California Regional Water Quality Control Board
Central Coast Region

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Arnold Schwarzenegger
Governor

MINUTES OF
REGULAR MEETING
Friday, September 9, 2005
Central Coast Water Board

Chairman Jeffrey Young called the meeting of the Central Coast Water Board to order at 8:32 a.m. on Friday, September 9, 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
Les Bowker
John Hayashi
Monica Hunter
Gary Shallcross
Don Villeneuve

Absent:
Bruce Daniels
Daniel Press

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. Mr. Briggs announced that Staff Counsel Lori Okun and Steven Blum would be attending the meeting by conference phone. Mr. Blum will be available for the Pierson item. State Board liaison Gerry Secundy, and State Board staff member Dan Merkley, will attend today's meeting. Mr. Briggs introduced staff members Bill Arkfeld and Sheila Soderberg. Sheila expressed her appreciation and thanks for Bill's 19 years of service and presented him with a plaque. Staff member, Jennifer Bitting, will be away from the agency for a year to work on her Master's degree overseas. We look forward to her return. Dr. Donald Villeneuve will be leaving the Board at the end of September. Mr. Briggs and Mr. Young expressed appreciation for his years of service with the Board and wished him the best of luck.

Supplemental sheets are available for the following: Items 7, 13, 15, 16/17/25, 26, and 31.

3. Approval of July 7-8, 2005 Meeting Minutes.....Board Motion

MOTION: Russell Jeffries moved to approve the meeting minutes for July 7-8, 2005.
SECOND: No second.
CARRIED: Unanimously (7-0)

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

Our State Board Liaison, Gerald Secundy, provided a report on the following items: the San Francisco Bay Mercury TMDL and other TMDLs, Areas of Special Biological Significance (ASBS) Workshops, the Water Quality Coordinating Committee (WQCC), numeric limits for storm water dischargers, and a General Counsel personnel update.

5. Uncontested Items Calendar .....Board Motion
Items 16, 17, and 25 were pulled off of the consent agenda for discussion.

MOTION: Russell Jeffries moved to approve consent items 13, 14, 18, 19, 20, and 21.
SECOND: Gary Shallcross
CARRIED: Unanimously (7-0)

6. Spills, Leaks, Investigation, and Cleanup.....Status Report

Water Board staff Engineer Karyn Steckling responded to Board Member Jeffries' questions regarding the status of the dry cleaner cleanup on Mt. Hermon Road in Scotts Valley. Ms. Steckling reviewed monitoring data received since the staff report was drafted. She also stated that the responsible party is cooperating with the Water Board and the Scotts Valley Water District. The pump-and-treat system is running continuously. The city and water district are not causing permitting delays.

7. Perchlorate Cases .....Status Report

No formal Water Board staff presentation was made for this item. Water Board staff was available to answer questions.

Water Board Chair Jeffrey Young, referenced the August 24, 2005 Perchlorate Community Advisory Group (PCAG) letter that was included in a supplemental agenda attachment. The PCAG letter expressed concern that Olin had missed several Water Board ordered deadlines. Executive Officer Briggs confirmed that Olin's sampling and reporting was late. Mr. Briggs noted that Water Board staff considered Olin to be out of compliance and that staff had drafted a Notice of Violation. Chairman Young asked when Olin planned to submit the report. Water Board staff Engineer, David Athey responded that he had received a summary of Olin's results, but that lab data sheets supporting the summary results had not been submitted. Mr. Athey noted that Olin was currently analyzing the remaining data, and he expected to receive the report by the end of the week. Board Member Jeffries stated that it is important to keep Olin moving forward and on track.. Mr. Jeffries also stated that the sampling and reporting delays only further delay cleanup and restoration of groundwater beneficial uses. In response, Mr. Athey noted that the draft Notice of Violation reminds Olin that they should consider adding resources in order to comply with Water Board imposed due dates. Mr. Athey concluded that more stringent efforts would be taken in the future to ensure Olin submitted their reports on time.

(Chairman Young announced a break at 9:30 a.m. The meeting reconvened at 9:40 a.m.)

29a. Public Forum ..... Board Direction

Members of the public requested that the Chair consider allowing a portion of the Public Forum be held earlier than scheduled. Chair Young granted the request.

John Q. Public Domain, Central Coast Outfall Group – suggested the Board watch a video called the "Emerald Forest."

Richard Sadowsky, Central Coast Ocean Outfall Group – requested a copy of a Conflict of Interest Form 700 from each Board member.

Joey Racano, Orange County Outfall Group – spoke about the ABC wastewater treatment plan.

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

A written report was submitted. There were no questions on this item.

9. Enforcement Report ..... Status Report

Mr. Briggs explained the transition period between the Regional Board's tracking databases, SWIM and CIWQS. We are looking forward to having the new CIWQS system up and running so that we may provide the regular Enforcement Report. Chairman Young noted the San Luis Obispo spill in the report and asked about back-up systems for spills. David Hix, City of San Luis Obispo explained events leading up to the City's recent spill and updated the Board on actions the City is taking to prevent future spills.

11. Resolution Authorizing the Chair to Appoint Hearing Panel to Conduct Hearings...Resolution No. R3-2005-127

Chairman Young asked about making a small change on Page 1 of the Resolution (changing the word "and" to "or"). Board member Shallcross asked about item 5, Page 2 about the Board Members reviewing the record and taking additional evidence as necessary. Board member Hunter asked about how the panel is selected and about fairness to the dischargers involved. Staff Counsel Okun responded to all questions and clarified the process for the Board. Mr. Briggs pointed out that hearing panels can actually be more convenient for the interested parties.

MOTION: Les Bowker moved to approve Resolution No. R3-2005-127 and to include the amendment.
SECOND: John Hayashi
CARRIED: Unanimously (7-0)

15. PG&E Diablo Canyon Power Plant ..... Board Direction

Executive Officer Roger Briggs introduced the item. Assistant Executive Officer Michael Thomas provided brief background information and a chronology of events leading up to this Board meeting. Mr. Thomas stated that the Water Board considered a revised NPDES permit for the Diablo Canyon Power Plant on July 10, 2003. At that hearing the Board considered all aspects of the draft permit. After several hours of presentations and deliberation, the Board closed the hearing, except for further consideration of specific issues, including mitigation options for addressing the Power Plant impacts. Staff provided a follow-up status report to the Water Board on May 14, 2004.

At that meeting, the Water Board directed staff to further investigate the possibility of constructing artificial reef habitat as a mitigation option.

The Water Board's independent scientists on this project (Drs. Raimondi, Cailliet, and Foster) submitted a paper titled *Independent Scientists' Recommendations to the Regional Board Regarding "Mitigation" for Cooling Water Impacts*, July 2005. Dr. Raimondi presented an overview of this paper, with an emphasis on the two main mitigation options: artificial reefs and funding for Marine Protected Areas. Dr. Raimondi explained that 210 to 500 acres of artificial reef habitat, at a cost of $10.6 million to $26 million, would compensate for most DCPP entrainment losses. Dr. Raimondi concluded by saying that artificial reefs would provide the most direct compensation for entrainment losses, while marine reserves would provide the greatest ecological benefit to the marine environment.

PG&E's consultant, William Desvousges, provided a presentation to the Board summarizing PG&E's *Benefits Valuation Study for Diablo Canyon Power Plant*, February 2005. PG&E estimates the value of entrainment losses at DCPP at $18,635 to $34,206 per year, with a mean of approximately $26,000 per year. PG&E estimates that the present value of eliminating all impingement and entrainment until 2053 (the latest potential closure date for the plant) is between $563,986 and $1,035,240, and that the present value of meeting the performance standards of the 316(b) regulations through 2053 is between $401,915 and $823,809. PG&E also emphasized its opinion that the cost of mitigation, such as the cost of an artificial reef, is not an indication of the value of lost resources.

Board Member Shallcross asked the Board's counsel about the economic valuation methodologies required by the 316(b) regulations. Lori Okun explained that the 316(b) regulations do not specify what methods may or may not be used.

Board Member Hunter mentioned abalone impacts from the seventies and asked whether this type of direct impact was included in PG&E's valuation study. Roger Briggs clarified that the abalone die off was caused by an initial discharge when the Power Plant first started up and was using copper tubing, which PG&E changed to titanium tubing after the copper discharge. PG&E's biologist, John Steinbeck, verified this information. PG&E's consultant, William Desvousges, explained that the valuation study is limited to the entrainment losses caused by the Power Plant.

Board Member Hunter said some fish populations are reduced due to entrainment, and that such resources are therefore becoming scarcer. PG&E's consultant, William Desvousges, responded that no threatened or endangered species are entrained by the Power Plant.

Chairman Young asked PG&E if they agree in general with Dr. Raimondi's assessment, except for the artificial reef or cost scale issues. PG&E's attorney, Karl Lytz, said that scale is an issue, and that the options may not be lawful pending the court's decision regarding challenges to the 316(b) rule.

Chairman Young asked if, assuming the regulations stay the same, PG&E is in general agreement with Dr. Raimondi except for scale (Chairman Young also said that the Board needs peer review of the reports submitted). Mr. Lytz responded that PG&E is concerned with scale and legality, but is willing to work on a reasonable resolution, and supports peer review.

Board Member Shallcross asked if the Board could use the value of the water and the living resources in it. Ms. Okun said there is no legal basis for doing so but our peer review experts may address the issue.

Board Member Villeneuve asked Dr. Raimondi about the potential for impacts over a long period of time. Dr. Raimondi said we cannot answer that question due to the lack of data. Dr. Raimondi said that is the reason for the Marine Life Protection Act (MLPA)—we cannot identify all the factors impacting the marine environment so we need to protect some areas from all impacts. Dr. Raimondi said we cannot separate out the degree change caused by an individual variable, such as entrainment.

Board Member Hunter asked Dr. Raimondi about the cumulative impacts from Diablo Canyon Power Plant and Morro Bay Power Plant with respect to rockfish population declines. Dr. Raimondi said we cannot attribute trends in fish

populations to entrainment impacts versus other impacts such as sedimentation or toxins.

Board Member Press (not present) submitted written questions in four general areas, as follows:

1. The EPA guidelines on 316(b) Phase II regulations seem to create a paradox: on the one hand they do allow restoration/mitigation to serve as Best Technology Available, on the other hand, the economic valuation methods authorized by EPA, it seems, would rarely result in resource valuations high enough to fund effective restoration/mitigation programs, much less creating the same impact/benefit as reducing entrainment by 60-90%. How is this paradox resolvable? That is, is staff aware of (or can find out about) circumstances/cases in which EPA-authorized valuation methods resulted in high enough resource values to fund restoration/mitigation as Best technology Available for existing impingement and entrainment impacts?

Ms. Okun responded that the paradox may not be resolvable, and the court may strike down the mitigation option, or modify the mitigation option. Ms. Okun said we need guidance by the EPA or the court. Ms. Okun said the EPA has not applied the new 316(b) regulations yet, but applied the "wholly disproportionate cost" test in the past, which is more flexible. Staff can investigate whether resource valuation methods were used with the wholly disproportion cost approach.

2. As a related question, how did the San Onofre Nuclear Generating Station artificial reef come about? That is, did Southern California Edison agree to it before the 316(b) Phase II final regulations were published? Did Southern California Edison propose the reef itself? Was a Cease and Desist Order or Administrative Civil Liability Order in force when the reef mitigation was agreed to?

Michael Thomas responded that the California Coastal Commission required the artificial reef at San Onofre via the California Environmental Quality Act. The 316(b) regulations did not apply, and the Regional Board was not involved in the mitigation requirements. There was no Cease and Desist Order and no Administrative Civil Liability Order. Dr. Raimondi added that the reef was recommended by a group of independent scientists, and required by the Coastal Commission.

3. Triangle Economic Research (TER – PG&E's consultant) claims that its analysis has captured all nonuse values of the species entrained by Diablo Canyon Power Plant. In staff's opinion and/or the peer reviewer's opinion, did the TER analysis capture and adequately value all the ecological processes, including disruptions of ecological niches and strategies used by aquatic species around the plant, all disruption of organic carbon, energy and nutrient transfer through trophic levels and disruption of age-class structures?

Michael Thomas responded that staff does not agree with TER's position that all non-use values have been captured in the valuation, and that capturing all non-use values is probably impossible. Mr. Thomas said that staff is also not qualified to review TER's report, and that staff is pursuing peer review by qualified experts.

4. What are the Board's options? I assume they are to wait for a proposal from PG&E, then accept or reject. Should we/could we wait to see what the Second Circuit Court of Appeals decision is in the Surfrider Foundation et al. vs. USEPA case? It seems that that case will settle some of these contentious valuation issues. On a related point, could the Water Board require Habitat Recovery Cost as a method of determining the Best Technology Available benefits dollar amount, and essentially challenge the USEPA's guidelines? Or does counsel think the Second Circuit Court decision will already settle the Habitat Recovery Cost question?

Michael Thomas responded that there is uncertainty associated with the 316(b) regulations due to pending lawsuits, and it may be prudent to wait until the lawsuits are settled before staff makes a recommendation regarding mitigation. Ms. Okun also added that the Water Board staff needs the peer review results before considering a recommendation.

(Chairman Young announced a lunch break at 12:18 p.m. The meeting reconvened at 1:24 p.m. There was no Closed Session.)

Public Comment:

John Ugoretz from the Department of Fish and Game (DFG) stated that it is unclear whether mitigation is intended to address past or future impacts. Mr. Ugoretz said DFG is against new Marine Protection areas as mitigation for impacts at Diablo Canyon, and expressed support for artificial reefs and abalone research. DFG is concerned with impacts to fisherman. DFG does not want to see another, separate MLPA process on the Central Coast. Mr. Ugoretz said implementation funds are welcome, but not as mitigation. DFG supports artificial reefs as the primary mitigation option. DFG also supports the easement.

Chairman Young asked if DFG supports the scale of artificial reefs as discussed by Dr. Raimondi. Mr. Ugoretz said he agreed.

Chairman Bowker asked about the size of existing Marine Protected Areas. Mr. Ugoretz responded that individual Marine Protect Areas are less than one square nautical mile.

Board Member Hunter asked about enforcement and monitoring (implementation) for Marine Protected Areas. Mr. Ugoretz said these actions are critical, and the source of funds for these activities is unknown. Mr. Ugoretz said mitigation funds could be used for this purpose as part of a larger mitigation package.

Mr. Briggs asked if DFG agrees with the independent scientists conclusion that Marine Protected Areas provide a greater overall benefit to the marine environment compared to artificial reefs. Mr. Ugoretz agreed, but said DFG supports reefs as the primary mitigation option. Mr. Ugoretz said DFG is concerned with decreasing fishing options.

Board Member Shallcross stated that directing funds toward the MLPA process will not change the process at all. The funds would be for implementation of Marine Protected Areas established by the Fish and Game Commission; the funds would not be used for a separate process, and would not change the existing process.

Pam Heatherington referred the Board to a letter she previously submitted regarding the Regional Board's settlement agreement. Ms. Heatherington stated opposition to the settlement agreement, and questioned its legality. Ms. Heatherington said that cumulative impacts have not been addressed.

David Nelson stated that several Board Members addressed his concerns and noted that many lawsuits have been filed regarding the regulations. Mr. Nelson stated that the Board has not addressed the impacts, should require closed cooling, and should not burden fisherman via Marine Protected Areas.

Henriette Groot, CAPE, stated that CEC staff published a report in June 2005, in opposition to once-through cooling. Ms. Groot stated that many impacts have not been studied, questioned the need for power from Diablo Canyon, and stated that the spent fuel will have to stay at Diablo Canyon in perpetuity. Ms. Groot said nuclear power is not clean energy. Chair Young said it would be much more helpful to address issues that are before the Board rather than issues over which the Board has no control.

Robert Osborn, with United Anglers, stated that Marine Protected Areas must be carefully studied before benefits can be determined. Mr. Osborn questioned the economic valuation of non-use values, and stated that costs can be considered in valuation assessments.

April Wakeman, attorney for United Anglers, stated that marine reserves restrict fishing, and reminded the Board that there are three types of marine protected areas with varying degrees of protection. Ms. Wakeman stated support for artificial reefs and the MLPA process.

Board Member Hunter asked if Ms. Wakeman supported an artificial reef as a reserve. Ms. Wakeman responded that she supports the MLPA process. Mr. Osborn stated that United Anglers strongly support artificial reefs as mitigation.

Steve Rebuck, former consultant to fisheries groups, stated that warm water is responsible for

promoting the spread of withering syndrome, and noted that other species of abalone, besides black abalone, are also important. He supports abalone research. Mr. Rebuck stated that species- specific reefs could be built, and supports artificial reefs as mitigation.

Tom Laurie stated that the Diablo Canyon entrainment study is flawed because the ocean current data is defective.

Ed Ewing, Morro Bay Commercial fisherman, stated opposition to funding for Marine Protected Areas, and support for artificial reefs or fish hatcheries. Mr. Ewing said there are no baseline data to show that Marine Protected Areas work, and stated concerns about DFG accepting funds from the Resources Legacy Fund Foundation. Mr. Ewing said that sandy bottom habitat is constantly changing, and an artificial reef may not be stable over time in that type of environment. Mr. Briggs asked why Mr. Ewing is opposed to long-term funding for implementation of Marine Protected Areas. Mr. Ewing said that if funding were provided, Marine Protected Areas may be bigger or more numerous than they would otherwise be.

Carolyn Moffitt, Port San Luis Harbor Commissioner, stated support for mitigation that has the greatest nexus to impacts. Ms. Moffitt stated support for Marine Protected Areas specifically designed to protect water quality and habitat, and support for existing watershed programs such as the Morro Bay National Estuary Program and the Central Coast Salmon Enhancement. Ms. Moffitt also supports funding for a rockfish grow-out facility, the Marine Interest Group, and education on marine environmental protection.

Andrew Christie, Sierra Club, stated that the Board should wait until the court makes a decision regarding the legality of mitigation as a compliance option per Section 316(b) of the Clean Water Act. Mr. Christie stated support for funding Marine Protected Areas as mitigation for past impacts, but not future impacts.

Regional Board Deliberation:

Board Member Bowker noted he would like to resolve the Diablo Canyon issues and not wait until the court makes a decision. Mr. Bowker stated his concern about incremental degradation of the PG&E lands, and support for the easement and an adjacent offshore Marine Protected Area, which would serve as a reference area in perpetuity for the Central Coast.

Chairman Young noted that the easement has less value now because of the Coastal Commission's requirements for public access. Board Member Bowker noted that the easement may be of less value, but still has value, and stated his support for the easement and a Marine Protected Area rather than an artificial reef.

Chairman Young stated his preference for replacing entrainment losses via an artificial reef. Board Member Shallcross asked if the Board is addressing entrainment or thermal issues. Ms. Okun stated that the Board is addressing both issues, and reminded the Board that they directed staff to consider mitigation options for both issues. Ms. Okun stated that these issues must be addressed before staff can propose an NPDES permit.

Chairman Young asked what would happen if the Board took action regarding mitigation, and the court then acted to change the regulations. Ms. Okun stated that if the Board adopted a permit with mitigation requirements in the near future, the permit would have to comply with Section 316(b), and if the court's subsequent decision changed the regulations, the Board may have to reconsider the permit.

Board Member Shallcross stated that the Board would need to obtain peer review and wait for the court's decision.

The Board discussed the possibility of an enforcement action regarding the thermal effects.

Mr. Briggs suggested that staff obtain peer review of PG&E's valuation study and the independent scientists' mitigation paper, work with the Coastal Commission and PG&E to obtain a protective access plan, and pursue how funding could be directed toward Marine Protected Areas.

Board Member Jeffries stated concern about funding for Marine Protected Areas, and preference for an artificial reef.

Chairman Young stated his preference for an artificial reef rather than funding for Marine Protected Areas.

The Board discussed the benefit of obtaining peer review before deciding on a mitigation option.

Board Member Hunter stated her preference for an artificial reef as mitigation.

Chairman Young asked the Board to move on to the thermal aspect, and stated his support for resolving the thermal impacts via an enforcement action, and asked each Board Member to state their opinions. Board Member Hayashi stated his preference to move ahead with Mr. Briggs' recommendations and not pursue enforcement.

Board Member Bowker agreed with Mr. Hayashi, and stated that the Regional Board's delay resulted in the access issue and that the Board should not delay further.

Board Member Shallcross stated his concern that the value of the easement has decreased with the public access requirements, and stated support for an enforcement action.

Board Member Villeneuve stated his neutrality on enforcement, and support for moving ahead with Mr. Briggs' recommendation.

Board Member Jeffries stated support for Mr. Briggs' recommendation, and for resolving the issue as soon as possible.

Board Member Hunter agreed with Board Member Jeffries regarding the easement and supported Mr. Brigg's recommendation to discuss the access agreement with the Coastal Commission and PG&E. Ms. Hunter asked about the time frame for bringing an enforcement action to the Board. Mr. Briggs stated that it would take a minimum of four months to bring an enforcement action to the Board. Ms. Okun stated that all Board Members would have to review the record prior to an enforcement action, and additional evidence would be submitted.

Conclusion:

The Board directed staff to:

1. Obtain peer review of PG&E's valuation report and the independent scientists' mitigation paper.

2. Obtain more information on artificial reefs, including total cost (permitting and performance monitoring) and scale.

3. Contact the Coastal Commission and determine their willingness to approve an access plan that is protective of the easement area.

(Chairman Young announced a break at 3:58 p.m. The meeting reconvened at 4:10 p.m.)

29b. Public Forum ..... Board Direction

David Nelson, Resident of Morro Bay – Mr. Nelson raised concerns about the draft discharge permit for the existing Duke Energy Power Plant at Morro Bay. He asked how long it would take to issue a permit. He also asked the Board to consider monitoring the estuary and to avoid dodging the issuance of a permit.

[Items 16, 17 and 25 were taken together]

***16. Initial Study, Negative Declaration, and General Waiver of WDRs for Petroleum Impacted Soil Waste Piles on Oilfield Properties** ..... Resolution No. R3-2005-092 and Order No. R3-2005-006
[Hector Hernandez 805/542-4641]

***17. Initial Study, Negative Declaration, and General Waiver of WDRs for Reuse of Crude Oil Impacted Soil and Non-Hazardous Sandblasting Aggregate at Oilfield Properties** .....Resolution No. R3-2005-089 and Order No. R3-2005-005
[Hector Hernandez 805/542-4641]

***25. Repeal Basin Plan Resolution No. 73-05 and Section 5(f) of Basin Plan Resolution No. 89-04 for the Reuse of Petroleum Wastes throughout the Central Coast Region** .....Resolution No. R3-2005-0013
[Sheila Soderberg 805/549-3592]

Water Resources Control Engineer Hector Hernandez, project manager for the proposed items, provided the Board a brief introduction of the items. Mr. Hernandez explained that the primary reason the proposed items had been pulled from the consent calendar was due to public concern with future development of oil field facilities into residential areas without the proper environmental assessment and cleanup of remnant petroleum-impacted soils. The concerned individuals are presently dealing with such situations at the Park Villas II and Harvest Ranch subdivision in Santa Maria, California.

Kristy Treur, Santa Barbara County Planning & Development, read a letter in full support of proposed Items Nos. 16, 17 and 25.

Tom Gibbons, indicated support for Item Nos. 16 and 25. He stated it is society's duty to collect, characterize, and manage petroleum-impacted soils in responsible manner. In regards to Item No. 17, Mr. Gibbons indicated several concerns and recommendations:

- Active oil field properties need to build roads.
- It is worth looking at the Bakersfield area to determine how best to control run-on and run-off from these types of waste pile facilities and reuse projects.
- Educating dischargers is needed to make it easier to enforce.
- Land Use and Planning Department should be involved.

Bob Poole, Western State Petroleum Association (WSPA) spoke in full support of the proposed waivers. Mr. Poole had the following comments:

- The proposed Waivers apply only to active oil fields.
- Reuse is not disposal.
- Regulatory oversight is needed/important.
- The proposed Waivers provide a workable program for managing petroleum-impacted soils.
- Only non-hazardous crude oil-impacted soils are acceptable for reuse purposes.
- Cal EPA Road Mix document concluded that reuse is not an issue.
- Interagency oversight will ensure compliance is achieved.
- WSPA will provide assistance to applicants by developing an ROWD template.
- WSPA intends to provide training information to applicants that are interested.

David White, Resident of Santa Maria: Mr. White was generally supportive of Item No. 16. However, he noted he is concerned with the issuance of Item No. 17. He believes that additional education and oversight in managing reuse projects are needed, as future homeowners may be impacted when the land-use designations change from oil field to residential. Mr. White thanked Water Board for being helpful and responsive to his concerns. Mr. White indicated that good documentation of where material is placed is needed to protect potential future landowners. He suggested a graphical data logging system would be ideal to track these reuse materials.

(Board member Hayashi left the meeting at 5:03 p.m.)

Mr. Hensley, San Luis Obispo Coast Keeper Alliance: Mr. Hensley recommended rejecting both of the proposed items based on his assertion that the proposed items do not comply with the Clean Water Act because these petroleum materials will be discharged to surface water. He stated that the adoption of a waiver is inappropriate because there are no sampling requirements. The petroleum-impacted materials contain metals and other unknown chemicals. Thus, he recommended the Water Board adopt formal waste discharge

requirements instead of a waiver and perform a full Environmental Impact Report.

State Board Counsel Lori Okun clarified that these Oilfield facilities are not point sources and are not exempt from storm water requirements.

Andrew Christie, Sierra Club: Mr. Christie indicated the management of petroleum-impacted soils requires further study. These materials were previously sent to Casmalia and it is unsafe to manage them in waste piles and use them on reuse projects. These types of materials contain mono-aromatics, are extremely toxic, and must be disposed of appropriately. The Water Board must adopt waste discharge requirements, not waivers.

Chairman Young asked Mr. Christie to clarify whether he believes the proposed characterization of the impacted materials is adequate. Mr. Christie indicated the characterization requirements only require characterization of the known chemicals and not the unknown chemicals. Mr. Christie stated that 85% percent of the chemicals in petroleum are unknown and cannot be identified with current analytical methods.

Staff Division Chief Harvey Packard pointed out that the unresolved complex mixture is an unknown portion in petroleum. However, the subject petroleum compounds are no different than what is found in roads. The reuse materials are conditioned to be non-hazardous crude oil-impacted materials only. No hazardous or toxic materials may be used.

Doug Herthell, Preservation of Los Olivos (POLO), read a letter from his Board. The letter indicated the POLO board is concerned with the use and handling of oil field waste. The letter indicated these materials must be carefully regulated; the proposed Orders are too lenient because the long-term affects of petroleum materials are being ignored. He indicated the proposed waivers do not address erosion, dust controls, and land use plans. The negative declaration is inadequate due to a lack of engineering controls and a lack of monitoring. The proposed Orders do not include TPH limits. The Board must redraft a more comprehensive proposal and a full Environmental Impact Report is needed. He indicated the POLO is concerned with visual impacts, odors, erosion/sedimentation, and lack of TPH limits. He believes an independent third party would produce a more comprehensive proposal.

Pam Heatherington, Environmental Center: Ms. Heatherington asked that a letter from the Environmental Center be included as part of the record. Ms. Heatherington is concerned with chemical and metals that may be associated with the reuse projects. She is concerned these soils may include SVOCS, PCBs, and other toxic chemicals and may cause health problems. She is concerned the Water Board has not addressed the "unresolved complex mixture" and should issue a Proposition 65 Notice. Also, she would like to see a better waste tracking system, requirement of a deed restriction and believes the fiveyear waiver is too long.

Mr. Ontiveros (Rancher that lives on oil field property): Mr. Ontiveros is supportive of the proposed items but would like the Water Board exclusively involved to implement the program. He believes Santa Barbara County Protection Services Division does not have enough staff to implement the reuse program. In general, the reuse program has not been implemented properly in the past. Operators need to be policed because reuse projects are not maintained. Based on his experience, piles are placed all over Cat Canyon. Some of these piles have not been removed since 2001.

Board Member Shallcross recommended allowing conditional waivers only in Santa Barbara County and issuing individual WDRs to those in other County's within the Central Coast Region.

Ed Brannon, Division of Oil & Gas & Geothermal Resources (DOGGR): Mr. Brannon stated that Santa Barbara County Fire and Protective Services Division gives final lease restoration approval for active oil field facilities. The DOGGR does not give final lease restoration letters. DOGGR issues a final letter for each well, not leases. Sheila Soderberg said Water Board staff will make this correction throughout both of the proposed Orders.

Mr. Brannon stated his agency inspects sites in San Luis Obispo and Monterey County. Mr. Brannon said he would write a letter to the Water Board in support of this program and his agency's responsibilities in relation to oil field facilities.

Board Member Jeffries indicated he is not certain whether the proposed Orders are adequately protective of the rights of property owners. Property owners do not have recourse or protection. Consequently, he recommended the proposed Reuse Order include a deed notice requirement as part of decommissioning for those facilities where reuse materials are to be left in place after closure approval.

Staff Counsel Lori Okun recommended, and staff agreed, to define "Discharger" in both of the proposed Orders as follows: Discharger is the surface rights owner and the operator. Water Board staff agreed to search throughout the Orders and define Discharger as recommended by Ms. Okun.

Water Board staff recommended incorporating the following changes to the proposed items:

- Changes noted in the Supplemental Sheets for Item Nos. 16 and 17.
- Discharger is to be defined as the property owner (surface rights) and the operator of the facility.
- A condition will be incorporated into the Reuse Order (Item 17) to require a recording to the deed for those facilities where reuse material will remain onsite after decommissioning.
- The proposed items will be revised to clarify that the County agency with jurisdictional authority provides final lease restoration approval not DOGGR. DOGGR approves decommissioning of individual wells not leases.

[Item No. 16]
MOTION: Russell Jeffries moved to approve Resolution No. R3-2005-092 to include recommended changes.
SECOND: Les Bowker
CARRIED: (5-1) Gary Shallcross voted no.

MOTION: Les Bowker moved to approve Order No. R3-2005-006 to include recommended changes.
SECOND: Russsell Jeffries
CARRIED: Unanimously (6-0)

[Item No. 17]
MOTION: Russell Jeffries moved to approve Resolution No. R3-2005-089 to include recommended changes.
SECOND: Les Bowker
CARRIED: (5-1) Gary Shallcross voted no.

MOTION: Les Bowker moved to approve Order No. R3-2005-005 to include recommended changes.
SECOND: Russsell Jeffries
CARRIED: Unanimously (6-0)

[Item No. 25]
MOTION: Russell Jeffries moved to approve Resolution No. R3-2005-0013.
SECOND: Les Bowker
CARRIED: Unanimously (6-0)

22. Agricultural Discharge Regulation Update.....Status Report

Alison Jones, lead staff for the Conditional Waiver for Irrigated Lands, answered questions from Board Members about the current status of the Cooperative Monitoring Program and the significance of the first data received. Karen Worcester, lead staff for the Central Coast Ambient Monitoring Program (CCAMP), answered specific questions on the consistency with CCAMP data and use of the data for Regional Board decision-making. The data received to date

are quite consistent with Regional Board CCAMP data. Staff will be reviewing the next data submittal (due September 30) and working with the Cooperative Monitoring Program to develop plans for follow-up monitoring in priority areas.

Kirk Schmidt, the new Executive Director of Central Coast Water Quality Preservation, Inc. (the non-profit entity formed by the agricultural industry to conduct the monitoring program), provided a brief discussion of the industry's success in meeting the regulatory milestones established in the waiver Order, as well as the challenges that it has faced. He also discussed the possibility of a future request for additional funding to cover a possible budget shortfall.

The item was for information only; no action was taken by the Board.

23. Nonpoint Source Control Implementation Policy ..... Status Report

Staff Environmental Scientist Larry Harlan provided a brief summary of the Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (the Policy). The Policy replaces the former three-tiered approach for nonpoint source pollution control by now requiring waste discharge requirements (WDR's), waivers of WDR's, or prohibitions. Staff stated that the Policy would be implemented in high priority watersheds as part of total maximum daily load (TMDL) projects. Grazing is an example of a nonpoint source. Board Member Shallcross asked what type of staffing may be required and what staff is assigned to TMDL implementation. Anticipated staffing needs for implementation of the Policy is not known. Watershed Assessment Unit (TMDL) staff primarily oversee TMDL implementation plans.

24. Basin Plan Triennial Review List Update ..... Board Direction/Approval

Staff Engineering Geologist Lou Blanck presented the Triennial Review Priority List to the Board. Board Member Hunter asked for more marine water quality goals and was referred to the longer list at the end of Attachment A. Michael Thomas noted that all of the goals translate to marine goals in the long run and that it is difficult to measure marine waters directly. Dr. Hunter elaborated that she was looking for staff to consider developing a baseline to characterize marine water quality and opportunities to see if marine water quality is improving. Dr. Hunter wanted to see more funding and support for marine water quality issues. Chairman Young requested that we classify recreational shellfish areas under the same objectives as commercial shellfish; this would result in stricter fecal coliform standards for the marine environment.

MOTION: Russell Jeffries moved to approve the Triennial Review List Update.
SECOND: Gary Shallcross
CARRIED: Unanimously (6-0)

26. San Luis Obispo Creek Nutrient TMDL ..... Resolution No. R3-2005-0106

Regional Board staff Environmental Scientist Christopher Rose presented the proposed Basin Plan Amendment. Mr. Rose summarized sources of nitrate-N in San Luis Obispo Creek and identified key elements in the Implementation Plan of the TMDL. Mr. Rose also advised the Board of date changes in the proposed amendment. Mr. David Hix, Wastewater Division Manager for the City of San Luis Obispo, commented on the proposed Basin Plan Amendment. Mr. Hix

requested that the Board consider interim nitrate-N effluent limits in the City's NPDES permit for the Water Reclamation Facility. Mr. Hix also advised the Board that the City of San Luis Obispo is currently developing a Use Attainability Analysis in an effort to de-designate the municipal and domestic water supply beneficial use from San Luis Obispo Creek.

MOTION: Russell Jeffries moved to approve Resolution No. R3-2005-0106.
SECOND: Gary Shallcross
CARRIED: Unanimously (6-0)

28. Low Impact Development Pilot Project: Request for Funding From the Guadalupe Settlement ..... Board Approval

Water Board staff Engineering Geologist Donette Dunaway recommended that the Board approve $250,000 for the funding of a Low Impact Development (LID) pilot project within the Central Coast Region. Ms. Dunaway explained that the primary goal of the project is to build the foundation for ongoing LID implementation. Staff is looking for a city that will be receptive toward LID concepts to ensure that the project will be a success. The City of Salinas was discussed as a potential candidate for the project. Several Board Members stated that they would support a project located in Salinas as long as the city and developers are willing to work cooperatively with the Water Board staff. Board Members also asked if the funding was to be used in the process of choosing a candidate city. Ms. Dunaway replied that the process of choosing the city would be independent of the funding provided for the project. Further details of how the money will be spent are provided in the Staff Report Table. Staff committed to giving regular updates on the progress of the proposed project.

MOTION: Donald Villeneuve moved to approve funding for the pilot project.
SECOND: Russell Jeffries
CARRIED: Unanimously (6-0)

30. Reports by Central Coast Water Board Members ..... Status Report

Russell Jeffries reported on an agricultural water drainage pipe project issue in the central valley that was addressed at the Monterey Bay National Marine Sanctuary Advisory Council (MBNMSAC) meeting. The MBNMSAC members were concerned about the possibility of the project draining into the Estero Bay in Cayucos. Mr. Briggs noted that staff wrote comments on the environmental document and he added that the project would most likely not be approved.

Board Member Hunter noticed that the speakers at the podium were not being illuminated on the video camera.

Mr. Briggs responded that Harvey Packard had just recently recommended adding a light for that purpose.

31. Executive Officer's Report ..... Information/Discussion

Mr. Briggs noted the supplemental sheet for the Storm Water Management Program and pointed out the progress. The Water Quality Coordinating Committee meeting will be held on September 19-20, 2005 in Sacramento. The Los Osos Community Services District

(LOCSD) is moving along with their contractors. With our approval, the Morro Bay National Estuary Program is allocating $100,000 to the low-income assistance fund for the LOCSD.

Chairman Young adjourned the public meeting at 8:15 p.m.

The next Board meeting (panel hearing) will be held on October 6, 2005, in San Luis Obispo. The meeting was audio recorded and the minutes were reviewed by management, and approved by the Board at its October 21, 2005 meeting in Santa Barbara, California.

Jeffrey Young, Chairman

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