

**Irrigated Lands Discharge Program (Program)  
Advisory Group Meeting #2  
Yreka Sub-Regional Meeting  
Meeting Summary  
2/28/2012**

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**Attendees**

**Advisory Group Members & Staff**

- Felice Pace, Klamath Forest Alliance
- Ken Fetcho, Yurok Tribe
- Cliff Munson, Siskiyou County Cattlemen's Association
- Jeff Fowle, Siskiyou County Farm Bureau
- Crystal Bowman, Karuk Tribe
- Adriane Garayalde, Shasta Valley Resource Conservation District
- Ric Costales, Siskiyou County
- Larry Alexander, Northern California Resource Center
- Bob Walker, Upper Mid-Klamath Watershed Council
- Tim Beck, Shasta Valley Rancher
- Jim Patterson, Natural Resources Conservation Service
- Steve Orloff, UC Cooperative Extension
- Amy Campbell, The Nature Conservancy
- Cat Kuhlman, Regional Water Board EO
- Matt St. John, Regional Water Board staff
- Jovita Pajarillo, Regional Water Board volunteer
- Rebecca Fitzgerald, Regional Water Board staff
- Danielle Yokel, Scott River Watershed Council

- Sam Magill (facilitator), Center for Collaborative Policy
- David Leland, Regional Water Board staff

**Public**

- Ned Coe, CA Farm Bureau Federation
- Bernie Vanee, Siskiyou Co resident
- Bob Davis
- Bev Slaughter, Rancher
- Jane Vorpapel, Department of Fish and Game
- Don Niem
- Andy Baker, Regional Water Board
- Jeff Horner, Scott Valley Rancher
- Bryan McFadin, Regional Water Board
- Lisa Ferris
- Genney Figget
- Ryan Walker, Upper Mid-Klamath Watershed Council

**Phone**

- Samantha Olson, Regional Water Board counsel
- Kari Fisher, CA Farm Bureau Federation

**ACTION ITEMS**

1. Staff will develop a draft scope for the Program (including criteria for enrollment) for discussion at the next Advisory Group meeting.
2. Staff will develop a glossary of key terms (including applicable code sections) based on the discussion below for discussion at a future Advisory Group meeting. These

definitions are for discussion purposes only, and will not constitute a legal definition of any terms.

3. Staff will research applicable case law supporting the idea that the most sensitive beneficial use must be protected and report back to the Advisory Group.
4. Jim Patterson will forward the link for the Minnesota/US Department of Agriculture/US Environmental Protection Agency Memorandum of Agreement (MOA) to reduce interagency duplication/conflicting regulations to staff for distribution to the Advisory Group. Links below:
  - o <http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/newsroom/?cid=STELPRDB1046382>
  - o <http://www.mda.state.mn.us/protecting/waterprotection.aspx>
5. Samantha Olson will look into whether the Irrigated Lands Program would be consistent with and in conformity with the "Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California" (the "California Thermal Plan"). In particular, that plan states that "Irrigation return water is not considered elevated temperature waste".

## **SUMMARY**

**\*\*PRESENTATION AVAILABLE ONLINE AT**

**[http://www.waterboards.ca.gov/northcoast/water\\_issues/programs/irrigated\\_lands/](http://www.waterboards.ca.gov/northcoast/water_issues/programs/irrigated_lands/) \*\***

### **Opening, Introductions, and Logistics Issues**

Catherine Kuhlman opened the meeting and thanked participants for attending. Sam Magill reviewed the agenda, discussed meeting logistics, and informed participants that any suggestions for additions to the Advisory Group membership should go through the formal process laid out in section three of the Advisory Group Charter.

### **Presentation & Discussion of Key Terms for the Program**

Ben Zabinsky presented information on key, legally defined terms for the Program, the proposed Program scope, and a potential name change for the Program. After the presentation, the following discussion was recorded:

- Bob Davis asked if this Program will include grazing lands. Staff responded that dry land grazing will not be included as part of the Program. A separate, statewide grazing program is under development by the State Water Resources Control Board (SWRCB). A stakeholder group has not yet been assembled as part of this effort. The specifics of what constitutes grazing vs. agriculture has not been determined. David Leland added that Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs) will be covered through existing permitting programs. Additional discussion and definition of AFO/CAFOs may be needed at a future Advisory Group meeting.

- Participants asked what the scope/definition of the Program includes. Staff will work to develop a draft scope of the Program for Advisory Group comment at the next meeting (**see Action Item #1**).
- Ric Costales noted that the definition of anti-degradation references maintaining high quality waters to the maximum extent *possible*, and asked the Advisory Group to remember that a difference exists between *possible* and *feasible*. He also asked for a definition of “nuisance.” Ms. Olson will provide a definition for the Advisory Group at a later meeting. This and other definitions requested by the Advisory Group will be included in a glossary handout with code sections (where applicable) (**see Action Item #2**). As needed, staff will coordinate with UC Cooperative Extension and NRCS to develop draft definitions. Additional requested definitions include:
  - Temperature of interstate waters
  - Agricultural lands
  - Natural establishment of vegetation
  - Riparian area
  - Constituents of concern
  - Small Animal Feeding Operations
- Bob Walker asked if something is only considered a “waste” if it adversely affects a beneficial use. Mr. Leland responded that it doesn’t have to affect it; something only has to have the potential to affect water quality to be considered waste. Mr. Walker followed by asking whether irrigation tailwater that is cleaner than the water it flows into is considered waste, as may be the case on Bogus Creek. Samantha Olson responded that it is unlikely that tailwater will be free of pollutants. Instead of focusing on waste levels, she suggested it would be better to focus on the risk a discharge poses to water quality. That said, the Regional Water Board does not generally require discharges to clean water beyond the level a landowner received it in. Mr. Walker closed by saying that there should be some way to minimize the impact of the Program on landowners who are meeting water quality standards, and suggested this could take the form of low requirements and infrequent monitoring.
- Mr. Costales asked people to consider that due to the definitions of “waters of the state” and “waste,” everyone is a discharger. He commented that the Regional Water Board needs to consider all dischargers in the state, not just agricultural dischargers. He also suggested that the taxpayers of California need to be made aware that they are in line for regulation. Ms. Kuhlman commented that the Regional Water Board gave staff priorities for dealing with nonpoint discharges (NPS): the top priority was timber, then dairies, the county/rural roads and agriculture.
- Steve Orloff asked that field crops be included in the scope of the Program (in addition to row and forage crops).
- Jane Vorpagel asked if there is a specific water quality program for managed wetlands. Kari Fisher responded that there is not a program for managed wetlands, but there is for rice.
- Ned Coe asked that the presentation be clarified to note that the Regional Water Board has authority over pesticide runoff, but not pesticide application.
- Participants asked for clarification on the difference between point source and NPS as they relate to the Program. Staff responded that all agricultural dischargers except CAFOs are considered NPS dischargers.

- Participants asked if growers are responsible for polluted water if it entered their property already degraded. Mr. Leland responded that growers are only responsible for anything they add to the water.
- Participants asked if agriculture is considered the highest ranked beneficial use. Ms. Kuhlman responded that uses are only ranked in reference to water rights not water quality protection.
- Participants asked if the requirement to protect the most sensitive beneficial use is in the Water Code. Staff responded that it has been interpreted as such by the Regional Water Board. Ms. Olson added there may be case law on the issue, and agreed to research the issue and report back at a future Advisory Group meeting (**see Action Item #3**).
- Mr. Coe stressed that the size of the agricultural operation should not be the sole determining factor for enrollment in the Program. Participants strongly agreed; staff noted that it could be one, but not the only criteria, and that there needs to be some way to address small operations that discharge waste.
- Crystal Bowen commented that fish are not always the most sensitive beneficial use.

### **Presentation and Discussion of Program Principles and Goals**

Mr. Leland opened the discussion by proposing the following potential framework for the Program:

- Growers who pose a de minimus risk to water quality are not included in the Program.
- Growers who pose a low risk to water quality are covered by the Program, but do not need to officially enroll.
- Growers who pose a moderate risk to water quality would have to enroll in the program and show they are implementing appropriate best management practices (BMPs).
- Growers who pose a substantial risk to water quality would enroll in the program and be subject to more stringent requirements. Staff would prioritize enrollment for growers in the highest risk category.

After a presentation on proposed Program principles and goals, the following discussion was recorded:

- Ms. Vorpapel asked if waivers always come with a fee attached. Mr. Leland responded that there are not always fees, but recently the SWRCB adopted fees for agricultural programs on a per-acre basis.
- Mr. Orloff asked if this Program will cover riparian grazing. Jeff Fowle added that he is not grazing within the riparian zone; the area is primarily fenced. Mr. Leland responded that if riparian grazing is not covered by an existing regulation, this Program could include it. Mr. Zabinsky noted that if riparian areas are already fenced, they will meet the requirements of this Program.
- Tim Beck noted that his ranch has some areas fenced off by DFG and some by the SWRCB, and asked if the Regional Water Board will work with these other agencies. Ms. Kuhlman committed coordination with these agencies to the extent possible.
- Mr. Fowle asked if this Program will work to eliminate conflicts within the Scott TMDL. Specifically, he said that the TMDL does not allow grazing in the riparian zone, despite vegetation issues near streams. Felice Pace noted that there are other ways to improve riparian health, and said that there aren't any exclusion requirements in the TMDL. Ms.

Kuhlman noted that flash grazing is allowed by the Regional Water Board, but acknowledged that DFG does not allow it. This conflict will have to be worked out in the future.

- Mr. Pace requested documentation of pesticide use in the area, as well as buffer requirements for application. Kari Fisher noted that the issue of riparian buffers for pesticides is under litigation in some areas; additional information should be available once cases conclude.
- Mr. Walker suggested that criteria for enrollment in the Program could be proximity to an impaired water body. If a landowner's operation is on an impaired stream, that operation could be considered high risk. Conversely, if there is no impairment, that operation could be considered low risk. Ms. Kuhlman stressed that this could be one, but not the only criteria for enrollment.
- Mr. Pace noted that flash grazing in riparian areas may not be an effective means to control invasive/nuisance plant species. He added that small, high density feeding operations adjacent to streams pose a significant risk to water quality.
- Mr. Alexander suggested three key elements for staff to consider as the Program is developed:
  - Eliminate duplicative regulations and conflicting agency purposes.
  - Assuage stakeholder fears that the Program is a "money grab" from the Regional Water Board.
  - Focus on high risk areas first and clearly define the focus of the Program.
- Jovita Pajarillo noted that there are interagency groups trying to reduce cross purposes and duplicative regulations.
- Danielle Yokel asked if the Program could have a mechanism to shift growers from a high to low risk category if they implement appropriate BMPs. Mr. Leland responded that it could, and that there should be a way to reward operators for doing good things. Ms. Fisher noted that the Central Coast is considering a mechanism in which the executive officer could approve a downgrade in requirements if appropriate steps are taken to reduce risk.
- Mr. Fowle asked if being identified as low risk would constitute a prohibition of waste discharge, moderate risk would be a waiver, and high risk would be a WDR. Ms. Kuhlman responded that this is one possibility. The SWRCB is considering amending the NPS Policy regarding prohibitions. Mr. Fowle supported using a prohibition as an option for low risk growers/operators.
- Participants noted that while irrigated pasture can generally be considered low risk and improve water quality, issues like manure and erosion can be an issue.
- A number of participants generally agreed that the main risk factors are proximity to water courses and slope.
- Mr. Patterson noted that in January, Minnesota, the US Department of Agriculture, and the US Environmental Protection Agency signed an agreement that addresses concerns of agency coordination and duplicative/conflicting regulations. Mr. Patterson will forward the link to staff for distribution to the Advisory Group (**see Action Item #4**). Ms. Kuhlman asked if a similar Memorandum of Agreement (MOA) between agencies would help alleviate stakeholder concerns about agency coordination. Mr. Alexander responded that it could.

- Participants and staff discussed fee structures for the Program. Although the current fee structure for agricultural programs is set by the SWRCB, staff suggested it could be revisited to meet the needs of the North Coast Region at a later date. Additional presentation/information will be needed at future meetings. The current fee schedule can be found online at:  
[http://www.swrcb.ca.gov/resources/fees/docs/fy1112fee\\_schdl\\_irigtd\\_lnds.pdf](http://www.swrcb.ca.gov/resources/fees/docs/fy1112fee_schdl_irigtd_lnds.pdf).
- Mr. Costales asked the Advisory Group to remember that regulatory actions like the Program are a political issue, and stressed that education to bring local governments and stakeholders into agreement will be critical for the success of the Program.
- Amy Campbell noted that monitoring costs for growers can be substantial, and said that a major shortfall of the Shasta TMDL is the lack of monitoring data. Identifying who will monitor and how it will be paid for is important for success of the Program.
- Mr. Fowle asked if the Regional Water Board has numerical standards for the Program to achieve. Ms. Kuhlman responded that it does for some pollutants.
- Mr. Fowle cautioned the Advisory Group against designing the Program in such a way that it only benefits Coho salmon at the expense of other species like eel or sucker.
- Bev Slaughter asked how groundwater will be monitored in the Program. Mr. Leland responded that staff does not know yet, but that monitoring will be a significant focus of the Program.
- Mr. Walker asked if Water Code Section 13141 finance/economic estimation has been completed for the Program. Ms. Kuhlman responded that it will have to be done once the Program is developed. Ms. Fisher noted that economic estimates in the Central Valley Region for its Irrigated Lands Regulatory Program were probably quite low.
- Mr. Walker proposed that the power point slides be distributed in advance of the next meeting and that the slides include relevant legal cites where appropriate.

### **Wrap Up, Action Items and Next Steps**

Mr. Zabinsky reviewed the proposed Advisory Group schedule. After a brief review of action items, Ms. Kuhlman thanked participants for attending and the meeting was adjourned.