIA MARCUS: Right. People don't
18 realize that but that is true.

19 JOHN O'HAGAN: And then the divergent
20 information, some people may give rough estimates
21 because -- then they say "we don't know exactly what
22 we've heard."

23 BOARD MEMBER STEVEN MOORE: Thanks. An earlier
24 report, you mentioned that you'd received some support
25 from the Regional Board staff because that was a big

1 jump from 2013 to 2014 compliance inspections.

2 JOHN O'HAGAN: Absolutely. We receive
3 assistance from the Department of Water Resources and
4 the Regional Board staff. That is why we were able to
5 bump up those inspection numbers and make a field
6 presence. Their assistance was of extreme value. And
7 as I said, stakeholders suggested that that presence
8 served as a deterrent.

9 BOARD MEMBER STEVEN MOORE: Well, we really want
10 to acknowledge that, you know, the assistance that we
11 received and not just in words but in other ways that we
12 can acknowledge.

13 Looking at Tom -- you know, just the extent, you
14 know, it is not just charity out there. We want to, you
15 know, recognize the sacrifices that they have made.

16 MALE VOICE: Pamela and I have discussed that
17 several times, tangible forms of appreciation.

18 BOARD MEMBER STEVEN MOORE: I'm glad for those
19 conversations. It is good that those conversations are
20 occurring. Thank you.

21 CAREN TRGOVCICH: Can I just -- I want to just
22 temper the bullet that John had up there on the dry year
23 assessment. We received a lot of comments, as you all
24 saw. Yes, Felicia has a binder with all the comments.

25 And so as we move into 2015 now, we are taking

1 things in chunks because we only have so much capacity.
2 And this first chunk is the curtailment process itself.

3 So the report that is going to be coming out is
4 going to be focused on the curtailment process, how we
5 can conduct our analysis, the data that we use, the
6 process that we use, where we make information
7 available, et cetera.

8 That is not to say we are not looking at all
9 those other comments, but they will be dealt with as we
10 move forward. We are just, like everyone else, having
11 capacity issues and we need to be able to manage this.

12 VICE-CHAIR FRANCES SPIVY-WEBER: One thing I
13 would recommend is, one thing I would recommend -- and
14 this goes to some of the comments that Felicia has made
15 from time to time -- context is everything. And so
16 providing how much water has been in this -- whatever
17 year you are looking at -- how much water has actually
18 been normally diverted, diverted this year and, you
19 know, then what are we doing in terms of curtailments.

20 Because sometimes the media will pick up that
21 there is a 5 percent or there is a 10 percent or a
22 15 percent -- when, in fact, that is for a particular
23 period of time. Not for the whole year and not -- you
24 know, it doesn't reflect what happened prior to the
25 restriction.

1 And so, I just think it is going to be
2 incredibly -- for example, last year, I think normally
3 -- is there a normal -- but you could expect that maybe
4 there is some amount of water that is fairly regularly
5 expected, but it is not 100 percent. It is 80 percent,
6 or it is something like that. But, in fact, what
7 actually got delivered was about 50 percent of the
8 80 percent.

9 And so those are very important numbers for
10 people to grasp as they start to evaluate what is going
11 on.

12 CAREN TRGOVCICH: You just raised one of our
13 recommendations actually, or one of the areas of the
14 report -- not speaking to the contract, the project
15 deliveries, but speaking to curtailments in general for,
16 you know, a large number of water right holders are
17 pre-'14 and riparian water right holders. We give
18 reports once over three years covering the prior three
19 years.

20 So being able to provide that context is a bit
21 more difficult because we don't have the information as
22 current. So that is one of the areas we explore in the
23 report.

24 CHAIR FELICIA MARCUS: Great. Well, the better
25 we can frame it in a way that -- I mean, my target used

1 to always be my Aunt Charlotte, that we need to explain
2 everything in a way that Aunt Charlotte would
3 understand, which was someone that didn't finish college
4 but read the paper every day and actually wanted to
5 know. And it is a good, a good test, because we all
6 know so much, too. So it just becomes telling the
7 story.

8 So thank you both for that.

9 We could talk much longer but we are going to
10 move on because we have a heavy afternoon. And I do
11 think we need to be able to take a break, but thank you.

12 But I do have one question. So as long as I
13 said that, I'm going to take it away. See, fooled you.
14 Yeah, right.

15 I was somewhere and someone said they had heard
16 reports that there was widespread violation of our
17 curtailment orders. And I said I didn't think that
18 necessarily was true because we have these enforcement
19 actions going. But that when you went out, you found
20 people who were using other rights or had gotten water
21 from other people.

22 Mr. Howard explained to me, when I wanted to
23 make sure that I was seeing accurate -- and, again,
24 "widespread" would be in the eyes of the beholder -- but
25 part of our challenge, too, is that someone could say, I

1 got a transfer from a riparian or a senior pre-'14 and
2 they don't have to register their transfers the way a
3 junior would.

4 Do I have that right, Tom? I just want to make
5 sure people -- this is an education moment.

6 All right. You couldn't get a transfer. I'm
7 sorry.

8 THOMAS HOWARD: Senior Pre-2014 doesn't need to
9 seek permission from the Board or from any other party
10 for transfer.

11 CHAIR FELICIA MARCUS: Right. So we don't
12 require that they show even a document to show that they
13 got the transfer. They show a document, but then we
14 don't go back and check to see whether that person had a
15 valid right to transfer rights.

16 If you have a fully adjudicated system -- don't
17 go crazy, it would take 30 years to do -- but then this
18 would be all set up and monitored. But in our case --

19 Am I answering that question right?

20 JOHN O'HAGAN: Right, I believe you are. We did
21 not find any widespread violations. And I would ask the
22 person that information. I said, "Well, have they filed
23 a complaint to highlight those violations to us?"
24 Because that is what that process is for.

25 CHAIR FELICIA MARCUS: Okay.

1 JOHN O'HAGAN: And then we would investigate
2 those complaints specific to the allegations. As we
3 found, we found a lot of land that was idled; we found
4 groundwater being used in lieu of their water rights;
5 parties using state and federal contracts in lieu of the
6 post-'14 water rights; and then other parties exercising
7 their claims to prior rights. That was the result of
8 most of the findings that we made.

9 CHAIR FELICIA MARCUS: Thank you. To be
10 continued. Appreciate it, all the hard work.

11 (Whereupon, end of transcribed portion.)

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<http://www.yeslaw.net/help>

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REPORTER'S CERTIFICATE

State of California)
) ss.
County of Sacramento)

I certify that the statements in the foregoing hearing were transcribed in the within-entitled cause by audio; that said hearing was taken at the time and place therein named; that the testimony of said witnesses was reported by me, a duly Certified Shorthand Reporter of the State of California authorized to administer oaths and affirmations, and said testimony was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said hearing, nor in any way interested in the outcome of the cause named in said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of August, 2015.

KATHRYN DAVIS
Certified Shorthand Reporter
Certificate No. 3808

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