

Sign-In Sheet

A-2239 (a)-(c) Eastern San Joaquin Agricultural Order Petition

Staff Workshop

November 18th 2016

9:00am

Name	Organization/Affiliation	Telephone Number	Email
Susan Fregien	Central Valley Water Board	464-4813	<del>staff</del> sfregien@waterboards.ca.gov
Nicole Bell	KRWCA	916-772-2175	NBELL@KRWCA.org
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Adam Bolt	Community Water Center	916 882-3271	adam.bolt@communitywatercenter.org
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Marisol Aguilera	CRLA	(709) 577-3811	maguilera@crca.org
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Name	Organization/Affiliation	Telephone Number	Email
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Casey Creeme	Kings River <sup>wac</sup>		ccreeme@krcd.org
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Thomas Harker	UC Davis		tharker@ucdavis.edu
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Name	Organization/Affiliation	Telephone Number	Email
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Adam Bolt	CWC	916-882 3271	adam.bolt@communitywatercenter.org
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Kari Fisher	CA Farm Bureau Federation	916-561-5666	Kfisher@cfbf.com
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Name	Organization/Affiliation	Telephone Number	Email
John Pickery	PWT - era	916 517 2881	jpickery@pwtira.com
Thomas Harker	UC Davis	530 400 1784	tharker@ucdavis.edu
Mike Ackerman	SCTDWA	916-684-9359	Info@sctdwatershed.org
Pammy Klasse	ESJWC	559 288 8125	Klassepammy@gmail.com
Melissa Turner	MUS-UC	530 756 5200	mturner@mij-llc.com
Tess Dunham	ESJWQC/SSD	916-446-7979	tdunham@somachaw.com
Fran Larson	Water Board	464-4722	a.larson@waterboard.ca.gov
Natalie Suzuki	CORE	916-920-5022	Natalie.Suzuki@CORE.CA.GOV
CHRISTOPHER ROSE	RWQCB 3		Chris.Rose@Waterboards.ca.gov
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JENNIFER CLARY	CLEAN WATER ACTION	707-483-6352	jclary@cleanwater.org

**Eastern San Joaquin Agricultural General Order Petitions  
Friday, November 18, 2016 Staff Workshop**

**AGENDA**

1. Purpose of staff workshop
2. Introductions and identification of parties and other stakeholder representatives
3. Auditing mechanisms
  - a. Functions:
    - i. Validation of data and test
    - ii. Validation of summary calculations
    - iii. Peer review/analysis of alternate summary methods
  - b. Regional board vs. third party auditing
  - c. Data security
4. Reporting options for AR data
  - a. *Zamora* update
  - b. Alternative: Individual field-level anonymized data reported to regional board with identifier held by coalition coupled with auditing program (data validation and security)
  - c. Alternative: Summary data reported to regional board, coupled with more extensive auditing program (all four auditing functions)
5. Drinking water well monitoring constituents
6. Framework for surface water quality monitoring program
  - a. Core monitoring sites
    - i. Basis for establishment of zones
    - ii. Method of core site selections
    - iii. Establishment of representativeness
    - iv. Ongoing validation
    - v. Relationship to representative sites
  - b. Monitoring timing
    - i. Basis of calendar-based timing
    - ii. Timing adjustment
    - iii. Incorporation of seasonality into monitoring
7. Time permitting, open forum (2 minutes per speaker)
8. Next steps and adjourn



**State Water Resources Control Board  
Eastern San Joaquin Agricultural General Order Petitions  
Friday, November 18, 2016 Staff Workshop**

**MINUTES**

**1. Purpose of staff workshop**

State Water Board staff explained the intent of the meeting was to allow discussion on comments previously provided, in order to assist staff in drafting the next version of the order. Projected date for release of the next draft order is end of February 2017. There will be an opportunity for additional public comment at that time, likely a 45-day written comment period and a workshop in March. The meeting to consider adoption is expected to be scheduled in May 2017.

**2. Introductions and identification of parties and other stakeholder representatives**

Meeting Attendees:

State Water Resources Control Board: DeeDee D'Adamo, Darrin Polhemus, Phil Wyels, Emel Wadhvani, Rich Breuer, Shahla Farahnak, Scott Couch

Parties:

Central Valley Water Board: Karl Longley, Adam Laputz, Sue McConnell, Andrew Deeringer, Patrick Pulupa, Susan Fregien

East San Joaquin Water Quality Coalition: Parry Klassen, Tess Dunham, Michael Johnson, Melissa Turner

Community Water Center: Laurel Firestone, Debi Ores

California Rural Legal Assistance: Marisol Aguilar

California Sportfishing Protection Alliance: no representatives present

San Joaquin County Resource Conservation District (on behalf of the San Joaquin County and Delta Water Quality Coalition): Jennifer Spaletta

California Farm Bureau Federation: Kari Fisher

C DFA: Barzin Moradi, Natalie Jacuzzi

Other stakeholder representatives/attendees: Thomas Harter (UC Davis), Michael Claiborne (Leadership Counsel), Jennifer Clary (Clean Water Action), Mike Wackman (SJC&DWQL), Steve Shimek (Otter Project), Nicole Bell (KRWCA), Adam Bolt (CWC), Kirk Schmidt (CCWQP), Gail Delihant (WGA), Casey Creamer (Kings River WQC), Nathaniel Kane (Environmental Law Foundation), John Dickey (PlanTierra), Christopher Rose (Central Coast Water Board)

**3. Auditing mechanisms**

**a. Functions:**

**i. Validation of data and test**

**ii. Validation of summary calculations**

**iii. Peer review/analysis of alternate summary methods**

**b. Regional board vs. third party auditing**

**c. Data security**

State Water Board staff explained that any proposed auditing program should incorporate the above three functions. Data validation is important to ensure that the data set is complete and accurate and that it is not compromised by a high transcription error rate. Additional validation should ensure that the summary calculations are accurately performed. The third function is to be performed not by an auditor, but by an academic or other professional with the goal of determining if the data should be analyzed and summarized in any alternative ways and if the data supports any conclusions and programmatic direction that may not be evident from coalition summaries. Any approach adopted into the permit must also ensure secure storage of the data.

#### **4. Reporting options for AR data**

##### **a. *Zamora* update**

State Water Board Assistant Chief Counsel Phil Wyels provided a summary of a recent County of San Luis Obispo Superior Court decision, *Zamora v. Central Coast Water Board*. The case concerned whether third party records generated under the Central Coast agricultural waiver are subject to public disclosure. The Superior Court held: (1) Letters from the coalition to members notifying them of drinking water well exceedances, notifications from the members to users of the wells, and letters from the members to the coalition confirming that notification had been provided are “monitoring reports” under Water Code section 13269 and must be publicly disclosed; these additionally serve as “feedback mechanisms” allowing the public to verify program effectiveness under the Non-Point Source Policy and; (2) To the extent the regional board reviewed the letters, they were “used” by the regional board and are public records under the Public Records Act. Mr. Wyels noted that the decision, as a Superior Court ruling, is not binding on other courts, that it may be appealed, and further that it is subject to debate whether the analysis applies equally in the context of an order adopted under Water Code section 13263 instead of Water Code section 13269. This notwithstanding, the court’s analysis may inform broader questions regarding transparency of data in agricultural regulatory programs.

**b. Alternative: Individual field-level anonymized data reported to regional board with identifier held by coalition coupled with auditing program (data validation and security)**

**c. Alternative: Summary data reported to regional board, coupled with more extensive auditing program (all four auditing functions)**

Staff presented two alternatives for data reporting and auditing that may be considered in lieu of the individual field-level data reporting directed in the Staff-Proposed Draft Order. (Both of these alternatives would also include summary reports on a township basis.)

Under the first alternative, individual field-level AR data would be submitted by the coalition to the regional board but only after the coalition replaced name and location information with an anonymous identifier. This alternative would be coupled with a limited audit, likely by a third party, to validate that the individual field-level data accurately reflects actual AR values. Secure off-site data back-up and storage would also be mandated.

Under the second alternative, the existing requirements in the ESJ Ag Order for the coalition to retain the individual field-level data and submit summary data would be retained, but would be coupled with a more extensive audit program to verify not just the validity of the underlying data, but also the validity of the summary calculations. Further, the data would be subject to peer review, perhaps by an academic team, to determine if the summary data is capturing all relevant information that may be

derived from the individual data. Secure off-site data storage and back-up would also be mandated under this option.

Representatives had varying perspectives on the two alternatives. The East San Joaquin Coalition indicated that it may be comfortable with the first alternative, but that the coalition needed to further discuss the associated auditing costs. Other coalition representatives questioned the need to move away from summary data or couple it with an extensive auditing program.

The EJ stakeholders generally opposed the second alternative and argued for the need for individual field-level data. There did not appear to be a clear consensus as to whether anonymous field-level data would be acceptable to the EJ and environmental stakeholders in lieu of field-level data with name and location identifiers, although some stakeholders indicated a comfort level with anonymous data. In related concerns, the EJ and Environmental stakeholders emphasized that, if data is reported at an aggregate level, the program must be capable of reporting total nitrogen loading at the township level.

The EJ and environmental stakeholders also emphasized that, in addition to providing information on nitrogen application, the program must be able to verify that practices found to be effective through the MPEP are in fact being implemented by growers.

#### **5. Drinking water well monitoring constituents**

Agricultural representatives stated that there is no basis in an agricultural program for requiring monitoring of any constituents not associated with agricultural practices. EJ representatives stated that monitoring should, at a minimum, include nitrates plus any common or high-risk contaminants from agriculture specific to the particular area, including contaminants associated with historic farming practices. They proposed that it might be appropriate to have a list of required and recommended constituents for monitoring for different areas.

#### **6. Framework for surface water quality monitoring program**

##### **a. Core monitoring sites**

- i. Basis for establishment of zones**
- ii. Method of core site selections**
- iii. Establishment of representativeness**
- iv. Ongoing validation**
- v. Relationship to representative sites**

##### **b. Monitoring timing**

- i. Basis of calendar-based timing**
- ii. Timing adjustment**
- iii. Incorporation of seasonality into monitoring**

State Board staff explained that the existing surface water monitoring program had raised questions for staff as to whether the limited number of core sites is capable of providing sufficient monitoring for the watershed. In particular, State Board staff pointed out that monitoring at represented sites, when triggered, appeared to find exceedances of contaminants not evident from monitoring at the core sites.

The East San Joaquin Coalition relayed that the monitoring program carves up the coalition area into six reasonably cohesive zones that have low dissimilarity as to water source, soil, precipitation, crops, and other conditions, and monitors two core sites within those zones with follow up monitoring at represented sites if a problem is found. The Central Valley Water Board stated that the core sites capture a reasonable set of representative crops and practices and should not be expected to perfectly represent other sites. Further, the Central Valley Water Board determined in past years that chasing exceedances upstream to locate a single bad actor was less effective at improving water quality than educating on management practices at a watershed level. The East San Joaquin Coalition and the Central Valley Water Board argued that the monitoring program was reasonable, and that it allowed funds previously spent on monitoring to instead be invested into outreach to growers, leading to clear and documented water quality improvements. They cautioned State Board staff that significantly increasing the spatial and temporal density of the required surface water monitoring would result in fewer funds available for surface water quality outreach and for addressing nitrate issues.

Environmental representatives pointed out that in the Central Coast region there are about fifty surface water monitoring sites in an area smaller than the area of the East San Joaquin Coalition. They questioned whether the perceived success in improving surface water quality is based on actual improvements in toxicity as opposed to growers switching to non-monitored pesticides.

Agricultural and environmental representatives from outside the East San Joaquin area asked for clarification on the precedential nature of any direction on surface receiving water monitoring. State Board staff indicated that specific direction would be provided in the revised staff-proposed order.

**7. Time permitting, open forum (2 minutes per speaker)**

No speakers asked for open forum.

**8. Next steps and adjourn**

No additional staff workshops are planned at this point. Staff expects to work with Board members to prepare a revised staff-proposed draft order for public release.