



# California Regional Water Quality Control Board Central Coast Region



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Arnold Schwarzenegger  
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## MINUTES OF REGULAR MEETING Thursday and Friday, July 7-8, 2005 Central Coast Water Board

### Thursday, July 7, 2005

Chairman Jeffrey Young called the meeting of the Central Coast Water Board to order at 10:30 a.m. on July 7, 2005, at the Central Coast Water Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California.

**1. Roll Call**..... Executive Assistant Carol Hewitt

**Board Members Present:**

Chairman Jeffrey Young  
Vice-Chair Russell Jeffries  
Bruce Daniels  
Monica Hunter  
Daniel Press  
Gary Shallcross  
Don Villeneuve (*arrived at 10:40 a.m.*)

**Absent:**

Leslie Bowker  
John Hayashi

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

Executive Officer Roger Briggs introduced staff and asked all interested parties who wished to comment to fill out testimony cards and submit them. State Board Liaison, Jerry Secundy, will

attend tomorrow's meeting. Mr. Briggs asked all parties to silence their cell phones. Supplemental sheets are as follows: Items 4, 5, 6, and 7.

**3. Military Facilities Update**.....Status Report

This is a written report. A letter was submitted from the California Army National Guard. Chairman Young read the letter that expressed appreciation for Central Coast Water Board staff's assistance and dedication on the Camp San Luis Obispo project for remediation and restoration of contaminated soil. The Camp San Luis Obispo National Guard staff received the 2004 National

Guard Bureau and Department of the Army Environmental Restoration Award. Water Board staff directly involved were Roger Briggs, Sheila Soderberg, Linda Stone, and Michael LeBrun. Mr. Briggs noted that Mr. LeBrun has since accepted other employment and Eric Gobler has assumed responsibility for Department of Defense cleanup work.

**4. Perchlorate Cases**..... Status Report

Staff Senior Engineer, Eric Gobler, gave a brief verbal update to supplement the written staff

report. Mr. Gobler mentioned that the ex-situ soil treatment has been successfully completed and

excavated soils backfilled. The in-situ soils treatment system is under construction and expected to be operational in late July or early August. On-site groundwater treatment continues as outlined in the staff report. In regards to providing replacement water for impacted supply wells, Mr. Gobler noted that the State Water Board's recently adopted Order is included in the staff report. He mentioned that the State Water Board raised the replacement water "trigger" from 4ppb perchlorate to 6ppb, based on the California Office of Health Hazard Assessment 6ppb public health goal. Mr. Gobler mentioned that Olin Corporation had not yet made a proposal to stop bottled water for wells in the 4-6 ppb perchlorate range.

Mr. Gobler stated that Olin recently installed four ion exchange systems on wells with perchlorate above 10 ppb. Initial analytical data shows that the treatment systems have reduced perchlorate levels in the 6 – 90 ppb range to non-detect (<2ppb). Mr. Gobler indicated that Olin Corporation is working with fifteen additional well owners to install ion exchange systems. To date, Olin has secured four more access agreements and treatment system installation could take 4-6 weeks. Water Board member Russ Jeffries asked how many domestic wells above 6ppb might need wellhead treatment. Mr. Gobler indicated, based on data from Olin Corporation and the Santa Clara Valley Water

District, 150 wells or more could fall in that category.

With respect to the Llagas Sub-basin monitoring and characterization plan, Mr. Gobler indicated that staff received the final draft plan from Olin on July 5, 2005. The plan includes installing one deep and one multi-port monitoring well at nine locations down the center of the basin. Approval of the plan is anticipated soon and well completion is expected in late September or early October. Board member Bruce Daniels raised concerns about lateral and vertical pollution extent, particularly the importance of determining the downgradient extent. Mr. Gobler stated that the initial nine wells are the first step in providing data to characterize vertical and lateral extent of the perchlorate plume. Mr. Gobler presented a figure showing two sentry wells planned in the southern plume area to provide early warning for the Gilroy municipal wells.

Mr. Gobler noted that three of the four multi-port monitoring wells in the NE flow area are complete and being developed. The fourth well should be complete within two weeks and sampling is expected in late July or early August. In conclusion, Mr. Gobler mentioned the recent Perchlorate Community Advisory Group meeting on June 30, 2005.

**5. California Men's Colony, San Luis Obispo County ..... Order No. R3-2005-0037**

Chairman Young read an opening statement and all interested parties were sworn in. Regional Board Staff Engineer, Matt Thompson, presented Administrative Civil Liability Order No. R3-2005-0037 for the California Men's Colony (CMC). Mr. Thompson presented a chronology of six large wastewater spills by CMC from February 24, 2004 to May 8, 2005, totaling 223,000 gallons. The largest spill was 100,000 gallons and occurred on October 24, 2004. Matt Thompson discussed staff's response to the spills, including a Notice of Violation on February 27, 2004, a Cleanup or Abatement Order on February 23, 2005, and an Administrative Civil Liability (ACL) complaint on May 8, 2005. The maximum liability is \$2,230,000. Considering all factors, especially degree of culpability and prior history of violation, the recommended liability is \$600,000. Matt

Thompson discussed CMC comments in response to the liability. CMC recommended paying \$7,500 towards staff costs and directing \$300,000 to three Supplemental Environmental Projects (SEPs). Matt Thompson described the SEPs. He recommended adoption of ACL Order No. R3-2005-0037, to require CMC to direct \$80,000 to the Riparian Fencing SEP; \$150,000 to the Morro Bay Sewage Pump-Out Vessel SEP; \$70,000 to Derelict Vessel Removal SEP; and \$300,000 to the State Water Resource Control Board Cleanup and Abatement account.

Board members Daniel Press and Russell Jeffries inquired about the short time frame and amount of money required for the proposed SEPs. Executive Officer Briggs, responded with a letter written by Environment in the Public Interest, supporting

staff's recommendations, but indicating that \$70,000 for the Derelict Vessel Removal SEP may only cover half of the possible cost. Regional Board attorney, Lori Okun, indicated that the Board does not have discretion to change the SEPs or increase the proposed SEP amounts. CMC must agree and make the proposal to change the SEP amounts.

CMC Warden, John Marshall, engineering consultant, Larry Parlin, and California Department of Corrections attorney, Chris Swanberg, described how they are correcting the sewage spill problems, and supported their recommendation to direct \$7,500 to staff costs and \$300,000 to SEPs.

Chairman Jeff Young questioned the CMC representatives regarding the history of spills, the amount discharged to the Chorro Creek, and the timeframe to solve the problem. Mr. Parlin responded by stating, "CMC is doing its best to decrease the amount of spills but that funding is limited because the California budget is broken." Furthermore, Mr. Swanberg explained that spills are unpredictable and CMC cannot easily shutdown their water supply system to prevent spills.

Betty Winholtz of the Morro Bay City Council suggested directing the additional liability of \$300,000 to the tertiary treatment upgrade of the Morro Bay/Cayucos Wastewater Treatment Plant. Daniel Press questioned the real impact of directing \$300,000 towards a tertiary treatment system that may cost up to \$14 million. Ms. Winholz explained that it would help convince Cayucos to commit to the tertiary upgrade.

Dan Berman, Director of Morro Bay Estuary Program, supported staff's recommended liability of \$600,000. He presented additional research concerning the cost of removing derelict vessels.

Kira Fatherree of the San Luis Obispo Coast Keeper supported staff's recommended liability of \$600,000. She expressed concern that \$70,000 is

an inadequate for the Derelict Vessel Removal SEP.

David Nelson, resident of Morro Bay, stated his opinion that CMC should be penalized for all spills that have occurred since 1990.

Matt Thompson closed his testimony by stating that all this information was considered when setting the liability amount, and that \$600,000 remains appropriate.

In response to a question about why the Executive Officer first issued a Cleanup or Abatement Order and later an Administrative Civil Liability complaint, Roger Briggs emphasized that the February 2005 Cleanup or Abatement Order and subject Administrative Civil Liability were considered by staff at the same time. However, the Cleanup Order was faster to prepare and issue. For this complaint, he suggested the Board first deliberate on the liability amount, then to the proposed SEPs adequacy.

Board members first deliberated on the liability amount. Daniel Press and Bruce Daniels agreed that \$600,000 was appropriate. Russ Jeffries explained his history with CMC and stated that the penalty should be \$1.5 million. Gary Shallcross, Monica Hunter, Donald Villeneuve, and Chairman Jeffrey Young stated that the amount seemed a little low, but that they would agree to \$600,000.

Several Board members expressed preference that the entire penalty, rather than only \$300,000, be directed to SEPs.

Chris Swanberg stated that CMC was not prepared to propose additional SEPs, but will carry out all the SEPs.

Daniel Press pointed out that if the liability is directed to SEPs, then the Board has discretion with setting due dates. After Jeff Young suggested that the hearing be continued, Bruce Daniels suggested that resolution of where the liability is directed be delegated to the Executive Officer.

**MOTION: Daniel Press made the following motion, as summarized by Lori Okun:**

**The hearing is closed for all purposes except consideration of SEPs; the item is continued for consideration of SEPs and imposition of a final order; the amount of the penalty is \$600,000; the Board**

delegates to the Executive Officer the authority to settle the matter for \$600,000, all or part of which may be in the form of SEPs acceptable to the Executive Officer; if CMC is unwilling to settle for \$600,000 or the parties can't agree upon SEPs to include, staff is directed to bring an order imposing liability of \$600,000 to the Board for consideration of SEP proposals and adoption of a final order.

**SECONDED by Bruce Daniels. CARRIED - Unanimously (7-0)**

*(Chairman Young announced a break for lunch at 12:50 p.m. The meeting reconvened at 1:30 p.m.)*

**6. Cambria Elementary School, San Luis Obispo County ..... Order No. R3-2005-0012**

Staff Engineer Jennifer Bitting presented a stipulated order and settlement agreement to settle alleged violations of the storm water construction permit. The settlement calls for Cambria Unified School District (CUSD) to deposit \$291,450 into a San Luis Obispo County Community Foundation (Foundation) trust fund and pay \$8,850 to the State Cleanup and Abatement fund for staff costs. The trust fund will be used to finance a Supplemental Environmental Project, as outlined in the staff report.

Board member Press asked about the condition of habitat upstream. Mike Hill of the Department of Fish and Game responded that there are seven to ten miles of excellent spawning habitat upstream of the barrier.

Board member Daniels asked if funds were available for the rest of the project. Staff responded that the SLO Land Conservancy feels they can raise the remainder.

Speakers:

Dennis DeClerq, Cambria School District - thanked staff and told the Board that his Board has agreed to the settlement.

Richard Hawley, Green Space - asked the Board to consider reprioritizing the projects and support Cambria Pine Forest and Cambria Forest

Management Plan. Chairman Young asked Mr. Hawley what portions of the funds were readily available for the proposed Forest Management Plan. Mr. Hawley responded that none of the funds for the proposed project were currently available.

Mike Hill, Department of Fish and Game (DFG) - supported the bridge project with documentation of the barrier on Ferasi Road.

Chairman Young asked if DFG had funds in their budget to help with the project. Mr. Hill stated that this project would be an excellent prospect for funding through the Fisheries Restoration Program. Board member Press asked if there were any adverse habitat issues upstream. Mr. Hill responded that there were not.

*(Board member Villeneuve recused himself at this point in the proceeding.)*

Rob Trask, Interested party - supported the Forest Management Plan

Mr. Briggs then recommended approval of the staff recommendation.

Board member Shallcross pointed out the timeline for action and asked if time was sufficient. Staff responded that the Executive Officer could extend timeline if necessary.

**MOTION: Daniel Press moved to approve Order No. R3-2005-0012, as recommended by staff. SECONDED by Russell Jeffries. CARRIED - (6-0) (Don Villeneuve recused)**

*(Chairman Young left the meeting at 2:05 p.m. and Vice-Chair Jeffries assumed control of the meeting)*

8. Public Forum ..... Board Direction

The following individuals had comments:

Hillary Hauser/Heal the Ocean – raised concerns about pollution from septic systems at Rincon Beach and asked the Board for regulatory assistance for the elimination of failing septic systems. The entire community is being held hostage by three dissenting homeowners.

Teri Taylor, Sandyland Cove resident – showed slides of the Sandyland Cove and Rincon area and asked the Board to support the proposed sewer project.

Steve Halsted, Rincon Point resident – concerned about the failing septic systems and asked the Board to assist the community to install a sewer system. The Board asked about the reasons given by the three dissenting homeowners. Mr. Halsted stated that with one homeowner had financial reasons, another homeowner believes that the wastewater recharges the water table, and the third homeowner is regularly against every issue. Mr. Briggs discussed options available to the Board and being considered by staff, such as a resolution of support for the project and a Basin Plan amendment prohibiting discharges, if the evidence supports such an action.

*(Chairman Young returned to the meeting at 2:30 p.m. and resumed control of the meeting)*

Jack McCurdy, CAPE – reported on a CEC conference on advanced cooling strategies for

*(Chairman Young announced a break at 3:10 p.m. The meeting reconvened at 3:20 p.m.)*

7. DeLaveaga Golf Course, Santa Cruz County ..... Order No. R3-2005-0067

Executive Officer Briggs described protocol for the hearing and introduced staff and teams. Chairman Young introduced Sheryl Schaffner, the Board's legal counsel for this item, and Harvey Packard, the Board's technical advisor for this item. Lori Okun and Roger Briggs were acting as legal counsel and technical advisor, respectively, for staff. Board Member Daniels recused himself from the hearing. In response to the City of Santa Cruz's concerns about Board members' conflicts of

power plants. He offered to provide a copy of a report he referenced.

Richard LeGros, Board member, LOCSD - reported that the LOCSD broke ground for the sewer project. He asked the Board and staff what would happen if the project stopped for the next three months. The Board indicated that it would take a dim view of any more delays with the project.

Linde Owen, resident Los Osos - spoke against the Los Osos sewer project and asked for the Board's support.

Julie Tacker – Board member, LOCSD, spoke against the Los Osos sewer project and stated that it was a recharge project.

Richard Sadowsky, Central Coast Ocean Outfall Group – spoke about an A-B-C sewer system plan.

Heather Allen, Friends of the Sea Otter -- updated the Board on the Monterey Storm Water Management Program activities.

Thomas Laurie, Morro Bay resident – spoke on the Duke modernization project.

Russ Jacobsen, President, DeLaveaga Disk Golf Club – spoke in favor of the DeLaveaga disk golf course and its benefits.

interest and bias in this case, Chairman Young asked Board member Jeffries a series of questions to determine whether or not Board member Jeffries should recuse himself. It was determined he would not recuse. Chairman Young proceeded to ask each Board member, including Jeffries and himself, if they were in any way biased. Board members Press, Shallcross, Jeffries, Hunter, Villeneuve, and Young answered they were not biased.

Chairman Young explained the hearing procedures and swore in those involved in the matter. Kimberly Gonzalez, Staff Water Resource Control Engineer, presented photographs of site inspections and the proposed liability of \$150,000 for multiple violations of the Construction Storm Water Permit from September 20, 2004 to April 4, 2005.

*(Chairman Young announced a brief break at 4:06 p.m. The meeting reconvened at 4:09 p.m.)*

Board Members and the Discharger's attorney, Mr. Kovacevich, asked Ms. Gonzalez several questions relating to site conditions, her inspections, and Permit requirements. Steve Hammack, City of Santa Cruz Parks and Recreation Department Superintendent, gave a presentation showing photographs of site conditions and spoke about the City's efforts to be good stewards of the environment with respect to their involvement with other local environmental and cleanup projects. Mr. Hammack answered questions from Board members, the City's attorney, and Mr. Briggs.

*(Chairman Young announced a break at 5:45 p.m. The meeting reconvened at 6:00 p.m.)*

Miles Hicks, Golf Course Superintendent, also responded to questions from the City's attorney, Board members, and Mr. Briggs.

**FIRST MOTION: Russell Jeffries moved to adopt the Order with staff's proposed liability of \$150,000. SECOND: No second. FAILED – (1-5) 1 yes, 5 no.**

**SECOND MOTION: Gary Shallcross moved to revise the liability amount in the Order to \$130,500. SECONDED by Monica Hunter. CARRIED – (4-2) 4 yes, 2 no.**

Chairman Young adjourned the public meeting at 8:18 p.m. The meeting will reconvene at 8:30 a.m. on July 8, 2005.

Roberta Haver, Arana Gulch Watershed Alliance, spoke regarding the City's involvement with local environmental and cleanup projects. Ms. Haver expressed interest in having the liability fund local environmental and/or cleanup efforts. Board members questioned Ms. Haver regarding turbidity monitoring in Arana Gulch, and associated data. Ms. Haver said there is continuous turbidity monitoring, but that she did not have any data with her at the hearing.

Mr. Briggs made the staff's closing arguments, pointing out the primary problems with the site's storm water management practices and the multiple opportunities the City had to make significant improvements. Instead, the City deliberately by-passed many of the Best Management Practices, rendering them useless. The complaint amount is still appropriate.

Mr. Kovacevich summarized the City's position, indicating the evidence shows the City did a lot to prevent problems at the site. He said if there is any penalty at all, it should be much less.

The Board members each discussed their interpretation of the evidence.

**Friday, July 8, 2005**

Chairman Jeffrey Young called the meeting of the Central Coast Regional Water Quality Control Board to order at 8:30 a.m. on July 8, 2005, at the Central Coast Water Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California.

9. Roll Call..... Executive Assistant Carol Hewitt

**Board Members Present:**

Chairman Jeffrey Young  
Vice-Chair Russell Jeffries  
Bruce Daniels  
Monica Hunter  
Daniel Press  
Gary Shallcross  
Don Villeneuve (*arrived at 8:40 am*)

**Absent:**

Leslie Bowker  
John Hayashi

10. Introductions..... Executive Officer Roger Briggs

Executive Officer Roger Briggs introduced staff and asked all interested parties who wished to comment to fill out testimony cards and submit them.

11. Approval of May 12-13, and June 1, 2005 Meeting Minutes .....Board Motion

May 12-13, 2005 minutes:

**MOTION: Russell Jeffries moved to approve the May 12-13, 2005 meeting minutes. SECONDED by Bruce Daniels. CARRIED - Unanimously (7-0)**

June 1, 2005 minutes:

**MOTION: Russell Jeffries moved to approve the June 1, 2005 meeting minutes. SECONDED by Bruce Daniels. CARRIED - (6-0) Daniel Press abstained.**

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

State Board Liaison, Jerry Secundy, complimented the Board on their stamina and fairness during the Board meeting hearings. Mr. Secundy provided an update of State activities with timber harvest, conditional agricultural waivers, septic regulations, areas of special biological significance (ASBS), numeric limits for storm water/nonpoint source

pollution, and 316b impingement and entrainment for power plant once-through cooling systems. The Board raised questions about pending agricultural litigation, enforcement costs to farmers, and plastics pollution.

13. Uncontested Items Calendar .....Board Motion

Executive Officer Briggs noted a date and name change on Item 20/Chevron Texaco, San Ardo. The CEQA compliance date is changed to 6/30/05 and the owner name is Chevron (not Chevron

Texaco). Mr. Briggs acknowledged and thanked staff and the dischargers for all of their work on the consent items.

**MOTION: Daniel Press moved to approve consent calendar Items 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, and 34. SECONDED by Russell Jeffries. CARRIED - Unanimously (7-0)**

**14. Low Threat and General Discharge Cases**.....Information/Discussion/Board Approval  
Staff's written report was submitted. The Board had no questions.

**15. Underground Storage Tank Program and MTBE Cases**.....Status Reports  
Staff's written report was submitted. The Board had no questions.

**16. Corrective Action Plan Approval**.....Status Report  
Staff's written report was submitted. The Board had no questions.

**17. Enforcement Report** .....Status Report

Chairman Young requested staff to include data in the next enforcement report on the number of

sampling inspections performed by permitting staff.

**18. David Pierson ACL, San Luis Obispo County** .....Order No. R3-2005-0024

Chairman Young explained hearing procedures and swore in all interested parties. State Water Board Counsel Steven Blum represented staff in this case. Water Board staff engineer, Jennifer Bitting, presented photographs of site conditions at the time of the complaint and the proposed Administrative Civil Liability Order. The proposed Order assesses a penalty of \$125,000. Board members and the Discharger asked Ms. Bitting several questions related to the site conditions and Permit requirements.

Mike Hill, Department of Fish and Game – Spoke regarding the detrimental effects to the Huerhuero creek caused by sediment from the Discharger's property. Mr. Hill also gave examples of how sediment can have adverse impacts to aquatic life. He also asked that correct BMPs be installed. Board member Daniels asked about the habitat downstream of the discharge. Mr. Hill responded that the Huerhuero creek does not support fin fish but does support Arroyo Toads and Western Spade Foot Toads, both threatened species.

Mr. Pierson, the property owner, and Mr. Emrick, the civil engineer hired to stabilize the property, gave a presentation showing photographs of current conditions at the site. Mr. Pierson referenced a letter, previously submitted into the record by his attorney, as his oral testimony. Mr. Pierson also introduced Kathy Novak, who has been assisting him with developing potential Supplemental Environmental Projects (SEP). Mr. Pierson answered questions from Board members and Mr. Briggs. Mr. Emrick also answered questions from Board members and Mr. Briggs.

Harry Gere, Resident, Creston – Expressed concern that there is no measurement of the amount of sediment that got into the stream.

Sarah Christie, Sierra Club – Testified that the Pierson property was listed on a Creston real estate web page, dated January 25, 2002, with a parcel map in progress.

Andrew Christie, Sierra Club – Stated that he would like the Board to impose a higher penalty than the proposed \$125,000. Mr. Christie suggested an amount closer to the maximum penalty of \$925,000.

Speakers:



Gordon Hensley, Environment in the Public Interest – Stated that he would like the Board to impose the maximum penalty.

Susan Harvey, President of Paso Watch – Stated that illegal grading is endemic in the northern portion of San Luis Obispo County. Ms. Harvey stated that she would like the Board to impose a penalty closer to the maximum.

Haig Kelegian, Property Owner, Creston – Stated that he believed Mr. Pierson is an honorable man.

Mr. Briggs summarized staff's case and said there are many completing factors regarding appropriate liability amount. He proposed an alternative penalty of \$100,000 that would direct \$88,000 to a Supplemental Environmental Project (SEP) and \$12,000 to the State Cleanup and Abatement fund for staff costs. Mr. Pierson presented his closing statement, saying that if a penalty is to be adopted that it should go to some good use through a SEP.

Board members each discussed their view of the evidence.

**MOTION: Russell Jeffries moved to set the liability amount at \$125,000 and direct staff to return to the September Board meeting with an Order directing the entire amount to the Cleanup and Abatement Fund or that amount minus staff costs to a Supplemental Environmental Project. The Discharger may negotiate SEP proposals with staff and staff will report back to the Board with the chosen proposal in September. SECONDED by Gary Shallcross. A roll call vote was taken. CARRIED - (5-2) Bruce Daniels and Don Villeneuve voted no.**

**19. Haig Kelegian ACL, San Luis Obispo County.....Order No. R3-2005-0025**

Chairman Young explained hearing procedures and swore in all interested parties. In response to Mr. Kelegian's concerns about Board member bias in this case, Chairman Young asked Board members a series of questions to determine whether or not some Board members should recuse themselves from the item. It was determined they would not recuse. Chairman Young proceeded to ask each Board member if they were in any way biased. Board members Daniels, Press, Shallcross, Jeffries, Hunter, Villeneuve, and Young responded that they were not biased.

State Water Board Counsel Steven Blum represented staff in this case. Staff engineer Jennifer Bitting presented photographs of the site conditions and the proposed Administrative Civil Liability Order. The proposed Order assesses Mr. Kelegian a penalty of \$100,000 for multiple violations during the period of September 1, 2002 to March 4, 2003. Board members and the Discharger asked Ms. Bitting several questions related to the site conditions and Permit requirements. Mr. Kelegian, the property owner, and Mr. Enrick, the civil engineer hired to stabilize the property, gave a presentation showing photographs of current conditions at the site. Mr.

Kelegian and Mr. Enrick answered questions from Board members and Mr. Briggs.

**Speakers:**

Mike Hill, Department of Fish and Game – spoke regarding the detrimental effects to the Huerhuero Creek caused by sediment from the Discharger's property. Mr. Hill also gave examples of how sediment can have adverse impacts to aquatic life. The Board asked Mr. Hill various questions related to his opinion of the effectiveness of the BMPs and the seriousness of the erosion on the site. Mr. Hill responded that the BMPs were inadequate and that the erosion on the site was some of the worst he has seen in his career.

Gordon Hensley, Environment in the Public Interest – stated that he would like the Board to impose the maximum penalty.

Donald J. Funk, Executive Director of Upper Salinas Las Tablas Resource Conservation District – stated that he was present to answer questions from the Board. Chairman Young asked Mr. Funk to comment on pictures of BMPs that were on the Kelegian property. Mr. Funk said he would not

recommend using the BMPs in the pictures for that site; the site was too steep with too much erosion.

Andrew Christie, Sierra Club -- stated that he would like the Board to impose a higher penalty than the proposed \$100,000. Mr. Christie suggested an amount of at least \$200,000.

Sarah Christie, Sierra Club -- stated that she would like the Board to impose a higher penalty than the proposed \$100,000. Mrs. Christie suggested an amount of at least \$200,000.

Susan Harvey, President of Paso Watch -- states that illegal grading is endemic in the northern

portion of San Luis Obispo County. Ms. Harvey states that she would like the Board to impose a penalty closer to the maximum.

Mr. Briggs summarized staff's case and said there are many completing factors regarding appropriate liability amount. He said the evidence supports the \$100,000 penalty in the proposed order. Mr. Kelegian presented his closing statement, saying that he hired people to do the job correctly, and that was his intent.

Board members each discussed their view of the evidence.

**MOTION: Russell Jeffries moved to adopt Order No. R3-2005-0025 with staff's proposed liability of \$100,000. SECONDED by Daniel Press. CARRIED - (5-2) Bruce Daniels and Don Villeneuve voted no.**

*(Chairman Young announced a break at 6:10 p.m. The meeting reconvened at 6:18 p.m.)*

[Note: Items 25 and 26 were taken together.]

- 25. **Initial Study and Negative Declaration for a General Conditional Waiver of WDRs for Timber Harvest Activities in the Central Coast Region.....**Resolution No. R3-2005-0075
- 26. **General Conditional Waiver of WDRs for Timber Harvest Activities in the Central Coast Region.....**Resolution No. R3-2005-0066

*(Board Member Villeneuve left the meeting at 7:00 p.m.)*

Staff Engineer Howard Kolb presented the two items concurrently. Board discussion raised numerous questions and comments that resulted in some of the changes summarized at the end of the minutes.

Speakers:

Clay Brandow, CDF - supports suggested changes on non-concurrence, and strongly supports an interagency mitigation monitoring team approach; monitoring that is focused on reducing risk. He is concerned that the Eligibility Criteria are arbitrary and contrary to scientific principles. MRP as proposed for THP's, is not efficient and is expensive. He asked the Board to consider the six

recommendations from the May 17 letter. He supports hill-slope and forensic monitoring.

Louis Schipper, RMC - raised concerns about misunderstandings and misinformation in an article that mentioned this Board concerning turbidity problems in the water supply to the City of Davenport. RMC has provided water free of charge to the City of Davenport (75% capital costs and 50% operation costs) as a neighbor. The article stated that turbidity problems were from timber activities. The truth is that the treatment plant is twenty years old, and treatment allows chlorination of anything over five NTUs for turbidity. The treatment facility is out of date and

under capacity. Mr. Schipper wanted to set the record straight.

Bejana Morgenthaler, Sierra Club/CRFM – supports making conditions effective by requiring staff participation in the timber harvest review process, adopting meaningful monitoring criteria, and modifying the general waiver to require additional management practices to ensure water quality compliance (need more Quality Assurance/Quality Compliance). She would also like more staff participation, more rigorous BMPS, and quality compliance.

Dennis Jackson, Hydrologist, for CRFM/TOC/SCSC - raised concerns on technical problems with the proposed process. His concerns included the Forest Practice Rules, CDF approvals of amendments after approval of THPs and NTMPs, amendments undercutting the General Waiver, lack of staff attendance at post harvest inspections, requirement of specific best management practices, Executive Officer's complete discretion over monitoring, and Eligibility Criteria receding into the background.

Kevin Collins, Lompico Watershed Conservancy - objected to the Negative Declaration, not because the Water Board involvement is a problem, but because he believes it is not enough. He stated that a Negative Declaration can only be made if there is substantial evidence that impact to environment will not occur. THP's need quality assurance and quality control and there has been a lack of it in the monitoring reports. The North Coast Board has made waiver conditional upon implementation of better management practice. The Board could make the waiver available to those who demonstrate better canopy retention around Class two and three watercourses. There could also be a condition to require better best management practices (BMPs) and better specifications for turbidity monitoring.

Jodi Frediani, CRMF/SCSC – Ms. Frediani gave a presentation with slides that raised the following concerns: the Initial Study is flawed due to insufficient Forest Practice Rules, CDF compliance inconsistencies with Forest Practice Rules in the region, a Negative Declaration is not appropriate, the Order and MRP are inadequate to protect water quality, past problems with lack of violations issued by CDF, THPs that lack CDF

inspections, insufficient Water Board inspections, amendments that impact water quality, Water Board violation notice sets no deadline for corrections of plans, Eligibility Criteria should be used as a backstop, require fees and additional BMPs as a condition of the waiver, and the MRP needs quality assurance and quality control procedures.

Bob Berlage, Big Creek Lumber Company - requested that all written and public comments made by Big Creek, Forest Landowners, and other foresters be incorporated in the record. Mr. Berlage stated that they need a fair and reasonable process that they can rely on. He noted that most of the information from the anti-logging representatives is old. Nearly forty years ago selective harvesting was adopted. During that time there hasn't been a single peer-reviewed, scientific document that associates Santa Cruz THPs in a legally conducted harvest to any kind of environmental harm, including harm to water quality. Mr. Berlage requested the following change in the General Order : Page 6. C. Resource Agency – has filed a water quality related non-concurrence. The language should clarify that CDF resolves the non-concurrence. It could be interpreted that the other agency has to resolve the non-concurrence. That would leave no due process because it is an action by another agency. There are frivolous reasons to file non-concurrences. He doesn't want is that action to hold up action on the waiver process. There is no approved plan until CDF addresses the issue. Mr. Berlage is trying to prevent another agency from adding a water quality concern that stops this process.

David Van Lennep, RPF for Redwood Empire - addressed the in-stream monitoring language. All Class II watercourses will be monitored and the language will be changed to say that sites will be selected. He would like that decision to be deferred until staff can review data collected to save some small landowners from taking on unnecessary expense. Class II streams are variable and receive protection with Forest Practice Rules. Additional BMPs are meant to guide folks to the types of things that are accomplished without oversight. For the CER, he proposed a ten-year re-entry. CDF could provide the rationale for using ten years. Mr. Van Lennep requested that the Board approve the Negative Declaration and proposed Waiver with recommended changes.

Nadia Hamey, RPF Big Creek Lumber - Board staff has done a good job on putting together the Negative Declaration and proposed waiver. Please consider the letter from the foresters. The MRP needs to be re-evaluated and the data needs to be analyzed. Ms. Hamey wishes the Board could see what happens in Santa Cruz, as it is a stark contrast to other parts of the State.

Matt Diaz, RPF Big Creek Lumber - please consider skid trail language that states 100 linear feet per acre in unmapped areas. Flexibility is needed to move equipment around. This is a safety issue.

Board members discussed the proposed documents and the comments, and discussed changes they would like to see in the waiver documents. The Chair directed staff to consolidate the discussed changes during a break.

*(Chairman Young announced a break at 9:20 p.m. The meeting reconvened at 9:30 p.m.)*

After the break, Mrs. Okun and Mr. Kolb listed the proposed changes.

**Proposed Changes to the Negative Declaration Resolution, Eligibility Criteria, Order, and MRP:**

**Negative Declaration** – to make the Negative Declaration resolution consistent with the proposed changes to the Order and MRP, add the following language:

- WHEREAS, the project is the Conditional Waiver, and the Central Coast Water Board (CCWB) has no jurisdiction to issue permits for timber harvest activities, but can only regulate water quality impacts of timber harvest activities that the California Department of Forestry (CDF) approves; and
- WHEREAS, adoption of the Conditional Waiver does not authorize timber harvest activities; and

- WHEREAS, the project will not have a significant impact on the environment; and
- WHEREAS, deleting the proposed waiver condition requiring resolution of non-concurrences by resource agencies (Condition 1.e) would not cause an adverse impact on the environment and is adequately addressed by Condition 4.c; and
- WHEREAS, deleting the requirement to map all skid trails (Condition 1.f) and including a new factor under skid trails that for unmapped areas “calculate the area disturbed by tractor operations as 100’ feet / acre” in the Soil Disturbance Factor will not cause an adverse impact on the environment; and

**Eligibility Criteria**

- Soil disturbance factor - add new factor under skid trails that for unmapped areas calculate the area disturbed by tractor operations as 100’ feet / acre.
- Change CER to read “Acres proposed for harvest or harvested in the Cal Water Planning Watershed in the last fifteen years.”

**Order**

- Delete paragraph 1e, page 6 (non-concurrence language).
- Delete paragraph 1f, page 6 (skid trail language).
- Add condition to require notification to the Water Board concurrently when submitting a request for a minor or major amendment to CDF.
- Add condition to require that given the results for the Eligibility Criteria, the Executive Officer can increase monitoring and but not reduce it.
- Revise the Order to state “If ground-based equipment is used off an all weather road during the period October 15 and May 1, Tier III monitoring is required.”
- Require 24 months of Tier 3 monitoring.

**MRP**

- Year one has a specific definition. Put "Year One" in quotes.
- Revise the MRP to reflect the phrase "artifacts will be measured for turbidity" to allow for some flexibility when selecting sampling sites.
- Change to second paragraph of MRP to add "THPs or NTMPs that are categorized as Tiers II or III cannot be downgraded to a lower category based on other criteria. However, the Executive Officer may not change the monitoring requirements so they are less stringent than the requirements in the tier from the eligibility criteria."

**General Direction**

- Regarding requirement of 24 months of Tier 3 monitoring, evaluate data and present results to the Water Board in 30 months.
- Analyze THP data and find out if temperature is higher in THPs with less canopy, i.e., relate it back to Class I / II protection.
- Develop a standard reporting format for rainfall information
- Develop/find QA/QC protocol for turbidity, temperature, etc.
- Re-evaluate the DDI weighting.
- Evaluate the use of additional management practices (above and beyond the Forest Practice Rules) for the protection of water quality.

**MOTION: Daniel Press moved approval of the Negative Declaration Resolution No. R3-2005-0075 with proposed modifications. SECONDED by Gary Shallcross. CARRIED - Unanimously (6-0)**

**MOTION: Gary Shallcross moved approval of Order No. R3-2005-0066 and MRP with proposed changes. SECONDED by Daniel Press. CARRIED - Unanimously (6-0)**

**32. Agricultural Discharge Regulation Update.....**Status Report  
[This item was deferred to the September Board meeting]

**33. Nonpoint Source Control Implementation Policy .....**Status Report  
[This item was deferred to the September Board meeting]

**35. Basin Plan Triennial Review List Update .....** Board Direction/Approval  
[This item was deferred to the September Board meeting]

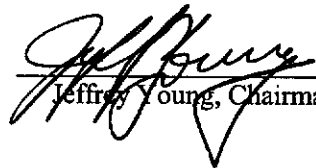
**36. Public Forum .....** Board Direction  
There was no public comment.

**37. Reports by Central Coast Water Board Members.....**Status Report  
[This item was deferred]

**38. Executive Officer's Report .....**Information/Discussion  
[This item was deferred]

Chairman Young adjourned the public meeting at 10:00 p.m.

The meeting was audio recorded and the minutes were reviewed by management, and approved by the Board at its September 9, 2005 meeting in San Luis Obispo, California.

  
Jeffrey Young, Chairman

H/ALLMYDOCS/BOARD MINUTES/JULY05mins/carol