From: Alex Mayer <AMayer@waterboards.ca.gov>
To: Japlus3 <japlus3@aol.com>; Dale Essary <dessary@waterboards.ca.gov>; Ken Landau <klandau@waterboards.ca.gov>; Mayumi Okamoto <MOkamoto@waterboards.ca.gov>
Subject: Re: Sweeney Dairy
Date: Tue, Sep 20, 2011 10:17 am

The Chair of the Central Valley Water Board has made rulings on procedural issues raised by Mr. James Sweeney in regards to upcoming October Board meeting to consider the final Hearing Panel Report on Administrative Civil Liability (ACL) Complaint No. R5-2011-0562. The panel held the hearing in Fresno on July 14, 2011. In a letter dated September 5, 2011, Mr. Sweeney alleged that surprise evidence was introduced at the July 14 hearing, requested a continuance to complete his review of an enumerated set of documents, and asked for assurances that he may present evidence and testimony at the upcoming Board meeting. After the Advisory Team solicited additional information from the parties in response to the letter, Mr. Sweeney and the Prosecution Team provided additional information on September 16. The Chair considered the above information prior to making rulings on these issues.

The Chair has ruled as follows: (1) The Sweeney item scheduled for the October Board meeting will not be continued; (2) Mr. Sweeney may provide additional evidence to respond to specific slides and statements presented by the Prosecution Team at the July 14 hearing; and (3) Other than this evidence, Mr. Sweeney will not be permitted to provide additional evidence, testimony, or policy statements at the October Board meeting. More details on these rulings are provided below. The descriptions below follow the numbering scheme from Mr. Sweeney's September 5 letter.

Paragraphs 1, 2, and 3 – Continuance Request to Review Information Requested Pursuant to the Public Records Act

On of the stated reasons for the requested continuance is for Mr. Sweeney to have more time to review and submit as evidence information requested pursuant to Items 3, 4, and 5 of a separate Public Records Act request dated June 20, 2011. The requests were for (1) correspondence mailed to the Sweeney dairy by the Central Valley Water Board during or after 1998 (2) the administrative record supporting the adoption of Order R5-2007-0035, the waste discharge requirements the hearing panel found were violated, and (3) correspondence sent by the Central Valley Water Board to the Office of Administrative Law regarding the preparation and adoption of the 1995 Tulare Lake Basin Plan. While Central Valley Water Board has complied with the Public Records Act in responding to these requests, such compliance is an issue separate from this proceeding.

The deadlines for submitting evidence for the July 14, 2011 hearing were specified in the hearing procedures document. The deadline for submitting the information described in paragraphs 1, 2 and 3 has passed now that the hearing is closed. As written in the public agenda distributed prior to the hearing on ACL Complaint No. R5-2011-0562, and as restated by the Hearing Panel Chair at the 14 July 2011 hearing, all evidence, testimony, and policy statements must have been made at the 14 July 2011 hearing. Since the hearing is now closed, the Central Valley Water Board will not be accepting additional evidence unless necessary. Further, Mr. Sweeney has not established that the documents are relevant to the particular findings proposed for the ACL Order or why he justifiably could not have produced the documents in advance of the July 14 hearing. It is not necessary for the Central Valley Water Board to review the type of evidence described in Objection 4 in order for it to reach a final decision on the order proposed by the hearing panel.

Paragraph 4 – Request to Submit Evidence Regarding Prosecution Team Testimony

The time and place to respond to testimony presented by the Prosecution Team at the July 14, 2011 Fresno Panel Hearing was at the hearing itself. That hearing is now closed. It is not necessary for the Central Valley Water Board to review the type of evidence described in Objection 4 in order for it to reach a final decision on the order proposed by the hearing panel.

Paragraph 5 – Request to Submit Evidence Regarding Compliance Rates for Order R5-2007-0035

As described more fully in his September 16, 2011 letter, Mr. Sweeney alleges that the Prosecution Team

submitted rebuttal evidence at the July 14, 2011 hearing and that submission was made beyond the June 27, 2011 deadline for rebuttal evidence set forth in the hearing notice. While Mr. Sweeney did not made a timely objection at the July 14, 2011 hearing, the Board Chair will allow Mr. Sweeney to submit the following evidence by September 30, 2011: evidence to rebut a statement made by Staff Counsel Okamoto that "with this assistance, approximately 94% of similarly situated dairies have complied with the 2009 Annual Report and approximately 97% have complied with the Waste Management Plan requirement." Mr. Sweeney may also submit evidence to rebut the slide entitled "Compliance by Dairy Size" and "May 2011 ACLs," which were used to illustrate the compliance rates by herd size for the 2008 and 2009 submissions. The scope of the materials submitted shall be limited to the above issues, and shall not include financial information specific to the Sweeney Dairy. Financial information, including but not limited to, financial statements, Profit or Loss Statements from Farming (Form 1040), Farm Income/Expense, Net Income, and Analysis of Funds Available for 2004-2008, should have been submitted at the hearing on ACL Complaint R5-2011-0562. That hearing has already closed.

The Central Valley Water Board will accept this evidence into the record if Mr. Sweeney submits it by September 30, 2011. Both parties will be given 5 minutes at the Board meeting to discuss the evidence.

Paragraph 6 – Request for Hearing Notice for October Regional Board Hearing

As the Advisory Team informed you on July 27, 2011, the Central Valley Water Board will be not be holding an additional hearing on ACL Complaint R5-2011-0562. That hearing was conducted by the Fresno Hearing Panel on July 14, 2011. At its October 2011 Board meeting, the Board will consider the hearing panel's proposed order regarding that ACL Complaint. The notice for this meeting, along with an agenda, will be provided at least 10 days prior to the board meeting. The meeting is tentatively scheduled for October 13, 2011.

Paragraph 7 – Request to Present Additional Evidence

As written in the public agenda distributed prior to the hearing on ACL Complaint No. R5-2011-0562, and as restated by the Hearing Panel Chair at the 14 July 2011 hearing, all evidence, testimony, and policy statements must have been made at the 14 July 2011 hearing. Since the hearing is now closed, the Central Valley Water Board will not be accepting additional evidence unless necessary. Other than the Order R5-2007-0035 compliance rate evidence described above, you will not be permitted to present additional evidence at the October Board meeting. If you are present at the Board meeting, the Central Valley Water Board members have discretion to ask you any questions that they may have.

Paragraph 8 – Modification of Order R5-2007-0035

When the Board considers the panel report at the upcoming October Board meeting, you express an intent to ask the Board to modify Order R5-2007-0035. That request would not be appropriate at that time. As written in the public agenda distributed prior to the hearing on ACL Complaint No. R5-2011-0562, and as restated by the Hearing Panel Chair at the 14 July 2011 hearing, all evidence, testimony, and policy statements must have been made at the 14 July 2011 hearing. As such, the Board Chair will not allow you to make this type of request during your October Board meeting item. Of course, members of the public are allowed to speak about matters not on the public agenda during the public forum portion of our Board meetings, or otherwise make written requests to staff. Should you make such a request, however, the request will not be a part of the administrative record for your October meeting item.

Paragraph 9 – Deficiency of Proposed ACL Order

As written in the public agenda distributed prior to the hearing on ACL Complaint No. R5-2011-0562, and as restated by the Hearing Panel Chair at the 14 July 2011 hearing, all evidence, testimony, and policy statements must have been made at the 14 July 2011 hearing. As such, the Board Chair will not allow you to make these types of statements at the October Board meeting.

Paragraph 10 – Premature Prosecution of ACL Order

For the same reasons stated in response to paragraphs 8 and 9, the Board Chair will not allow you to make these

types of statements at the October Board meeting.

Sincerely,

Alex Mayer
Staff Counsel, Central Valley Regional Water Quality Control Board

>>> Japlus3 <japlus3@aol.com> 9/6/2011 7:26 AM >>>

ATTACHMENT 23

To: **A. Meyer, counsel for Central Valley Regional Water Quality Control Board**

Cc: klandau@waterboards.ca.gov

MOkamoto@waterboards.ca.gov

dessary@waterboards.ca.gov

Date: **September 21, 2011**

Re: **Response to email of September 20, 2011 - Complaint R5-2011-0562 – Sweeney Dairy**

Dear Mr. Meyer:

This letter is to respond to your email of September 20, 2011. As you know, commencing in April, 2010 and many times thereafter, my wife and I requested a hearing before the regional board in order to seek relief from some of the waste discharge requirements set forth is Order R5-2007-0035. Since you have made it clear that such a "request would not be appropriate at that time," we then ask you to please schedule such a hearing at a future meeting of the regional board, and please promptly inform us of the date of such hearing. We do not believe it is within your authority or discretion to deny us that opportunity. We think the Water Code is clear that only the regional board has the non-delegable authority to modify or refuse to modify waste discharge requirements. How can the board make that decision if the staff intervenes to act as a barrier to the making of such a request? In his testimony before the Hearing Panel, your fellow employee, Mr. Clay Rodgers, freely boasted that your staff acts as the board's "gatekeeper."

While we are disappointed in most of the rulings made by the "Chair," we are not surprised. It was a predictable and unseemly continuation of your Agent's flagrant and transparently self-serving procedures and decisions aimed at thwarting a fair hearing.

The record will show that we have made numerous requests for more time and for continuances, the most critical of which you denied. In light of all circumstances – representing ourselves, needing time to study to lay of the land, the law, determining what documents to request, reviewing over 34,000 pages of documents – we think a judge will view your denials of our requests for more time was an abuse of discretion, and a deprivation of due process and a fair hearing. As you well know, judges often deal with continuance requests and are very sensitive to making sure all parties have been given ample time.

You try to make it sound as if we have not shown the relevance of the administrative record to Order R5-2007-0035, or to your Complaint against us. We are still going through the 34,000 pages of administrative record. At this juncture, we have found no evidence that was introduced that the reporting requirements that existed before the adoption of the 2007 Order were

insufficient, inadequate, unreliable or otherwise unsatisfactory. Moreover, there has been no showing of the need of the new reporting requirements adopted in the 2007 Order. We believe that the law is well settled that administrative rules and regulations are invalid and unenforceable unless supported by substantial evidence. If, upon completion of our review of the administrative record, we have found no substantial evidence, we intend to raise that as an additional defense to your Complaint against us. Your denial of additional time to complete our review of such a vast amount of documents and your unwillingness to let us introduce the results of our findings is an egregious abuse of discretion and an unfair deprivation of our ability to have a fair hearing.

We intend to be present at the hearing on your proposed order relative to the Complaint against us. We intend to enter all relevant evidence into the record at that hearing. We do not think your being bull-headed about this will gain you anything except establishing that your agency is an out-of-control tyrant.

Sincerely,

Jim Sweeney

ATTACHMENT 24

From: Japlus3 <japlus3@aol.com>
To: AMayer <AMayer@waterboards.ca.gov>
Subject: Re: Sweeney
Date: Thu, Sep 29, 2011 5:52 pm

Will the five minutes be all at one time or will there be closing statements?

-----Original Message-----
From: Alex Mayer <AMayer@waterboards.ca.gov>
To: Japlus3 <japlus3@aol.com>
Cc: Dale Essary <dessary@waterboards.ca.gov>; Ken Landau <klandau@waterboards.ca.gov>; Mayumi Okamoto <MOkamoto@waterboards.ca.gov>
Sent: Thu, Sep 29, 2011 4:20 pm
Subject: Re: Sweeney

Mr. Sweeney,

In your email to me dated September 26, 2011, you asked to be advised regarding the procedural rules for your upcoming agenda item scheduled for the October 2011 Central Valley Water Board meeting. Below, I summarize the rules, which have been provided to you previously as part of the Hearing Panel proceedings for your July 14, 2011 hearing and in prior procedural rulings submitted to you from the Advisory Team. These rules will be announced by the Board Chair at the October Board meeting as your agenda item is introduced.

Your agenda item will proceed in accordance with Water Code section 13228.14. The Advisory Team will provide the Hearing Panel's report of findings of fact and conclusions of law to the Regional Board during a public meeting to be held at the Central Valley Water Board's Rancho Cordova office, located at 11020 Sun Center Drive #200. The agenda for the meeting, which is tentatively scheduled for October 13, 2011, will be provided at least 10 days prior to the actual meeting. You will then be given a combined five minutes to present any additional evidence you submitted by September 30, 2011 pursuant to the Chair's ruling dated September 20, 2011, which means you may discuss rebuttal evidence regarding "new" dairy compliance rate evidence which you believe was introduced by the Prosecution Team at the July 14 Panel Hearing. You may use part of the combined five minutes to provide a closing statement on the evidence. The Prosecution Team will be given a combined 5 minutes to discuss your submitted evidence, and possibly cross examine you regarding your rebuttal evidence. The Prosecution Team will be instructed not to submit new or rebuttal evidence during their presentation. Prior to taking a vote on the matter, the Board members may, in their discretion, deliberate with each other and may pose questions to the Advisory Team or anyone present at the Board meeting. The Board will then, having considered the entire administrative record in this matter, reach a decision on the proposed assessment of administrative civil liability. The Board may adopt, modify, or reject the recommendation of the Hearing Panel.

As written in the public agenda distributed prior to the panel hearing on ACL Complaint No. R5-2011-0562, and as restated by the Hearing Panel Chair at the 14 July 2011 hearing, and in the Board Chair's September 20, 2011 ruling, all evidence, testimony, and policy statements must have been made at the 14 July 2011 hearing. Since the hearing is now closed, the Central Valley Water Board will not accept additional evidence unless necessary. Other than evidence described above, you will not be permitted to present additional evidence, testimony, or policy statements at the October Board meeting.

In regards to your request for a continuance based on the need to review the administrative record supporting the adoption of Order R5-2007-0035, the Advisory Team informed the parties on September 20, 2011 that the Board Chair made a ruling denying this request.

Sincerely,
Alex Mayer
Staff Counsel, Central Valley Regional Water Quality Control Board

>>> Japlus3 <japlus3@aol.com> 9/26/2011 8:55 PM >>>
Mr. Mayer,
I would like to be advised regarding the procedural rules for our upcoming hearing with the regional board.
I also read an interesting article where the High Speed Rail Authority has submitted its draft environmental impact report for public review, and is giving the public only thirty days in which to submit comments. However, J. G.

Boswell farming company has noted that the document , including appendices, consists of 30,000 pages and asked that the public be given six months to review such a voluminous amount of material. I also read where the Kings County Board of Supervisors is going to consider also asking for an extension of the comment period to six months. In light of the administrative record consisting of 34,000 pages I again request that we be granted a continuance for at least four months on grounds that I need this amount of time to review and to develop any legal arguments which may arise from my review. Thank you for your consideration.
Jim Sweeney

ATTACHMENT 25

From: Alex Mayer <AMayer@waterboards.ca.gov>
To: Japlus3 <japlus3@aol.com>
Cc: Dale Essary <dessary@waterboards.ca.gov>; Ken Landau <klandau@waterboards.ca.gov>; Mayumi Okamoto <MOkamoto@waterboards.ca.gov>
Subject: Re: Sweeney
Date: Thu, Sep 29, 2011 4:36 pm

Mr. Sweeney,

In your letter to me dated September 21, 2011, you asked to me to schedule a hearing of the Central Valley Water Board to modify Order R5-2007-0035 (Dairy General Order). As staff counsel to the Advisory Team on Administrative Civil Liabilty Complaint R5-2011-0562, I do not have the authority to schedule such a hearing. You made a similar request in a letter dated September 5, 2011. In response to your September 5, 2011 letter, the Advisory Team consulted with the Chair of the Central Valley Water Board. On September 20, 2011, the Advisory Team reported the Chair's ruling to you and the Prosecution Team. That ruling explained that a request to modify the Dairy General Order would not be appropriate during the Board's upcoming agenda item to consider a proposed Administrative Civil Liability Order against your dairy for violation of the Dairy General Order. It also explained that you, as a member of the public, would be allowed to speak about that topic during the public forum portion of the Board meeting, or otherwise direct your request to the Board's staff, which includes its Executive Officer.

Sincerely,

Alex Mayer
Staff Counsel, Central Valley Regional Water Quality Control Board

>>> Japlus3 <japlus3@aol.com> 9/22/2011 1:05 PM >>>

ATTACHMENT 26

Date: **September 30, 2011**

To: **A. Meyer, counsel for Central Valley Regional Water Quality Control Board**

Cc: klandau@waterboards.ca.gov

MOkamoto@waterboards.ca.gov

dessary@waterboards.ca.gov

Re: **Response to Mayer letter of September 20, 2011**

Complaint R5-2011-0562 – Sweeney Dairy

Dear Mr. Meyer:

This is in response to your letter of September 20 regarding "Paragraph 5" of our September 16 letter to you.

Dale Essary, Mayumi Okamoto and Clay Rodgers used charts in their presentations. The charts were clearly intended as evidence to persuade the Hearing Panel that compliance with the 2007 Order's reporting requirements was "doable" by all dairies. The charts seemed to serve that purpose because Chairman Longley declared at the closing of our hearing (page 52, line 18 of hearing transcript) that "And the issue before us, though, is one of – that as we see it, at the graphics that are still up, Item Number 6 on the screen that a large majority of the dairies were able to comply with. And that is compelling to me that, in fact, it is doable."

The above "surprise" evidence caught us unprepared to rebut. Since then, we have requested data from RWQCB that would reveal the compliance rate of dairies, broken down by herd size. In response to our request, Jorge Baca from your agency provided us with data concerning the dairies dealt with by the Fresno office. As we understand this data, it shows the following number of dairies provided reports to the Fresno office:

Herd Size	2007	2010	Attrition
Less than 400 cows	56	30	-26 = 46% attrition
400 to 700 cows	92	62	-30 = 32% attrition
Over 700 cows	485	455	-30 = .6% attrition
Total	633	547	-86 = 13% overall attrition

The California Department of Food and Agriculture publishes "Dairy Statistics" for California dairies and posts this data on its website (http://www.cdfa.ca.gov/dairy/dairystats_annual.html).

It shows that there were 1950 dairies in California in 2007 and 1715 in 2010. This represents a loss of 235 dairies during that three year period, or a loss of 12%. The Central Region also posted a loss of 12% (1543 in 2007 vs. 1365 in 2010). This loss figure corresponds quite closely to the 13% decline that appeared in Jorge Baca's numbers for dairies in the Fresno district during that same period.

We are satisfied that the data we have since collected supports the claim we have made from the beginning: That small dairies are under much greater economic stress than larger, more efficient dairies and, therefore, are less able to handle the high costs of complying with the 2007 Order's reporting requirements. This also rebuts the very misleading "surprise" data that the Prosecution Team presented at the July 14 hearing.

Sincerely,

Jim Sweeney

ATTACHMENT 27

Date: **September 30, 2011**

To: **A. Meyer, counsel for Central Valley Regional Water Quality Control Board**

Cc: klandau@waterboards.ca.gov

MOkamoto@waterboards.ca.gov

dessary@waterboards.ca.gov

Re: **Response to Mayer email of September 29, 2011**

Complaint R5-2011-0562 – Sweeney Dairy

Dear Mr. Meyer:

We have looked at Water Code section 13228.14, which states, in part, "The regional board, after making an independent review of the record, and taking additional evidence as may be necessary, may adopt, with or without revision, or reject, the proposed decision and order of the panel."

We have made a number of reasonable and compelling arguments as to why (1) the hearing before the Hearing Panel and (2) the final hearing before the regional board should be continued. Basically it was because the deadlines set forth in your original Hearing Procedures were unconscionably short and did not allow us sufficient time to complete our discovery and properly prepare for the hearing.

On June 1, we made our timely request for a continuance of the July 14 hearing, and on June 13, you advised us that our request was denied. Hence, the presentation we were forced to submit for the July 14 hearing before the Hearing Panel was not all that we had hoped for.

We went on to ask that the October hearing before the regional board be continued and rescheduled at their next meeting. We needed to complete our review of the 34,000 page administrative record of the 2007 Order, which your agency did not provide us until after the July 14 hearing. We also needed time to develop and present whatever additional evidence and arguments we felt was fit and proper based on an adequate review of all documents.

Unfortunately, your email of September 29 advises us that the Chair of the regional board has decided (1) to not continue the hearing, and (2) and to not allow us to introduce anything new beyond that which we introduced at the July 14 hearing (except as to herd size data).

From our reading of the above section 13228.14, we do not see where it grants the Chair the sole authority to make these decisions. Rather, it would seem that these are decisions that a duly qualified and informed board must make after hearing arguments by both parties.

This brings us to our next point. Water Code section 13201 (b) provides that "All persons appointed to a regional board shall be subject to Senate confirmation, ..."

On June 26, 2011, we asked Mayumi Okamoto, counsel for the Prosecution Team, whether each of the current CVRWQCB members have had their appointment to the board confirmed by the State Senate, and asked for copies of documents reflecting such confirmation.

On June 30, Ms. Okamoto responded by saying that "Please find attached the documents reflecting the confirmation of Chair Hart. We are still in the process of searching for the other documents responsive to this request for the remaining four members."

We have never received any documents indicating that these other four members were confirmed by the State Senate. In the absence of such proof, we contend that the regional board does not possess a quorum of members qualified to make any decisions. And, it seems, your position to not admit any new evidence will similarly bar your agency from now introducing evidence into the record that the other members have been confirmed by the Senate.

Your email of September 29 also informed us that you do not have the authority to schedule a hearing before the regional board in connection with the request for relief that we have been making ever since April, 2010. Despite our repeated requests, such a hearing has never been scheduled, and no one has informed us that there is a particular person to whom we must direct this request. So we ask you: to whom should we direct our request, keeping in mind that it can be scheduled for some time after the regional board's October meeting? We look forward to your answer.

Sincerely,

Jim Sweeney

ATTACHMENT 28

To: **Central Valley Regional Water Quality Control Board**

Cc: AMaye@waterboards.ca.gov

klancia@waterboards.ca.gov

MOkamoto@waterboards.ca.gov

dessar@waterboards.ca.gov

Date: **October 2, 2011** 10-3

Re: **Complaint R5-2011-0562 – Sweeney Dairy**

Written Testimony for hearing before Regional Board – October 13, 2011

My name is James Sweeney, and my wife and I are the named Dischargers under the Central Valley Regional Water Quality Control Board's Administrative Civil Liability Complaint R5-2011-00562.

Most of what follows is testimony we have already submitted to the Hearing Panel at its July 14 hearing. However, on June 20, 2011, we asked the CVRWQCB for copies of the proceedings held in connection with the adoption of Order R5-2007-0035 (administrative record). As of the July 14 hearing, your agency had only provided us with about1100 pages of the record, and had failed to deliver to us the rest - an additional 33,000 pages. We finally received the remaining pages on July 30 - after the hearing - and found that it contained a great deal that was important to our defense. Hence, the following contains some of the additional evidence that we encountered during our review of the administrative record, as well as the new legal arguments that have arisen from this evidence. Nevertheless, we still do not feel we have had adequate time to review and analyze the administrative record to our satisfaction, and we ask that this hearing be continued to a later meeting of the regional board.

We were advised on September 29, 2011 that the Chair of the regional board denied our request for a continuance and denied our request to allow this additional evidence, testimony and argument. Because we believe that such decisions deprive us of a fair hearing, and because we think that these are decisions that the full board should make, rather than just the Chair, we now ask the board to allow us to present this additional evidence and testimony and to continue this hearing to a later meeting.

Facts.

We operate a small dairy at 30712 Road 170, Visalia, CA. We milk less than 300 cows on a site where a dairy has continuously been conducted for over eighty years. We are a small business in that our gross receipts from our agricultural operation were under $1,000,000.00 in 2009.

Your agency's Order No. R5-2007-0035, as amended by Order No. R5-2009-0029 (2007 Order), compelled us, along with all other dairymen, to prepare and file the following with your agency by July 1, 2010:

The 2009 Annual Report, which includes an Annual Dairy Facility Assessment for 2009, and a Waste Management Plan (WMP). The WMP consists of the following reports:

(1) Retrofitting Plan for needed improvement to storage capacity, flood protection or design of the production area.

(2) Dairy site and Cropland maps.

(3) Wastewater lagoon capacity evaluation.

(4) Flood protection evaluation.

(5) Dairy and cropland design and construction evaluation.

(6) Cross-connection assessment report.

The 2007 Order required most of these reports, technical and otherwise, to be prepared by appropriately licensed professionals/engineers and consultants, who are very expensive. And these burdens do not include the costs of the expensive reports that we are required to submit to the San Joaquin Valley Air Pollution Control District. In total, we were facing regulatory costs of approximately $20,000.00.

The dairy industry suffered through a dreadful period in 2009 due to a combination of low milk prices and high feed costs that were unprecedented in recent memory. It was a period from which many of us dairymen have not yet recovered. Indeed, your agency's 2009 Order acknowledged the seriousness of the dairy industry's economic situation by postponing for a year the filing date for most of the above reports.

Our dairy was losing money in 2009 and in 2010. By the fall of 2009, our lender had categorized our loan as "distressed," and it advanced us a limited amount of funds that was barely enough to purchase feed and to pay such essentials as labor and utility bills. Had we used these funds to hire the engineers and consultants needed to prepare these reports, then we would have been put in a position where we would have been guilty of fraud - buying feed from farmers while knowing that we would have not have the funds to pay for it. On a per cow basis, the regulatory costs imposed by the Order's requirements are disproportionately higher for small dairies as compared to large operations, and put small dairies at a competitive disadvantage and threaten their very survival.

Environmental groups and your agency have both at times been critical of large dairies, calling them "mega dairies" and "factory farms." It is true that larger dairies discharge larger volumes of waste and generally pose a greater potential threat to our groundwater. Yet, ironically, your agency has adopted burdensome monitoring and reporting requirements that put extra pressure on smaller dairies to the extent of driving some of them out of business. I know of a number of small dairies who told me they sold out because they knew they could not afford the costs of complying with your agency's reporting requirements. As a result, perhaps unwittingly, your

agency's requirements are causing large dairies to grow even larger as they fill the production lost by the small dairies going out of business.

On March 28, 2010, more than three months before the July 1, 2010 filing deadline, we wrote a letter to your agency asking for an extension of the deadline for submission of these reports. Anticipating that the staff would refuse to grant said relief, we asked the staff in our letter of April 7, 2010 to schedule the matter for a face-to-face hearing before the regional board so that we could present our request for some form of relief from the 2007 Order's reporting requirements.

In their letter of June 15, 2010, the Central Valley staff stated that they had no authority to modify the reporting requirements, and they refused to schedule a formal, agenda-item hearing before the regional board. Instead, they advised us that we were free to address the Board during the Public Forum section of their Agenda, even though such presentations are limited to three (3) minutes.

In a letter dated July 27, 2010, we again pressed the staff to schedule a hearing before the regional board, and it was ignored. We received a Notice of Violation from the agency for failing to file the July 1 reports, and on August 22, 2010 we sent another letter requesting a hearing before the regional board. Yet, your agency continued to ignore our request.

Nothing occurred for nine months, until May 10, 2011, when we were served with the Administrative Complaint for Civil Liability. The Complaint sought civil penalties from us for failing to file the July1, 2010 reports. Attached to the Complaint was a set of "Hearing Procedures" informing us, among other things, that a hearing on the Complaint would be held before a Hearing Panel on July 14, 2011.

Arguments.

The Hearing Panel's proposed order against us is invalid on the following grounds:

1. **Your agency has denied us due process and a fair hearing.**

   (a) We beg your indulgence for repeating some of the above facts, but the following facts are an integral part of this argument. Beginning in April, 2010, before the July 1, 2010 report filing deadline, we asked your agency to schedule a hearing with the regional board so we could seek relief from the costly reporting requirements that are part of the "waste discharge requirements contained in Order R5-2007-0035. We intended to seek a postponement of the deadline or seek a waiver from them. While the regional board may delegate some of its powers and duties, some are not delegable. The modification of any waste discharge requirement is one of those powers and duties that are not delegable. (Water Code Section 13223) It was the regional board's nondelegable duty and responsibility to hear and decide our request for relief.

   Your agency staff refused to schedule such hearing. We later found out why. At the July 14, 2011 hearing before the Hearing Panel, Clay Rodgers testified that "Mr.

Sweeney did approach us to ask for an extension. We decided ... as the gatekeepers to the Board, that the extension of the Waste Management Plan had already been granted. ... And we did not feel that the extension of the annual report would be appropriate." (page 50 of transcript) Mr. Rodger has apparently forgotten that section 13223 grants only the regional board the authority to make such determinations. His terrible admission shows that your staff acts beyond their statutory authority and act as an unlawful barrier to someone trying to exercise their right to appear before the board to request a change to, or relief from, some of these waste discharge requirements (in a more detailed and meaningful way than being allowed three minutes of "public comment").

(b) The Administrative Civil Liability Complaint was served on us on May 10, 2011. Attached to the Complaint was a description of the "Hearing Procedures," which included various deadlines. It informed us that a hearing on the Complaint would be held before a Hearing Panel on July 14, 2011. We were informed that we had to submit to the agency no later than June 13, 2011, 33 days after receiving the Complaint, all documents, evidence, witnesses and legal arguments we intended to present at the hearing before the Hearing Panel. According to your agency's self-serving rules, we could not use anything we did not submit by that date. In effect, after we were served with the Complaint, we were only given thirty-three days to acquaint ourselves with the situation and protocols, to engage in and complete discovery, to research the law, to marshal our evidence and to formulate our testimony and legal arguments. We are full time dairymen. Because we are small I do some of the milking and most of the feeding and cow care, and we had very little time to work on this matter.

The "Hearing Procedure" attached to the Complaint went on to state that "Participants who would like additional time must submit their request to the Advisory Team so that it is received by 5:00 pm on 20 June, 2011." On June 1, 2011, we asked your agency in writing for more time and for an extension of the hearing date; we waived the 90-day requirement. By email dated June 7, 2011 the Prosecution Team forwarded our request for more time to the Advisory Team and we were advised by email on June 13 that our request for a continuance of the hearing was denied by the Chair of the Hearing Panel.

(c) On June 20, 2011 we made a Public Records Act request, asking for copies of all documents in your agency's file concerning information on our dairy, and we asked that they be provided by June 30, 2011 so that we would have time to review and evaluate them before the hearing. We were advised by agency counsel that because the documents were "voluminous" this request was "not practicable." We were told that we would have to make arrangements to go to your agency's Fresno office to personally go through the files. If the task was "impracticable" for your agency, it was certainly "impracticable" for us, as we have very few available hours beyond our full time duties at the dairy. Finally, the copies we requested were made available to us on June 30, 2011. They consisted of 250 pages of documents, and while we tried to

completely review and evaluate them all, we were not able to adequately do so before the hearing.

(d) Also on June 20, 2011, we requested from your agency copies of "all studies, evidence and testimony that CVRWQCB received, considered and utilized in connection with its development and/or adoption of Order R5-2007-0035. [the administrative record]" Your agency sent us a CD on or about July 1, 2011, which contained what it referred to a "Vol. 2 and Vol. 6" of the administrative record relating to the 2007 Order, and contained 851 pages of testimony and documents.

Because we received these 1104 pages documents only thirteen days before the July 14 hearing, we had insufficient time to adequately review and digest them all. On July 1, 2011 we again asked for a continuance of the hearing before the Hearing Panel. On July 12, only two days before the hearing, your agency advised us of its denial of our request.

We were suspicious that the one CD, containing only "Vol. 2 and Vol. 6," might not be all of the administrative record for the 2007 Order. We wrote Dale Essary on August 21, 2011, and inquired whether there was more than what we had received on July 1. We were informed that there were indeed three more CDs, which we picked up on August 31. Our suspicions were correct; your agency had earlier failed to provide us with volumes 1, 3, 4, 5, and 7 through 69, inclusive. Altogether, we discovered that the administrative record that we requested on June 20, 2011, consisted of a total of 34,028 pages, of which 33,177 were not given to us until forty-five days **after** the Hearing Panel's July 14 hearing.

Beginning on September 1, 2011, we began the prodigious task of reading through these materials to determine whether substantial evidence had been introduced during the hearings on the proposed 2007 Order to support a need for adopting reporting requirements that were new or different from those that existed prior to the 2007 Order.

(e) We advised your agency's legal counsel on July 27, 2011 that we intended to present all evidence and legal arguments to the regional board at its October hearing on our matter, including all evidence we were provided by your agency after the July 14 hearing. On July 27, 2011, your legal counsel informed us that "the hearing is now closed" and that the regional board would not be accepting additional evidence, testimony or argument other than what we presented before the Hearing Panel on July 14. On September 5, 2011, we objected to that position and informed legal counsel of our intention to introduce this additional evidence and testimony at the October hearing. On September 20, 2011, your agency's legal counsel informed us that the Chair of the regional board had denied our request. We believe such a decision deprives us of due process and a fair hearing, and we do not think this is a decision that should be made by the Chair alone; it a decision that the full board should make, after hearing argument from both sides.

(f) Water Code Section 13292 states that it is the state water board's responsibility to ensure that the regional boards provide "fair" access to participants in its proceedings and to improve its "adjudication procedures." Your agency's self-written Hearing Procedures is a quagmire of detailed protocols and short-fused deadlines. We have little doubt that it is all of intentional design to overwhelm, intimidate, discourage and set traps against anyone who would otherwise want to challenge the agency or any of its rules and regulations. That and your refusals to grant our requests for a continuance and to not accept additional evidence have effectively deprived us of an opportunity to satisfactorily prepare our evidence, adequately make our case, and defend ourselves against the Complaint. In short, it deprives us of a fair hearing. For these reasons, the proposed order that the Hearing Panel is recommending against us should be disregarded by the regional board, and this hearing before the regional board should be continued to a later board meeting - a hearing where we can present all relevant evidence, testimony, and argument.

(g) After the July 14 hearing before the Hearing Panel, we learned that Sandra Meraz, one of your board members and a member of the Hearing Panel, joined the Delano Advisory Board for The Center on Race, Poverty and the Environment (CRPE) in 1999 and remained in that capacity at the time of the public hearings on the proposed 2007 order. She is presently President of CRPE's Delano Advisory Board. CRPE was an earnest participant at the 2007 hearings and was, and probably still is, a strong advocate of the reporting requirements adopted in the Order. This fact should have been revealed to us prior to the July 14 hearing so that we could have asked her to recuse herself from serving on the Hearing Panel. Her presence on the Panel creates the appearance that we may not have received a fair and impartial hearing.

2. The Administrative Civil Liability Complaint filed against us is invalid because it is premature.

(a) Section 13269 of the Water Code recites that a regional board may waive monitoring requirements if it determines that a discharge does "not pose a significant threat to water quality." The 2007 Order declares that it "serves as general waste discharge requirements of waste from existing milk cow dairies ... of all sizes." (2007 Order, p.1) Under the Order's terms, a Discharger has the right to seek a modification of any of those general waste discharge requirements. (2007 Order, SPRR-2) The reporting requirements, including the filing deadlines for annual and technical reports, are part of the Order's general waste discharge requirements for which a dairyman may seek modification, exemption or other similar relief.

(b) As stated earlier, the regional board may not delegate modification of waste discharge requirements (Water Code Section 13223). It is the regional board's nondelegable duty and responsibility to hear and decide our request for relief from these waste discharge requirements. The staff cannot appoint itself as the "gatekeepers" in these matters, and the board is prohibited under section 13223 to appoint the staff as

"gatekeepers." We have a right to appear before the regional board to seek a [illegible] requirements. Even a decision to not hear our request for relief would have to be made by the regional board - not by the staff.

Had your agency's staff sch[illegible] that the regional board would have granted us relief from these deadlines or some of these reports, in which case, we would not be in violation of the filing requirements. The filing and serving of your Complaint for Administrative Civil Liability is premature. Your agency cannot contend that we have violated the filing requirements until such time as the regional board has heard and denied our request and after we have exhausted our appeal and all other legal remedies afforded us under the Water Code. (Water Code Sections 13320, 13325, and 13330)

3. **Order R5-2007-0035 is unlawful and unenforceable against us because it fails to comply with applicable provisions of the Water Code and Government Code.**

(a) No rule or regulation of a state agency is valid and enforceable unless the administrative record shows that it is supported by substantial evidence. In our review of the administrative record of the hearings held in connection with the adoption of Order R5-2007-0035, we have encountered no substantial evidence – in fact, no evidence whatsoever – that supports the need to replace the former reporting requirements with the new reporting requirements adopted in the 2007 Order. We have encountered no evidence in the record that the pre-Order data, reports and information that the RWQCB staff obtained from or about dairies was inadequate, insufficient, unreliable or otherwise flawed. And we have encountered no evidence whatsoever in the record that claimed or demonstrated that the new reporting requirements were needed to replace the former.

(b) The "Monitoring and Reporting Program" of the 2007 Order recites that it is issued pursuant to Water Code Section 13267. (2007 Order, p. MRP-1) Section 13267 (b) (1) states that "the regional board may require that any person who … discharges … waste within its region … shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

But Section 13267 (b) (1) goes on to say that "The burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In requiring these reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

Your agency has failed to comply with Section 13267 in that it never provided us "with a written explanation with regard for the need for the reports," and it has failed to "identify the evidence that supports requiring [us] to provide the reports."

Had we been allowed to appear before the regional board, we were prepared to show that a dairy has been continuously operating on our dairy site for over eighty years. We were prepared to show that we have submitted to your agency water sample test results from each of our wells in 2003, 2007 and 2009. All well results were and are substantially below the state's maximum contaminant levels (MCL) Not only that, our most recent water samples from our wells tested .2, 1.1 and 1.4 mg/L for nitrate nitrogen levels –unheard of low levels. Such results indicate that our operation is not and has not been a threat to the ground water underlying our dairy site.

In showing the regional board the foregoing well-water test results, we intended to argue that they were compelling evidence that our operation was not adversely impacting ground water, and therefore the cost of these reports did not, in the words of Section 13267, "bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports."

Over the years, your agency's staff has visited our dairy site to inspect and obtain information about it. For example, your Ken Jones visited our dairy in 2003 and spent the day gathering information. He measured and calculated the storage capacity of our three waste water lagoons and concluded that our storage capacity exceeded what your agency required. In fact, it was 128% of what was required. He also concluded that we had excess cropland for application of waste water. We have his letter confirming that our dairy was in full compliance with all RWQCB requirements. Yet, your agency is now requiring me to hire licensed engineers to re-calculate the storage capacity of our lagoons at a cost of $7500.00, as well as other new reports that must be prepared by engineers and other licensed professionals that we believe are, for the most part, duplicative, and add nothing useful or valuable, besides being terribly costly. In this regard, your agency's refusal to accept already available information in its files ignores Section 13267's requirement that your agency's reports should "bear a reasonable relationship to the need for the reports." For the most part, your new Waste Management Reports are redundant, unneeded and unjustified. We communicated these allegations to the Prosecution Team on June 13, 2011, and they failed to dispute them during the July 14 hearing.

(c) Water Code Section 13263 (e) provides that "any affected person may apply to the regional board to review and revise its waste discharge requirements. All requirements shall be reviewed periodically." If new and more cost effective ways can accomplish the same purpose, we contend that the regional board is under a legal duty to review such issues and revise its requirements accordingly. New and old research and advanced technologies exist which may provide less expensive means for evaluating groundwater contamination risk, of determining non-contamination of groundwater, and of using less expensive practices that can still prevent such contamination.

For example, Lawrence Livermore National Laboratory published two papers in 2007 in *Environmental Science Technology*, in which they stated that they discovered that soil bacteria break down and eliminate nitrates in dairy waste water in a substantial if

not complete degree. They have also ascertained that there are certain compounds and gasses in manure water that can be used to determine whether water from dairy lagoons or from waste applied in irrigation water has infiltrated into first encountered groundwater. There are also simple and inexpensive ways to show the amount of highly compacted clay layers sitting beneath a dairy site and whether they constitute an impervious barrier between the dairy and the groundwater. Yet, your Order contains a "one-size-fits-all" approach, and requires reports that in some cases may not be needed. Some of these reports are ludicrous and unnecessary. One laughable example is that we are required to provide monthly photos of our lagoons to show that the water level was not too high. This is as absurd as requiring us to photograph our speedometer each month to prove we didn't drive over the speed limit.

In short, most of the Order's reporting requirements are primitive, antiquated, obsolete, and provide nothing of real value, except for lining the pockets of engineers, consultants and laboratories. Your agency has not continued to sufficiently examine and consider such research results and advanced technologies, or that it has modified its Order accordingly. We communicated these allegations to the Prosecution Team on June 13, 2011, and they failed to dispute it during the July 14 hearing.

The foregoing represents additional reasons why the Complaint against us is premature. Had our request been scheduled for a hearing before the regional board and had we been allowed the opportunity to present in detail all of the matters and issues described above, we believe that there were abundant grounds under which the regional board could have granted us considerable relief from many of its reporting requirements. In such event, there would not have been a basis for filing the Complaint against us.

(d) The Order's waste discharge requirements as they relate to water quality objectives must take into account economic considerations. (Water Code Sections 13241 and 13263 (a)) The Order does not do so, particularly failing to set or implement water quality objectives that are within the economic means of smaller dairies that have to deal with disproportionately higher per cow reporting costs. Indeed, the Order fails to address the special economic circumstances of smaller dairies in any way whatsoever. In contrast, the SJ Valley Air Pollution Control District exempts smaller dairies from many of its requirements.

The administrative record (AR) of the 2007 Order reveals that a great deal of testimony was presented concerning how expensive the new reporting requirements would be, and how unbearable it would be for smaller dairies.

There was testimony that the cost would be "as high as $89,000.00 initially and $58,000.00 annually per dairy." (AR 002089) Mr. Souza testified that "some dairies will be out of business as a result of this waste discharge requirement ... (AR 000384)."

Ms Asgill, an agricultural economist, testified that because of these regulations, "we are probably looking at the smaller dairies going under. Probably those dairies that we [are] usually fond of protecting – dairies under 500 milking cows - will be going out." (AR 000444)

A letter from the State Department of Food and Agriculture Board mentioned that Governor Schwarzenegger "made a commitment to reject new regulations that unfairly impact small business. ... It is expected that new and existing regulations will be reviewed for economic impact to small business. ... we encourage the RWQCB to review your proposal ... propose alternatives that are less burdensome." (AR 007297)

Even Board member Dr. Longley expressed concerns: "Whereas larger dairies, a 10,000 cow dairy, would be able to absorb the costs, a 100 cow dairy is going to be faced with possible disaster." (AR 002163)

In response to a written question submitted by Baywatch, Sierra Club, California Sportfishing Protection Alliance and Waterkeeper Alliance, your agency responded by saying that "the Board has the option of limiting the application of this order based on the size of herd," and that "waste discharge requirements or a waiver of waste discharge requirements would be adopted for facilities that are not covered by the order." (AR 000583)

Recently, we requested data from RWQCB that would reveal the compliance rate of dairies, broken down by herd size. In response to our request, Jorge Baca, from RWQCB, provided us with data concerning the dairies dealt with by its Fresno office. As we understand this data, it shows the following number of dairies provided reports to the Fresno office:

Herd Size	**2007**	**2010**	**Attrition**
Less than 400 cows	56	30	-26 = 46% attrition
400 to 700 cows	92	62	-30 = 32% attrition
Over 700 cows	485	455	-30 = .6% attrition
Total	633	547	-86 = 13% overall attrition

The California Department of Food and Agriculture publishes "Dairy Statistics" for California dairies and posts this data on its website: (http://www.cdfa.ca.gov/dairy/dairystats_annual.html).

It shows that there were 1950 diaries in California in 2007 and 1715 in 2010. This represents a loss of 235 dairies during that three year period, or a loss of 12%. The Central Region also posted a loss of 12% (1543 in 2007 vs. 1365 in 2010). These loss figures correspond quite closely to the 13% decline that appeared in Jorge Baca's numbers for dairies in the Fresno district during that same period.

We are satisfied that the data we have since collected supports the claim we have made from the beginning: That small dairies are under much greater economic stress than larger, more efficient dairies and, therefore, are less able to handle the high costs of complying with the 2007 Order's reporting requirements. Yet, no exceptions or waivers for smaller dairies ended up in the 2007 Order. Despite his apparent concern, Dr. Longley went ahead and voted to adopt the order without it containing any provision whatsoever to help the smaller dairies.

(e) The California Administrative Procedure Act ("CAPA"- Chapter 3.5 of the California Government Code, Section 11340 et seq), is intended to keep the regulations of state agencies from becoming unreasonably costly and otherwise burdensome. Indeed, Section 11340 of CAPA recites that the legislature found that "the complexity and lack of clarity in many regulations put small businesses, which do not have the resources to hire experts to assist them, at a distinct disadvantage." CAPA created the Office of Administrative Law to administer the Act. Section 11340.1 goes on to declare that it is the legislature's intent under CAPA for state agencies to "actively seek to reduce the unnecessary regulatory burden on private individuals." It is undisputed that the regional water boards are state agencies.

While it is true that Section 11340.9 (i) of CAPA states that this chapter does not apply to a number of matters, including a regulation that "does not apply generally throughout the state," it does apply however, under Section 11353, to "any policy, plan or guideline" that (1) the State Water Resources Control Board has adopted after June 1, 1992, or (2) that a court determines is subject to this part. In other words, Section 11353 is a specific exception to the more general exception under 11340.9 (i). Section 11353 goes on to say that the policies, plans and guidelines adopted by the SWRCB are not effective until their regulatory provisions are approved by the Office of Administrative Law. Indeed, your agency admitted in its Forward to the Tulare Lake Basin Water Quality Plan (2nd ed., 1995) that the Tulare Lake Basin Plan needed to be adopted by the SWRCB in order to be effective, and that it had to be approved by the Office of Administrative Law (under CAPA).

On June 20, 2011 we requested from your agency copies of "all submissions and correspondence that the CVRWQCB sent to the Office of Administrative Law regarding the preparation and adoption of ... the 1995 Tulare Lake Basin Plan." Having received no response, we followed up on June 26 with another request for a copy of the OAL's approval of the 1995 Tulare Lake Basin Plan. Your agency has never provided us with the foregoing. As a result, the record in this matter does not contain evidence that the Tulare Lake Plan was ever approved by the OAL, and therefore there is no evidence in the record that the Tulare Lake Basin Plan is effective or enforceable.

Paragraph 14, page 3, of the 2007 Order recites that it is implementing the Tulare Lake Basin Water Quality Control Plan, and SWRCB Resolution 68-16, among other things. If there is no evidence that the Tulare Lake Plan is effective, how can the 2007

Order be effective if it is an implementation of an ineffective plan? Thus, it is our contention that the Order is unenforceable by virtue of noncompliance with CAPA.

It is also our contention that we can file an action for declaratory relief with the superior court, under Government Code sections 11350 and 11353, under which we ask the court whether this Order is a "regulation" that should be subject to the requirements of CAPA. Given the significant adverse impact that the Order has on small dairies, we believe a court will be inclined to find a way to declare that the Order is subject to CAPA requirements.

(f) Water Code section 13201 (b) provides that "All persons appointed to a regional board shall be subject to Senate confirmation, ..."

On June 26, 2011, we asked Mayumi Okamoto, counsel for the Prosecution Team, whether each of the current CVRWQCB members have had their appointment to the board confirmed by the State Senate, and asked for copies of documents reflecting such confirmation. On June 30, Ms. Okamoto responded by saying that "Please find attached the documents reflecting the confirmation of Chair Hart. We are still in the process of searching for the other documents responsive to this request for the remaining four members."

We have never received any documents indicating that these other four members were confirmed by the State Senate. In the absence of such proof, we contend that the regional board does not possess a quorum of members qualified to make any decisions. And, it seems, your position to not admit any new evidence will have the awkward effect of barring your agency from now introducing evidence into the record that the other members have been confirmed by the Senate, if such evidence even exists.

Concluding comments

In closing, we believe that your Order is invalid and unenforceable, a conclusion we arrived at after being forced to defend ourselves in this matter. Let me make another observation. It is extremely troublesome that the Agency's staff prepared the Complaint while purposely choosing to not mention the letters we wrote prior to the filing deadline and thereafter, and therefore failing to mention that we had often requested a hearing before the regional board. In this way, the Complaint is inherently deceptive and prejudicial.

We are not here because of any allegation of pollution; in fact the evidence is that we have not polluted at all. It is entirely about us not filing unaffordable and unlawful reports. Even here, we tried to approach it the right way by seeking a hearing for relief before the filing deadline.

I, like hundreds of other dairymen, have worked a lifetime to build my dream. We work with our animals and land to produce high-quality milk. However, the unreasonable expense of reporting requirements is forcing us from business. Your agency has imposed "country club" regulations--only large dairies with the resources to comply will be allowed to stay in business.

Sincerely,

Jim Sweeney

ATTACHMENT 29

From: Japlus3 <japlus3@aol.com>
To: lasallem <lasallem@lightspeed.net>
Subject: Fwd: Sweeney
Date: Tue, Oct 25, 2011 3:04 pm
Attachments: Sweeney_Oct_2011_Board_Meeting_PowerPoint.pdf (150K), longley_confirmation_Aug_2006.pdf (440K), hart_confirmation_-_Sept_2009.pdf (267K), odenweller_appointment_Jan_2008.pdf (81K), odenweller_confirmation_Sept_2008.pdf (168K), hoag_appointment_december_2010.pdf (114K), meraz_confirmation_aug_2011.pdf (165K)

----Original Message----
From: Ken Landau <klandau@waterboards.ca.gov>
To: Japlus3 <japlus3@aol.com>
Cc: Alex Mayer <AMayer@waterboards.ca.gov>; Dale Essary <dessary@waterboards.ca.gov>; Kiran Lanfranchi-Rizzardi <klanfranchi@waterboards.ca.gov>; Mayumi Okamoto <MOkamoto@waterboards.ca.gov>
Sent: Tue, Oct 25, 2011 2:02 pm
Subject: Re: Sweeney

Mr. Sweeney,
I am responding to your email to Kiran Lanfranchi dated 13 October 2011.

1) The written testimony sent with your email cannot be entered into the record of the hearing, as the date for submittal of written evidence had passed prior to the hearing and the Chair did not specifically approve the late submission. Only what you actually said during the hearing is part of the record.

2) The court reporter is being asked to prepare a written transcript of the hearing, but that document is not usually available from the court reporter for a few weeks. I will inform you when the transcript becomes available. In the meantime, we can mail you an audio recording of the Board meeting (saved to a compact disk) if you would like. If you would like a copy of the recording, please let me know.

3) The documents made available to Board members for their consideration at the 13 October hearing include the following. Except for the attached files, you should already have all of these documents.

   a. All agenda materials from the 14 July Panel Hearing in Fresno
   b. The court reporter transcript of the 14 July Panel hearing, which was sent to Board members Hart and Hoag, who were not at the 14 July Panel hearing.
   c. Your 8 July 2011 Written Testimony prepared for the July 14 Panel Hearing
   d. Items (a)(15), (a)(16), and (a)(1) through (a)(13) as referenced in your June 13, 2011 letter to the Advisory Team (accepted into the record by Hearing Panel Chair Longley as documented in Alex Mayer's June 30, 2011 email)
   e. Your June 30 evidentiary submission (accepted into the record as documented by Ken Landau's July 7, 2011 email).
   f. Your 30 September 2011 Written Testimony prepared for the October 13 Board meeting
   g. Your 30 September 2011 comment letter to Alex Mayer (accepted into the record by the Board Chair at the October 13 board meeting)
   h. All agenda materials for the 13 October Board meeting in Rancho Cordova
   i. The Advisory Team Power Point slides from the October 14 Panel Hearing (copy attached)
   j. Documents related to the legal status of individual Board members handed out at the Board meeting (copie of which are attached),
   k. Board meeting handouts of the PowerPoint slides of dairy compliance rates by the Prosecution and dairy attrition rates from you (given to you at Board meeting)

Ken Landau

ATTACHMENTS:

Documents on legal status of individual Board members [item 3) j., above]

Kenneth D. Landau
Assistant Executive Officer
Central Valley Regional Water Board
11020 Sun Center Drive, # 200
Rancho Cordova, CA 95670-6114
(916)464-4726, FAX (916) 464-4758
klandau@waterboards.ca.gov

>>> Japlus3 <japlus3@aol.com> 10/13/2011 10:03 PM >>>
Kiran,
I would like a copy of todays testimony by October 27, 2011 so that I can prepare for our appeal to the state board. I would also like a copy of all the evidence which was presented and considered by the board ASAP. Thank you very much. I wanted to include the written testimony into the record this morning that Mayumi Okamoto objected to as I was trying to read it. Please find it attached.
Jim Sweeney

ATTACHMENT 30

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

Order No. R5-2007-0035

WASTE DISCHARGE REQUIREMENTS GENERAL ORDER FOR EXISTING MILK COW DAIRIES

The California Regional Water Quality Control Board, Central Valley Region (hereafter, Central Valley Water Board), finds that:

SCOPE OF COVERAGE OF THIS ORDER

1. This Order serves as general waste discharge requirements for discharges of waste from existing milk cow dairies (defined in Finding 7) of all sizes.

2. This Order applies to owners and operators of existing milk cow dairies (hereinafter Dischargers) that: (1) submitted a complete Report of Waste Discharge in response to the Central Valley Water Board's 8 August 2005 request for such a report (2005 Report of Waste Discharge Request Letter) and (2) have not been expanded since October 17, 2005. Following formal written notification by the Central Valley Water Board, these Dischargers are required to comply with the terms and conditions of this Order. Dischargers that do not qualify for coverage under this Order will be covered under separate general or individual waste discharge requirements or a waiver of waste discharge requirements.

REASON FOR THE CENTRAL VALLEY WATER BOARD ISSUING THIS ORDER

3. The Central Valley Water Board authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater and the prevention of nuisances, is found in the Porter-Cologne Water Quality Control Act (California Water Code Division 7).

4. California Water Code Section 13260 requires any person discharging waste, or proposing to discharge waste, within the Central Valley Region, that could affect the quality of the waters of the state (which includes both surface waters and groundwaters) to file a report of waste discharge with the Central Valley Water Board.

5. The Central Valley Water Board is required to prescribe waste discharge requirements for proposed, existing, or material changes in discharges of waste and must implement the relevant water quality control plans. The Central Valley Water Board may prescribe general waste discharge requirements as to a category of discharges if all the following criteria apply to the discharges in that category:

ATTACHMENT 31

shall include accelerated or additional monitoring as necessary to determine the nature and impact of the noncompliance.

7. The fact that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the Order shall not be a defense for violations of the Order by the Discharger.

8. The filing of a request by the Discharger for modification, revocation and reissuance, or termination of the Order, or notification of planned changes or anticipated noncompliance, does not stay any condition of the Order.

9. The Order is not transferable to any person except after notice to the Central Valley Water Board. The Central Valley Water Board may modify or revoke and reissue the Order to change the name of the Discharger and incorporate such other requirements as may be necessary under the California Water Code.

10. The Discharger shall provide to the Executive Officer, within a reasonable time, any information which the Executive Officer may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating the Discharger's coverage under the Order or to determine compliance with the Order. The Discharger shall also provide to the Executive Officer upon request, copies of records required by the Order to be kept.

11. After notice and opportunity for a hearing, the Order may be terminated or modified for cause, including but not limited to:

    a. Violation of any term or condition contained in the Order;

    b. Obtaining the Order by misrepresentation, or failure to disclose fully all relevant facts;

    c. A change in any condition that results in either a temporary or permanent need to reduce or eliminate the authorized discharge; or

    d. A material change in the character, location, or volume of discharge.

12. The Order may be modified if new state statutes or regulations are promulgated, and if more stringent applicable water quality standards are approved pursuant to Title 27 of the CCR, or as adopted into the Central Valley Water Board *Water Quality Control Plans* (Basin Plans) *for the Sacramento River and San Joaquin River Basins (4th Ed), and for the Tulare Lake Basin (2nd Ed.).* The Order may also be modified for incorporation of land application plans, and/or changes in the waste application to cropland.

13. The Central Valley Water Board may review and revise the Order at any time upon application of any affected person or by motion of the Regional Board.

ATTACHMENT 32

California Regional Water Quality Control Board
Central Valley Region
Robert Schneider, Chair

Fresno Branch Office
Internet Address: http://www.swrcb.ca.gov/~rwqcb5
1685 E Street, Fresno, California 93706-2020
Phone (559) 445-5116 • FAX (559) 445-5910

Winston H. Hickox
Secretary for Environmental Protection

Gray Davis
Governor

7 April 2003

Mr. James Sweeney
30712 Road 170
Visalia, CA 93292

Mr. Joseph Borges
30766 Road 170
Visalia, CA 93292

INSPECTION REPORT SWEENEY DAIRY, WDID #5D545155N01, 30712 ROAD 170, TULARE COUNTY

On 21 March 2003, Regional Board staff (Ken Jones) inspected your dairy to assess compliance with Title 27 of the California Code of Regulations (Title 27) and the Water Quality Control Plan for the Tulare Lake Basin-Second Edition, 1995 (Basin Plan). Mr. Sweeney met with our staff and provided access to the site and information regarding activities there. A copy of the Facilities Inspection Report is enclosed. No violations were observed.

You reported that the facility currently maintains a mixed Holstein/Jersey herd of approximately 275 milk cows, 35 dry cows, 80 large heifers (older than one year), 70 small heifers (three months to one year), 40 calves (less than three months), 7 young bulls, and 1 breeding bull for a total of 485 animal units (1,000 pound). The herd is housed in dry scrape open corrals. The facility consists of approximately 18 acres of production area and 40 acres of cropland for dairy waste application. You reported that you export all of your dry manure from the site. The cropland where dairy wastewater is applied is used to raise almonds. The confined animal area, wastewater retention ponds, and solid manure storage area were inspected during the tour. The facility appears to have adequate cropland for the agronomic application of wastewater and sufficient wastewater storage capacity (see Attachments A and B of the Facilities Inspection Report).

A water supply well was observed on the west side of the production area within 100 feet of the calf hutches. Wells in proximity to sources of pollution have the potential to act as conduits for the migration of pollutants to groundwater. California Well Standards (Department of Water Resources Bulleting 74-90) state: "When, at the approval of the enforcing agency, a water well is located closer to a source of pollution or contamination than allowed by Section 8, page 12, above (less than 100 feet from an animal enclosure, etc.), the annular space shall be sealed from ground surface to the first impervious stratum, if possible. The annular seal for all such wells shall extend to a minimum depth of 50 feet."

By 15 June 2003, demonstrate that the well observed on your facility within 100 feet of the animal enclosures has the appropriate annular seal.

Assumptions used by Regional Board staff in calculating nitrogen and salt loading rates are based on information developed in the 1960's and 1970's. In 2000, the University of California was requested by

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at http://www.swrcb.ca.gov/rwqcb5

the Regional and State Boards to assemble a Dairy Waste Committee of Consultants (Committee) to answer a series of questions. One of the questions was "How much nitrogen is excreted by the average lactating cow?" The Committee has reported that the average nitrogen excretion rate for lactating cows in California is significantly greater than the information provided nearly 30 years ago. The Committee also stated that it expects the salt excretion rate to increase accordingly. The Committee's work may change nitrogen and salt excretion assumptions employed in the future by both consultants and Regional Board staff to assess reasonable application rates. Title 27 of the California Code of Regulations requires that manure and wastewater be applied at rates which are reasonable for the crop, soil, climate, special local situations, management system, and type of manure. This may result in the need for the dairy to acquire more cropland for waste application, or a reduction of the herd size. You may also demonstrate that the nutrients and salts produced by the herd can be applied to cropland at reasonable rates.

If you have any questions regarding this matter, please call Ken Jones at (559) 488 - 4391.

K. D. JONES
Associate Engineering Geologist

LONNIE M. WASS
Supervising WRC Engineer
RCE No. 38917

DAS:kdj

Enclosure

cc: Tulare County Resource Management Department; Visalia
Tulare County Health & Human Services Agency, Visalia

OFFICE NO 5F

INSPECTOR: JONESK

FACILITIES INSPECTION REPORT

SWRCB 001 (REV.5-91)

Program Type:

5D545155NO1	Joseph Borges	Sweeney Dairy
DS NUMBER	NAME OF AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE	NAME OF FACILITY
	30766 Road 170	30712 Road 170
NPDES NUMBER	AGENCY STREET	FACILITY STREET
	Visalia, CA 93292-	Visalia, CA 93292-
(YY) (MM) (TYPE)	AGENCY CITY AND STATE	FACILITY CITY AND STAT
SCHEDULED INS. DATA	Mr. Joseph Borges	Mr. Jim Sweeney
	AGENCY CONTACT PERSON	ONSITE FACILITY CONTACT PERSON
030321 (YYMMDD)	(559) 594-4398	(559) 594-5511
ACTUAL INS. DATE	AGENCY PHONE NO.	FACILITY PHONE NO.

S Inspection agency (State = S, State / EPA Joint = J)

N If this inspection is a Compliance Inspection of an NPDES facility, send a copy of this report to SWRCB's Division of Water Quality; Program Support Unit

INSPECTION TYPE (Check One)

A1 ☐ "A" type compliance -- Comprehensive inspection in which samples are taken. (EPA Type S)

B1 ☑ "B" type compliance -- A routine nonsampling inspection. (EPA Type C)

02 ☐ Noncompliance follow-up -- Inspection made to verify correction of previously identified violation.

03 ☐ Enforcement follow-up -- Inspection made to verify that conditions of an enforcement action are being met.

04 ☐ Complaint -- Inspection made in response to a complaint.

05 ☐ Pre-requirement -- Inspection made to gather info. relative to preparing, modifying, or rescinding requirements.

☐ Miscellaneous -- Any inspection type not mentioned above.

If this is an EPA inspection not mentioned above, please note type. (e.g. -- biomonitoring, performance audit, diagnostic, etc.)

(Type)

N Were VIOLATIONS noted during this inspection? (Yes/No/Pending Sample Results)

N Was this a Quality Assurance-Based Inspection? (Y/N)

N Were bioassay samples taken? (N = No) If YES, then S = Static or F = Flowthrough

INSPECTION SUMMARY (REQUIRED) (100 character limit)

Routine dairy inspection for compliance with Title 27 and the Tulare Lake Basin Plan.

INSPECTOR'S DATA:

Staff ID JONESK SIGNATURE D Jones DATE 4/07/03

For Internal Use: Reviewed by: (1) David A Shaler (2) Tonnie M. Wass (3) Roberto Moreno
Reg. WDS Coordinator

WDS Data Entry Date: 4/16/03 Regional Board File Number: Inspection ID 2569

VIOLATION (IF APPLICABLE)

VIOL (A-G): _____ (See pages IK05.0 and IK05.1 of the Micro Waste Discharger System Users Manual)

Date Violation Occurred (YYMMDD): _____ Date Violation Determined (YYMMDD): _____

DESCRIPTION (200 CHARACTER LIMIT):

EPA SUGGESTED INSPECTION CHECKLIST

(S= Satisfactory, M= Marginal, U= Unsatisfactory, N= Not Evaluated)

N	Permit	N	Flow Measurement	N	Pretreatment	S	Operations and Maintenance
N	Records/Reports	N	Laboratories	N	Compliance Schedules	N	Sludge Disposal
N	Facility Site Review	N	Eff./Receiving Waters	N	Self-Monitoring	N	Other

3 Overall Facility Operation Evaluation (5= Very reliable, 3= Satisfactory, 1= Unreliable)

TORICAL INFORMATION

MOST RECENT ORDERS

ORDER NO.	DATE ADOPTED	TYPE

MOST RECENT INSPECTIONS:

DATE	TYPE	VIOLATONS?
3/21/03	B1	N

MOST RECENT VIOLATIONS:

VIOL. TYPE	DATE

ADDITIONAL COMMENTS, SPECIAL INSTRUCTIONS, ITEMS FOR FOLLOWUP ON FUTURE INSPECTIONS, NOTES, ETC. (Attach additional pages, if necessary)

On 21 March 2003, I (Ken Jones) inspected the dairy to assess compliance with Title 27 of the California Code of Regulations (Title 27) and the Water Quality Control Plan for the Tulare Lake Basin-Second Edition, 1995 (Basin Plan). Mr. Sweeney, facility operaotr, met with me and provided access to the site and information regarding activities there. No violations were observed.

Mr. Sweeney reported that the facility currently maintains a mixed Holstein/Jersey herd of approximately 275 milk cows, 35 dry cows, 80 large heifers (older than one year), 70 small heifers (three months to one year), 40 calves (less than three months), 7 young bulls, and 1 breeding bull for a total of 485 animal units (1,000 pound). The herd is housed in dry scrape open corrals. The facility consists of approximately 18 acres of production area and 40 acres of cropland for dairy waste application. Mr. Sweeney reported that all dry manure is exported from the site. The cropland where dairy wastewater is applied is used to raise almonds. The confined animal area, wastewater retention ponds, and solid manure storage area were inspected during the tour. The facility appears to have adequate cropland for the agronomic application of wastewater and sufficient wastewater storage capacity (see Attachments A and B).

ATTACHMENT A
NUTRIENT AND IRRIGATION WATER MANAGEMENT PLANS
(Fact Sheet No. 4)

SWEENEY DAIRY
30712 ROAD 170
TULARE COUNTY

Holstein Herd — Based on data collected during routine inspection on 3/21/03

Table 1. Herd Description & A.U.

		Freestalls		Flushed Corrals		Scraped Corrals		Totals
Animal	Factor	Head	A.U.	Head	A.U.	Head	A.U.	
Milk Cows	1.40	0	0		0	275	385	275
Dry Cows	1.12	0	0		0	35	39	35
Bred Heifers	1.02	0	0		0	0	0	0
Heifers (1 yr to breeding)	1.02	0	0		0	1	1	1
Calves (3mo - 1yr)	0.49	0	0		0	80	39	80
Baby Calves	0.29	0	0		0	70	21	70
Breeder Bulls	1.40		0		0	40	56	40
Young Bulls	1.02		0		0	7	7	7
Subtotal =		0	0	0	0	508	485	508

Total Head= 508
Total AUs= 485

Table 2. Calculation of Nitrogen Loading (minimum retention period of 30 days).

Description	Value from Table 1	Liquid Waste Factor	Liquid Waste Nitrogen	Solid Waste Factor	Solid Waste Nitrogen
Total Freestall AU	0	0.8*0.45*0.25*365	0	0.2*0.45*0.25*365	0
Freestall Milk Cows	0	0.8*0.11*0.25*365	0.0	0.2*0.11*0.25*365	0
Flushed Corral AU	0	0.6*0.45*0.25*365	0	0.4*0.45*0.25*365	0
Flushed Corral Milk Cows	0	0.6*0.11*0.25*365	0	0.4*0.11*0.25*365	0
Scraped Corral Milk Cows	385	0.1*0.56*0.25*365	1967.35	0.9*0.56*0.25*365	17706.15
Scraped Corral AU - Milk Cows	100		(AU-Milk Cows)*1*0.45*0.25*365		4106
TOTALS (lbs of N)			1967		21812

Total N wet + dry= 23,780

Tables 1 and 2 can be used to estimate the amount of nitrogen available to crops from manure produced at a dairy. Table 1 is used to calculate the Animal Units (1,000 lbs each) at the dairy. Table 2 is used to estimate the nitrogen loading if the manure is applied to cropland. An alternate and superior way to evaluate the nitrogen loading is to have the holding pond contents and manure stockpiles analyzed periodically and then use the reported nutrient values along with the wastewater and manure application rates to determine the nutrient loading rate.

Notes:

1 Animal units (AU) are calculated by multiplying the number of head by the appropriate factor.

2 The following assumptions used calculating nitrogen values are consistent with assumptions used by staff in Merced County: The animals are housed for 365 days/year; the nitrogen excretion rate is 0.56 lbs/day for milk cows and 0.45 lbs/day for other cows; 80% and 60 % of the manure in freestalls and flushed corrals, respectively, is handled as a liquid. For milk cows in dry corrals or where alleys are scraped, 10% of the manure is in washwater at the milk barn. When wastewater held less than 30 days is applied to cropland there is a 50% loss of nitrogen, and when wastewater held more than 60 days is applied to cropland, there is a 75% loss of nitrogen. There is a 75% loss of nitrogen from storage and application of dry manure. These values are based on various studies and reports; however, the values may be modified in the future as new information becomes available.

3 For Guernseys and Holsteins, use adjusted values.

Table 3. Cropland Nitrogen Requirement

Crop	Yield (tons)	lbs/acre	Field Acres First Crop	Field Acres Second Crop	Field Acres Third Crop	Nitrogen Requirement
Alfalfa	8	480	0	0	0	0
Almonds	1.5	200	40	0	0	8000
Barley	2.5	160	0	0	0	0
Bermudagrass	4	225	0	0	0	0
Bromegrass	5	220	0	0	0	0
Clovergrass	6	300	0	0	0	0
Corn (grain)	5	240	0	0	0	0
Corn (silage)	30	250	0	0	0	0
Cotton (lint)	0.75	180	0	0	0	0
Grain sorghum	4	250	0	0	0	0
Oats	1.6	115	0	0	0	0
Orchardgrass	6	300	0	0	0	0
Prunes	15	90	0	0	0	0
Safflower	2	200	0	0	0	0
Sorghum-sudan	8	325	0	0	0	0
Sugar Beets	30	255	0	0	0	0
Tomatoes	30	180	0	0	0	0
Timothy	4	150	0	0	0	0
Walnuts	7	200	0	0	0	0
Wheat	3	175	0	0	0	0
			40	0	Total N (lbs/year)	8000

Evaluation of Nutrient Requirements: Using the total pounds of nitrogen available value from Table 2 and the total nitrogen requirements value from Table 3, an initial determination can be made as to the relationship between nitrogen availability and nitrogen need and whether or not it is necessary to export manure or to import fertilizer. As with any farming operation, periodic measurements of nitrogen in cropland and/or crops should be made in order to better determine nutrient requirements for optimum yield.

Table 4. Preliminary Nitrogen Balance

Description	Wet	Dry
Crop Requirement	8000	6033
Nitrogen Produced	1967	21812
Balance	6033	-15780

Needed Acreage (Wet) 0
Needed Acreage (Dry) 37

Table 5. Salt Production Calculation

Description	Value from Table 1	Liquid Waste Factor	Liquid Waste Salts	Solid Waste Factor	Solid Waste Salts
Total Freestall AU	0	0.8*1.28*365	0	0.2*1.28*365	0
Flushed Corral AU	0	0.6*1.28*365	0	0.4*1.28*365	0
Scraped Corral Milk Cows	385	0.1*1.28*365	17987.2	0.9*1.28*365	161884.8
Scraped Corral AU - Milk Cows	100			1.0*1.28*365	46721
TOTALS (lbs salt/year)			17987		208606

Total salts/year (wet + dry) = 226593

Table 6. Cropland Salt Loading Capacity

Description	Acres	Salt Loading Criteria (lbs/acre/year)	Maximum Salt Loading Capacity (lbs/year)
Single Cropped Acreage (Available for wet & dry applications)	40	2000	80000
Double Cropped Acreage (Available for wet & dry applications)	0	3000	0
Single Cropped Acreage (Available for dry applications only)	0	2000	0
Double Cropped Acreage (Available for dry applications only)	0	3000	0

Total Salt Loading Capacity (lbs/year) = 80000

Table 7. Preliminary Salt Balance

Description	Wet	Dry
Crop Requirement	80000	62013
Salts Produced	17987	208606
Balance	62013	-146593

Additional Double Cropped Acreage Needed for Wet Waste 0
Additional Double Cropped AcreageNeeded for Dry Waste 49

Quantity of Manure To Be Exported Off-Site If Additional Cropland Is Not Available

Reduce herd by: 0 Animal Units

Manure to haul off as per NRCS AWMFH, p. 4-8 (modified).
Waste/AU = 85lb @ 87.5% moisture; Dry Manure % moisture = 30%

AUs(85)(0.125)(365)/2000+moist= 869 tons @ moist = 30%

WASTEWATER STORAGE VOLUME CALCULATIONS

SWEENEY DAIRY, 30712 ROAD 170, TULARE COUNTY

VOLUME FORMULA				RAINFALL AND EVAPORATION INFORMATION					
d = depth of pond	B1 = (L)(W)								
L = Length	B2 = [L - (d*S*2)][W - (d*S*2)]			Tulare	Rainfall (in.)	Unpaved (in.)	Evaporation (in.)		
W = Width	M = [L - (S*d)][W - (S*d)]			25-yr, 24-hr	2.2	1.44	-		
S = Slope (H:V)				120 days (Dec-Mar)	6	0.79	6.58		
Volume = 1/6*d*(B1 + 4M + B2)									
STORAGE CAPACITY									
NE Pond (triangle)	Base	Height	Depth (ft)	Slope (H:V)	B1	B2	M	Volume (ft^3)	Volume (gal.)
Dimensions	460	120	12	1.00	27600	20928	24192	290,592	2,173,779
With 2 ft Freeboard	456	116	10	1.00	26448	20928	23638	236,547	1,769,492
NE Pond (rectangle)	Length (ft)	Width (ft)	Depth (ft)	Slope (H:V)	B1	B2	M	Volume (ft^3)	Volume (gal.)
Dimensions	580	35	12	1.00	20300	6116	13064	157,344	1,177,015
With 2 ft Freeboard	576	31	10	1.00	17856	6116	11886	119,193	891,628
Corral Area Pond	Length (ft)	Width (ft)	Depth (ft)	Slope (H:V)	B1	B2	M	Volume (ft^3)	Volume (gal.)
Dimesions	514	35	15	1.00	17990	2420	9980	150,825	1,128,249
With 2 ft Freeboard	510	31	13	1.00	15810	2420	8946	117,030	875,448
							Total Storage Volume (ft^3) =		472,770
							Total Storage Volume (gal.) =		3,536,568

REQUIRED STORAGE								
Daily Wash Water (ft^3)	120 Days Wash Water (ft^3)	Impervious Acreage	Unpaved Acreage	rainfall to Ponds (ft^3)	Evaporation (Dec-Mar) (ft^3)	Total Vol. (ft^3)	Total Vol. (gallons)		
1,838	220,588	4.50	13.5	32732	26265	470,283	3,517,716		

*Daily wash water based on 50 gal./milk cow/day with a herd of 275 milk cows

ATTACHMENT 33

California Regional Water Quality Control Boa
Central Valley Region

Water Quality Control Plan for Tulare Lake Basin Second Edition - 1995

Board Members
Karl E. Longley, Chair
Hugh V. Johns, Vice Chair
Hank Abraham
Steven Butler
Ernie Pfanner

FOREWORD TO THE SECOND EDITION

Water quality control plans, or basin plans, contain California's administrative policies and procedures for protecting state waters. Basin plans are required by the state Porter-Cologne Water Quality Control Act (California Water Code Section 13240). In addition, Section 303 of the federal Clean Water Act requires states to adopt water quality standards that "consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses."

Each of California's nine regional water quality control boards must formulate and adopt a basin plan for all areas within its region. The basin plans must conform with statewide policy set forth by the legislature and by the State Water Resources Control Board. Basin plans consist of designated beneficial uses to be protected, water quality objectives to protect those uses, and a program of implementation needed for achieving the objectives {California Water Code, Section 13050(j)}.

Beneficial uses, together with their corresponding water quality objectives, meet federal regulatory criteria for water quality standards. Hence, California's basin plans serve as regulatory references for meeting both State and federal requirements for water quality control {40 CFR Parts 130 and 131}. One significant difference between the state and federal programs is that California's basin plans establish standards for ground waters in addition to surface waters.

Basin plans are adopted and amended by regional water boards under a structured process involving full public participation and state environmental review.

Basin plans and amendments do not become effective until approved by the State Water Board. Regulatory provisions must be approved by the Office of Administrative Law. Adoption or revision of surface water standards are subject to the approval of the U. S. Environmental Protection Agency before they become accepted standards for the federal program.

Basin plans complement water quality control plans adopted by the State Water Board. It is the intent of the state and regional water boards to maintain basin plans in an updated and readily available edition that reflects all current water quality control programs.

The first edition of this *Water Quality Control Plan for the Tulare Lake Basin* (Basin Plan) was adopted by the California Regional Water Quality Control Board, Central Valley Region, on 25 July 1975, and became effective following approval by the State Water Board on 21 August 1975 and the U. S. Environmental Protection Agency (EPA) in June 1976. Although several revisions have been adopted and approved since 1975, this revision is the first complete rewrite of the text of the Basin Plan.

Regional Water Board resolutions adopted prior to 17 August 1995, that revise or supplement the first edition of the plan which are not expressly incorporated by reference into the second edition of the plan are superceded.

In this Basin Plan, "Regional Water Board" refers to the Central Valley Regional Water Quality Control Board and "State Water Board" refers to the State Water Resources Control Board.

ATTACHMENT 34

13. For the purposes of this Order, "waste" includes, but is not limited to, manure, leachate, process wastewater and any water, precipitation or rainfall runoff that contacts raw materials, products, or byproducts such as manure, compost piles, feed, silage, milk, or bedding.

14. This Order implements the requirements of State Water Resources Control Board Resolution 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*) (Resolution 68-16), Title 27 CCR for confined animal facilities, the Central Valley Water Board's Water Quality Control Plan for the Sacramento and San Joaquin River Basins (4th Ed.) and the Water Quality Control Plan for the Tulare Lake Basin (2nd Ed.) (Basin Plans) and other applicable plans and policies of the State Water Resources Control Board (State Water Board) and the Central Valley Water Board described in the Information Sheet, which is attached to and made part of this Order.

15. This Order does not authorize any further degradation to groundwater and prohibits discharges from production areas to surface waters. This Order also contains many restrictions, including the requirement to comply with a Nutrient Management Plan, for the application of waste to land application areas. However, it is possible that some minor degradation to surface waters from the application of waste to land application areas could occur despite compliance with this Order. That degradation would be limited because any such discharge may not cause or contribute to the exceedance of any water quality objective in the surface water. Such possible minor degradation is consistent with the maximum benefit to the people of the state. This Order would impose significantly more stringent requirements on these existing facilities than has been imposed in the past and as a result, water quality will be improved. While this Order will impose stringent new requirements, it will still accommodate important economic activities in mostly rural areas of the Central Valley Region, which is considered to be a benefit to the people of the State. Given that these are existing facilities, this Order would reduce the impacts that may have occurred under previous regulation of these facilities.

    This Order will result in implementation of best practicable treatment or control as set forth in the Information Sheet.

    This Order will assure that pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the State will be maintained. For example, the proposed order prohibits discharges to surface water from the production area and prohibits discharges from land application areas unless, among other requirements, the dairy prepares and implements a Nutrient Management Plan. Any authorized discharge from the land application area must not cause or contribute to an exceedance of any applicable water quality objective or federal water quality criteria. The proposed order prohibits any further degradation of groundwater. The Order addresses impacts from future discharges

ATTACHMENT 35

CALIFORNIA LEGISLATURE

2007–08 REGULAR SESSION

SENATE DAILY JOURNAL

ONE HUNDRED TWENTY-NINTH LEGISLATIVE DAY

IN SENATE

Senate Chamber, Sacramento
Monday, January 7, 2008

The Senate met at 1 p.m.
Hon. Don Perata, of the 9th District, presiding.
Secretary Greg Schmidt at the Desk.
Assistant Secretary Kipchoge Randall reading.

QUORUM CALL OF THE SENATE

Without objection, a quorum call was placed upon the Senate.

The President directed the Sergeant at Arms to close the doors and to bring in the absent Members.

PROCEEDINGS UNDER QUORUM CALL OF THE SENATE

ROLL CALL

The roll was called and the following Senators answered to their names:

Aanestad, Ackerman, Alquist, Ashburn, Battin, Calderon, Cedillo, Cogdill, Corbett, Correa, Cox, Denham, Ducheny, Dutton, Florez, Harman, Hollingsworth, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Migden, Negrete McLeod, Oropeza, Padilla, Perata, Ridley-Thomas, Romero, Runner, Scott, Simitian, Steinberg, Torlakson, Wiggins, and Yee—38.

Quorum present.

(NOTE: Senator Wyland will be excused this day on personal business and Senator Vincent will be excused this day due to illness.)

PRAYER

Prayer was offered by the Chaplain, Rev. Canon James Richardson:

Holy and Gracious God, We give you thanks for this New Year and its new possibilities. Watch over this Capitol and all who pass through these halls. We ask your blessing especially upon the Governor of California and his administration; the members the California Senate and Assembly and their staff; and the judges of our state and all who serve in the courts. Bless our public servants with the vision to serve all of your people, and the wisdom to know how. Give to them the courage and strength, integrity and patience to meet the challenges ahead.—AMEN.

PLEDGE OF ALLEGIANCE TO THE FLAG

Senator Lowenthal led the Senate in the pledge of allegiance to the Flag.

MESSAGES FROM THE GOVERNOR

Governor's Office, State Capitol
December 3, 2007

To the Senate of the State of California:

I have the honor to transmit to you herewith the following appointments or reappointments heretofore made by me to offices which by law are to be filled by the Governor. These appointments are subject to Senate confirmation and consent. I hereby nominate these appointees to you and request your confirmation and consent.

Sincerely,

ARNOLD SCHWARZENEGGER, Governor

Deborah E. Linden, chief of police, San Luis Obispo Police Department since 2003; and has served on the Commission on Peace Officer Standards and Training since 2004. Reappointed 11/08/07. Effective 11/08/07.

Member, Commission on Peace Officer Standards and Training, term ending 09/18/2010.

Anthony W. Batts, chief of police, Long Beach Police Department; and has served on the Commission on Peace Officer Standards and Training since 2004. Reappointed 11/08/07. Effective 11/08/07.

Member, Commission on Peace Officer Standards and Training, term ending 09/18/2010.

John W. Corbett, attorney in private practice since 1974; and served on the California Regional Water Quality Control Board, North Coastal Region since 2001. Reappointed 11/28/07. Effective 11/28/07.

Member, California Regional Water Quality Control Board, North Coastal Region, term ending 09/30/2011.

William R. Massey, licensed tax preparer in private practice; and served on the California Regional Water Quality Control Board, North Coastal Region since 2000. Reappointed 11/28/07. Effective 11/28/07.

Member, California Regional Water Quality Control Board, North Coastal Region, term ending 09/30/2011.

Dan B. Odenweller, has worked for the California Department of Fish and Game for 30 years in numerous capacities before retiring in 2001; and served on the board since 2005. Reappointed 11/28/07. Effective 11/28/07.

Member, California Regional Water Quality Control Board, Central Valley Region, term ending 09/30/2011.

Eric T. Anderson, vice president, La Costa Flower Shop and Nursery, Inc.; and former president of the California Farm Bureau. He has served on the California Regional Water Quality Control Board, San Diego Region since 2004. Reappointed 11/28/07. Effective 11/28/07.

Member, California Regional Water Quality Control Board, San Diego Region, term ending 09/30/2011.

John W. McCamman, acting director and chief deputy director of the Department of Fish and Game. Former senior vice president, Fleishman-Hillard Government Relations from 2003–2006. Appointed 11/15/07. Effective 11/15/07.

Commissioner, Pacific States Marine Fisheries Commission, vice L. Ryan Broddrick, resigned, term ending 09/18/2011.

L.B. Boydstun, arine fishery advisor, California Department of Fish and Game and the Pacific Fishery Management Council since 2003. He has served on the Pacific States Marine Fisheries Commission since 2005. Reappointed 11/15/07. Effective 11/15/07.

Commissioner, Pacific States Marine Fisheries Commission, term ending 09/19/2011.

Elizabeth L. Mathieson, senior managing scientist, Exponent Failure Analysis Associates since 1999; and former principal geologist with TerraTech from 1983 to 1999. Appointed 11/08/07. Effective 11/08/07.

Member, Alfred E. Alquist Seismic Safety Commission, term ending 05/15/2011.

Marshall McKay, tribal chair, Rumsey Indian Rancheria since 1985; and a member of the board of trustees for the Autry National Center and the University of California, Davis. Appointed 11/14/07. Effective 11/14/07.

Member, Native American Heritage Commission, vice Mary Ann E. Martin Andreas, withdrawn from Senate, term ending at the Pleasure of the Governor.

ATTACHMENT 36

CALIFORNIA LEGISLATURE

2007–08 REGULAR SESSION

SENATE DAILY JOURNAL

TWO HUNDRED FIFTY-SIXTH LEGISLATIVE DAY

IN SENATE

Senate Chamber, Sacramento
Monday, September 15, 2008

The Senate met at 4 p.m.
Hon. Don Perata, of the 9th District, presiding.
Secretary Greg Schmidt at the Desk.
Assistant Secretary Kipchoge Randall reading.

QUORUM CALL OF THE SENATE

Without objection, a quorum call was placed upon the Senate.

The President directed the Sergeant at Arms to close the doors and to bring in the absent Members.

PROCEEDINGS UNDER QUORUM CALL OF THE SENATE

ROLL CALL

The roll was called and the following Senators answered to their names:

Aanestad, Ackerman, Alquist, Ashburn, Battin, Calderon, Cedillo, Cogdill, Corbett, Correa (waiving per diem), Cox, Denham, Ducheny, Dutton, Florez (waiving per diem), Harman, Hollingsworth, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Migden, Negrete McLeod, Oropeza, Padilla, Perata, Ridley-Thomas, Romero, Runner, Scott, Simitian, Steinberg, Torlakson, Vincent, Wiggins, Wyland, and Yee(waiving per diem)—40.

Quorum present.

Lowenthal, Machado, Migden, Negrete McLeod, Oropeza, Padilla, Perata, Ridley-Thomas, Romero, Scott, Steinberg, Vincent, and Wiggins.

NOES (13)—Senators Aanestad, Ackerman, Ashburn, Denham, Hollingsworth, Maldonado, Margett, McClintock, Runner, Simitian, Torlakson, Wyland, and Yee.

Bill ordered transmitted to the Assembly.

RECESS

At 12:37 a.m., on motion of Senator Perata the Senate recessed in order to convene the third extraordinary session.

REASSEMBLED

At 12:41 a.m., the Senate reconvened.

Hon. Gloria Romero, of the 24th District, presiding.

CONSIDERATION OF DAILY FILE (RESUMED)

UNFINISHED BUSINESS

Consideration of Governor's Appointments

Senator Perata placed the following Governor's appointments before the Senate:

John H. Hayashi, Member, California Regional Water Quality Control Board, Central Coastal Region.

Dan B. Odenweller, Member, California Regional Water Quality Control.

Eric T. Anderson, Member, California Regional Water Quality Control Board, San Diego Region.

Wayne F. Rayfield, Member, California Regional Water Quality Control Board, San Diego Region.

Kris J. Weber, Member, California Regional Water Quality Control Board, San Diego Region.

The President put the question: "Will the Senate advise and consent to the appointments by the Governor?"

Roll Call

The roll was called and the appointments were confirmed by the following vote:

AYES (37)—Senators Aanestad, Ackerman, Alquist, Ashburn, Calderon, Cedillo, Cogdill, Corbett, Correa, Cox, Denham, Ducheny, Dutton, Harman, Hollingsworth, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Negrete McLeod, Oropeza, Padilla, Perata, Ridley-Thomas, Romero, Runner, Scott, Simitian, Steinberg, Torlakson, Vincent, Wiggins, Wyland, and Yee.

NOES (0)—None.

ATTACHMENT 37

CALIFORNIA LEGISLATURE

2009–10 REGULAR SESSION

SENATE DAILY JOURNAL

ONE HUNDRED THIRTY-FIRST LEGISLATIVE DAY

IN SENATE

Senate Chamber, Sacramento
Friday, September 11, 2009

The Senate met at 10:45 a.m.
Hon. Gloria Romero, of the 24th District, presiding.
Secretary Greg Schmidt at the Desk.
Assistant Secretary Zach Twilla reading.

QUORUM CALL OF THE SENATE

Without objection, a quorum call was placed upon the Senate.

The President directed the Sergeant at Arms to close the doors and to bring in the absent Members.

PROCEEDINGS UNDER QUORUM CALL OF THE SENATE

ROLL CALL

The roll was called and the following Senators answered to their names:

Aanestad, Alquist, Ashburn, Benoit, Calderon, Cedillo, Cogdill, Corbett, Correa, Cox, Denham, DeSaulnier, Ducheny, Dutton, Florez, Hancock, Harman, Hollingsworth, Huff, Kehoe, Leno, Liu, Lowenthal, Maldonado, Negrete McLeod, Oropeza, Padilla, Pavley, Price, Romero, Runner, Simitian, Steinberg, Strickland, Walters, Wiggins, Wolk, Wright, Wyland, and Yee—40.

Quorum present.

Price, Romero, Runner, Simitian, Steinberg, Strickland, Walters, Wiggins, Wolk, Wright, Wyland, and Yee.

NOES (0)—None.

Consideration of Governor's Appointment

Senator Steinberg placed the following Governor's appointment before the Senate:

STEPHEN L. EDINGER, Member, Oil Spill Response Administrator.

The President put the question: "Will the Senate advise and consent to the appointment by the Governor?"

Roll Call

The roll was called and the appointment was confirmed by the following vote:

AYES (40)—Senators Aanestad, Alquist, Ashburn, Benoit, Calderon, Cedillo, Cogdill, Corbett, Correa, Cox, Denham, DeSaulnier, Ducheny, Dutton, Florez, Hancock, Harman, Hollingsworth, Huff, Kehoe, Leno, Liu, Lowenthal, Maldonado, Negrete McLeod, Oropeza, Padilla, Pavley, Price, Romero, Runner, Simitian, Steinberg, Strickland, Walters, Wiggins, Wolk, Wright, Wyland, and Yee.

NOES (0)—None.

Consideration of Governor's Appointments

Senator Steinberg placed the following Governor's appointments before the Senate:

RUSSELL M. JEFFRIES, Member, Water Quality Control Board, Central Coast Region.

KATHERINE J. HART, Member, Water Quality Control Board, Central Valley Region.

THOMAS J. DAVIS, Member, Water Quality Control Board, Colorado River Basin Region.

JEFFREY A. HAYS, Member, Water Quality Control Board, Colorado River Basin Region.

ELLEN M. WAY, Member, Water Quality Control Board, Colorado River Basin Region.

R. KEITH DYAS, Member, Water Quality Control Board, Lahontan Region.

HEIDI J. CARPENTER-HARRIS, Member, Water Quality Control Board, North Coastal Region.

JOHN M. DUNKER, Member, Water Quality Control Board, North Coastal Region.

GEOFFREY M. HALES, Member, Water Quality Control Board, North Coastal Region.

JOHN H. MULLER, Member, Water Quality Control Board, San Francisco Bay Region.

RAMESHWAR SINGH PH.D., Member, Water Quality Control Board, San Francisco Bay Region.

RICHARD FRESCHI, Member, Water Quality Control Board, Santa Ana Region.

BETTY H. OLSON PH.D., Member, Western States Water Council.

The President put the question: "Will the Senate advise and consent to the appointments by the Governor?"

Roll Call

The roll was called and the appointments were confirmed by the following vote:

AYES (40)—Senators Aanestad, Alquist, Ashburn, Benoit, Calderon, Cedillo, Cogdill, Corbett, Correa, Cox, Denham, DeSaulnier, Ducheny, Dutton, Florez, Hancock, Harman, Hollingsworth, Huff, Kehoe, Leno, Liu, Lowenthal, Maldonado, Negrete McLeod, Oropeza, Padilla, Pavley, Price, Romero, Runner, Simitian, Steinberg, Strickland, Walters, Wiggins, Wolk, Wright, Wyland, and Yee.

NOES (0)—None.

Consideration of Governor's Appointment

Senator Steinberg placed the following Governor's appointment before the Senate:

MONICA S. HUNTER, PH.D., Member, Water Quality Control Board, Central Coast Region

The President put the question: "Will the Senate advise and consent to the appointment by the Governor?"

Roll Call

The roll was called and the appointment was confirmed by the following vote:

AYES (25)—Senators Alquist, Calderon, Cedillo, Corbett, Correa, DeSaulnier, Ducheny, Florez, Hancock, Kehoe, Leno, Liu, Lowenthal, Maldonado, Oropeza, Padilla, Pavley, Price, Romero, Simitian, Steinberg, Wiggins, Wolk, Wright, and Yee.

NOES (14)—Senators Aanestad, Ashburn, Benoit, Cogdill, Cox, Denham, Dutton, Harman, Hollingsworth, Huff, Runner, Strickland, Walters, and Wyland.

Consideration of Governor's Appointment

Senator Steinberg placed the following Governor's appointment before the Senate:

G. MICHAEL SUTTON, Member, Fish and Game Commission.

The President put the question: "Will the Senate advise and consent to the appointment by the Governor?"

ATTACHMENT 38

CALIFORNIA LEGISLATURE

2011–12 REGULAR SESSION

SENATE DAILY JOURNAL

SECOND LEGISLATIVE DAY

IN SENATE

Senate Chamber, Sacramento
Monday, January 3, 2011

The Senate met at 2:45 p.m.
Hon. S. Joseph Simitian, of the 11th District, presiding.
Secretary Greg Schmidt at the Desk.
Assistant Secretary Zachary L. Twilla reading.

QUORUM CALL OF THE SENATE

Without objection, a quorum call was placed upon the Senate.

The President directed the Sergeant at Arms to close the doors and to bring in the absent Members.

PROCEEDINGS UNDER QUORUM CALL OF THE SENATE

ROLL CALL

The roll was called and the following Senators answered to their names:

Alquist, Anderson, Berryhill, Blakeslee, Calderon, Cannella, Corbett, Correa, De León, DeSaulnier, Dutton, Emmerson, Evans, Fuller, Hancock, Harman, Hernandez, Huff, Kehoe, La Malfa, Leno, Liu, Lowenthal, Negrete McLeod, Padilla, Pavley, Price, Rubio, Simitian, Steinberg, Vargas, Walters, Wolk, Wright, Wyland, and Yee—36.

Quorum present.

(NOTE: Senator Strickland will be excused this day on personal business.)

Science and the Organization of Tropical Nematologists. Reappointed 11/15/10. Effective 12/08/10.

Member, California Regional Water Quality Control Board, Santa Ana Region, term ending 09/18/14.

Above appointments referred to the Committee on Rules.

Governor's Office, State Capitol
December 13, 2010

To the Senate of the State of California:

I have the honor to transmit to you herewith the following appointments or reappointments heretofore made by me to offices which by law are to be filled by the Governor. These appointments are subject to Senate confirmation and consent. I hereby nominate these appointees to you and request your confirmation and consent.

Sincerely,

ARNOLD SCHWARZENEGGER, Governor

JACK L. CLARKE, is a private consultant for Jack Clarke Consulting since 2007 and has served on the Lahontan Regional Water Quality Control Board since 1996. Clarke was vice president and general manager for Apple Valley Ranchos Water Company from 1982 to 2007 and area manager for Southern California Water Company from 1974 to 1982. He was purchasing agent for Granite Construction from 1969 to 1974 and water quality inspector and filter plant operator from 1962 to 1969. Clarke is a member of American Water Works Association, Apple Valley Chamber of Commerce and the Mojave Water Agency Executive Committee and Technical Advisory Committee. Reappointed 11/15/10. Effective 12/08/10.

Member, California Regional Water Quality Control Board, Lahontan Region, term ending 09/18/14.

AMY L. HORNE, is an independent scholar since 2009 and has served on the Lahontan Regional Water Quality Control Board since 2006. She was adjunct professor for Sierra Nevada College in 2008. Horne was a science writer for the University of California, Davis, Tahoe Environmental Research Center from 2007 to 2009. Horne was research director for the Sierra Business Council from 1998 to 2005 and research forester for the U.S. Forest Service, Pacific Northwest Station from 1993 to 1997. She is a member of the California Native Plant Society. Reappointed 11/15/10. Effective 12/08/10.

Member, California Regional Water Quality Control Board, Lahontan Region, term ending 09/18/14.

KRISTINA E. RASPE, is associate senior vice president of real estate asset management for the University of Southern California since 2006. Previously, she was general counsel and senior vice president for Doheny Enterprises and a partner specializing in real estate law at Troy and Gould. Raspe is a member of the California Board of Realtors, Beverly Hills and Greater Los Angeles Board of Realtors and Design-Build Institute of America. She serves on the Commercial Real Estate Women, Los Angeles Chapter Advisory Board and the Los Angeles Headquarters Association Board. Appointed 11/18/10. Effective 12/07/10.

Member, Fair Employment and Housing Commission, vice, Carol R. Freeman, term expired, term ending 09/18/13.

DAVID T. HODGIN, has served as chairman of The Pathfinder Companies since 1984, where he served as president from 1979 to 1984. He was president of Daire Associates from 1968 to 1979 and financial analyst for Owens Corning Fiberglass from 1964 to 1968. Hodgin is a member of Scotts Valley Water District and Institute of Management Consultants. He is a region 5 director and serves on the statewide board of the Association of California Water Agencies. Reappointed 11/15/10. Effective 12/09/10.

Member, California Regional Water Quality Control Board, Central Coastal Region, term ending 09/18/14.

LYLE N. HOAG, has been an independent water resources consultant since 1956. In that capacity, Hoag was administrator of the California Water and Environmental Modeling Forum and the California Urban Water Conservation Counsel from 1991 to 1995. He also served as the executive director of California Urban Water Agencies from 1989 to 1995, during which time he coordinated the Bay-Delta Three-Way Negotiations. From 1956 to 1989, he was vice president of Brown & Caldwell Consultants. Hoag is a member of the American Society of Civil Engineers, the American Water Works Association and the Water Environment Federation. Appointed 12/06/10. Effective 12/08/10.

Member, California Regional Water Quality Control Board, Central Valley Region, vice, Robert G. Walters, term ending 09/30/13.

SOPAC M. MULHOLLAND, is executive director of the Sequoia Riverlands Trust since 2001. Since 1987, Mulholland has been the principal of Sopac and Associates. She has been part-owner and operator of River Valley Ranch and McCarthy Creek Ranch, commercial livestock and citrus operations, since 1973. From 1998 to 1999, she served as the interim president of the Economic Development Corporation of Tulare County as well as the director of development for the California Agricultural Education Foundation. From 1989 to 1992, Mulholland was a partner in McKinley & Sopac, a consulting firm specializing in multipurpose real estate projects. From 1985 to 1987, she served as project manager at Beauchamp Enterprises and was project manager and vice president of acquisitions at CDS Development from

ATTACHMENT 40

CALIFORNIA LEGISLATURE

2011–12 REGULAR SESSION

SENATE DAILY JOURNAL

ONE HUNDRED TWENTY-FIRST LEGISLATIVE DAY

IN SENATE

Senate Chamber, Sacramento
Monday, August 29, 2011

The Senate met at 12 p.m.
Hon. Christine Kehoe, of the 39th District, presiding.
Secretary Greg Schmidt at the Desk.
Assistant Secretary Zachary L. Twilla reading.

QUORUM CALL OF THE SENATE

Without objection, a quorum call was placed upon the Senate.

The President directed the Sergeant at Arms to close the doors and to bring in the absent Members.

PROCEEDINGS UNDER QUORUM CALL OF THE SENATE

ROLL CALL

The roll was called and the following Senators answered to their names:

Alquist, Anderson, Berryhill, Blakeslee, Calderon, Cannella, Corbett, Correa, De León, DeSaulnier, Dutton, Emmerson, Evans, Fuller, Gaines, Hancock, Hernandez, Huff, Kehoe, La Malfa, Leno, Lieu, Liu, Lowenthal, Negrete McLeod, Padilla, Pavley, Price, Rubio, Simitian, Steinberg, Strickland, Vargas, Walters, Wolk, Wright, Wyland, and Yee—38.

Quorum present.

(NOTE: Senators Harman and Runner will be excused this day on personal business.)

Consideration of Governor's Appointment

Senator Steinberg placed the following Governor's appointment before the Senate:

RONALD YANK, Director, Personnel Administration Department

The President put the question: "Will the Senate advise and consent to the appointment by the Governor?"

Roll Call

The roll was called and the appointment was confirmed by the following vote:

AYES (37)—Senators Alquist, Anderson, Berryhill, Blakeslee, Calderon, Cannella, Corbett, Correa, De León, DeSaulnier, Dutton, Emmerson, Evans, Fuller, Gaines, Hancock, Hernandez, Huff, Kehoe, La Malfa, Leno, Lieu, Liu, Lowenthal, Negrete McLeod, Padilla, Pavley, Price, Rubio, Simitian, Steinberg, Strickland, Walters, Wolk, Wright, Wyland, and Yee.

NOES (0)—None.

Consideration of Governor's Appointments

Senator Steinberg placed the following Governor's appointments before the Senate:

DANIELLE L. PAXSON, Member, State Building Standards Commission

SARAH R. OLSEN, Member, Commission on State Mandates

JEAN-PIERRE WOLFF PH.D., Member, Water Quality Control Board, Central Coast Region

SANDRA O. MERAZ, Member, Water Quality Control Board, Central Valley Region

JACK L. CLARKE, Water Quality Control Board, Lahontan Region

PETER C. PUMPHREY, Member, Water Quality Control Board, Lahontan Region

CHARLES M. STRINGER, Member, Water Quality Control Board, Los Angeles Region

DAVID M. NOREN, Member, Water Quality Control Board, North Coast Region

GARY W. STRAWN, Member, Water Quality Control Board, San Diego Region

The President put the question: "Will the Senate advise and consent to the appointments by the Governor?"

Roll Call

The roll was called and the appointments were confirmed by the following vote:

AYES (38)—Senators Alquist, Anderson, Berryhill, Blakeslee, Calderon, Cannella, Corbett, Correa, De León, DeSaulnier, Dutton, Emmerson, Evans, Fuller, Gaines, Hancock, Hernandez, Huff, Kehoe, La Malfa, Leno, Lieu, Liu, Lowenthal, Negrete McLeod, Padilla, Pavley,

Price, Rubio, Simitian, Steinberg, Strickland, Vargas, Walters, Wolk, Wright, Wyland, and Yee.
NOES (0)—None.

Consideration of Governor's Appointments

Senator Steinberg placed the following Governor's appointments before the Senate:

BUFORD CRITES, Member, Water Quality Control Board, Colorado River Basin Region

AMY L. HORNE PH.D., Member, Water Quality Control Board, Lahontan Region

FRANCINE B. DIAMOND, Member, Water Quality Control Board, Los Angeles Region

TERRY F. YOUNG PH.D., Member, Water Quality Control Board, San Francisco Bay Region

Roll Call

The roll was called and the appointments were confirmed by the following vote:

AYES (24)—Senators Alquist, Calderon, Corbett, Correa, De León, DeSaulnier, Evans, Hancock, Hernandez, Kehoe, Leno, Lieu, Liu, Lowenthal, Negrete McLeod, Padilla, Pavley, Price, Rubio, Simitian, Vargas, Wolk, Wright, and Yee.
NOES (13)—Senators Anderson, Berryhill, Blakeslee, Cannella, Dutton, Emmerson, Fuller, Gaines, Huff, La Malfa, Strickland, Walters, and Wyland.

SPECIAL CONSENT CALENDAR

Senate Concurrent Resolution 54—Relative to Pain Awareness Month and Women In Pain Awareness Day.

Resolution read, adopted, and ordered transmitted to the Assembly.

(NOTE: See Consent Calendar Roll Call)

Assembly Concurrent Resolution 62—Relative to Read Across California Month.

Resolution read, adopted, and ordered transmitted to the Assembly.

(NOTE: See Consent Calendar Roll Call)

Consent Calendar Roll Call

The roll was called and the above measures on the Consent Calendar passed by the following vote:

AYES (38)—Senators Alquist, Anderson, Berryhill, Blakeslee, Calderon, Cannella, Corbett, Correa, De León, DeSaulnier, Dutton, Emmerson, Evans, Fuller, Gaines, Hancock, Hernandez, Huff, Kehoe, La Malfa, Leno, Lieu, Liu, Lowenthal, Negrete McLeod, Padilla, Pavley, Price, Rubio, Simitian, Steinberg, Strickland, Vargas, Walters, Wolk, Wright, Wyland, and Yee.
NOES (0)—None.

ATTACHMENT 41

MEETING

STATE OF CALIFORNIA

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

PARTIAL TRANSCRIPT

AGENDA ITEM 10

CENTRAL VALLEY REGIONAL

WATER QUALITY CONTROL BOARD

11020 SUN CENTER DRIVE, #200

RANCHO CORDOVA, CALIFORNIA

THURSDAY, OCTOBER 13, 2011

9:44 A.M.

TIFFANY C. KRAFT, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

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SAN RAFAEL, CA 94901
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APPEARANCES

BOARD MEMBERS

Ms. Kate Hart, Chairperson

Mr. Karl Longley, Vice Chairperson

Mr. Lyle Hoag

Ms. Sandra Meraz

Mr. Dan Odenweller

STAFF

Mr. Ken Landau, Assistant Executive Officer

Mr. Clay Rodgers, Assistant Executive Officer

Mr. Alex Mayer, Staff Counsel

Ms. Mayumi Okamoto, Staff Counsel

ALSO PRESENT

Mr. James Sweeney, Sweeney Dairy

INDEX

	PAGE
10. James G. Sweeney and Amelia M. Sweeney, Sweeney Dairy, Tulare County - Consideration of Administrative Civil Liability Complaint and Recommendation Administrative Civil Liability Order	1
Adjournment	32
Reporter's Certificate	33

PROCEEDINGS

CHAIRPERSON HART: Moving on to Agenda Item 10 regarding the Sweeney Dairy in Tulare County.

This is the time and place to consider the issuance of an administrative civil liability Order for the Sweeney Dairy in Tulare County.

The hearing on this matter was held before a panel of the Regional Board members on July 14th in Fresno, so additional evidence and testimony would not normally be accepted. However, during the July panel hearing, the prosecution team presented evidence concerning compliance rates for dairies in the Central Valley, and this evidence had not previously been provided to the discharger. Therefore, the discharger did not reasonably have the opportunity to rebut this testimony, and the discharger will be provided with an opportunity to rebut that evidence today. No additional evidence or testimony outside of this limited scope will be accepted unless determined by the Chair and the Board that additional testimony is warranted.

Following receipt of the panel hearing report and comments from the advisory team, Mr. Sweeney will be provided five minutes to present rebuttal evidence and testimony concerning compliance rates for dairies in Central Valley. The prosecution team will then have five

minutes to cross-examine Mr. Sweeney on his rebuttal evidence or comment on the evidence. The prosecution team will not present any new evidence.

Mr. Sweeney may then use any remaining time of his five minutes for a closing statement. The prosecution may use any remaining time for a closing statement.

All persons expecting to testify, please stand at this time, raise your right hand, and take the following oath.

(Whereupon all prospective witnesses were sworn.)

CHAIRPERSON HART: Thank you.

Please state your name, address and affiliation and whether you've taken the oath before testifying.

Does the Board Advisory Counsel have any legal issues to discuss? Mr. Mayer?

STAFF COUNSEL MAYER: My microphone is not working. That's better.

Yes, Madam Chair. I had four procedural issues that I'd like to discuss with you and the Board before we get started with this matter.

The first is to clarify that there were a number of written -- there was a number of written correspondence between the advisory team and the designated parties in this matter and that that written correspondence is being added into the record along with the associated

documentation. Specifically, there were -- these e-mails include, but are not limited to, advisory team e-mails from July 27th, September 20th, September 29th, and October 12th. That was the first matter.

The second matter I wanted to discuss is a late letter that came in from Mr. Sweeney, the discharger, on September 30th. I'm going to be recommending that the Board accept this letter into the record. The letter contains a legal objection to the Chair's procedural ruling dated September 20th denying his request for a continuance and also requesting the submittal of additional evidence. The letter also made a new allegation that the Central Valley Water Board at today's October meeting lacks a legal quorum to act because not all of the Board members are currently authorized to act.

So because the letter could not have been provided prior to the July 14th hearing and there has been no objection from the prosecution team and no apparent prejudice to the Board, I'm recommending that this letter be admitted to the record. And while there is no legal obligation for the Board to respond to the contents of the letter, I will distribute copies to the Board members, if the Board agrees that this item is to be added to the record.

CHAIRPERSON HART: I would agree it should be

added to the record. Does anyone object?

And the prosecution team does not object?

STAFF COUNSEL OKAMOTO: No.

STAFF COUNSEL MAYER: I have a third issue, and it's related to the allegation in the September 30th letter about the Board's legal quorum status.

In regards to that issue, while the Board is not required to issue a response to that allegation here today, I did want to take -- I did want to recommend that the Board take official notice of certain legislative documents that confirm that, indeed, all five of our Board members are currently authorized to act. And those legislative documents were published in the Senate Daily Journal, and there are six separate documents. One is dated January 7th, 2008. The other September 15th, 2008; September 11th, 2009; August 31st, 2010; January 3rd, 2011; and August 29th, 2011.

And I'm recommending the Board take official notice of these documents pursuant to the Board's regulations found at 23 CCR 648.2. And if the Board agrees that official notice is proper, I can distribute copies of these letters and explain them as necessary to the Board members. And I can distribute a copy to the discharger as well.

CHAIRPERSON HART: Yes, we will take official

notice of those documents, which essentially indicate that all Board members are currently authorized to serve.

STAFF COUNSEL MAYER: That's correct.

And I have one final issue, and that is a letter that came in on October 2nd from Mr. Sweeney. And it was a letter proposing testimony to be introduced at today's meeting. And I'm recommending that the Board not accept this late letter into the record. The hearing procedure -- the hearing itself took place on July 14th. And the issues in this letter -- the proposed testimony should have been given at the July 14th hearing. In fact, a very similar letter -- written letter was accepted into the record prior to that hearing. And that letter is dated July 8th. And that letter is in the record today. So because this letter should have been introduced prior to today at the July 14th hearing, I'm recommending that the Board not accept this letter into the record.

CHAIRPERSON HART: Hearing unless I hear an objection, we will decline to accept it into the record.

Seeing none, it is not included in the record.

STAFF COUNSEL MAYER: Okay. That's great. Those were the four legal issues that I wanted to raise.

CHAIRPERSON HART: Excellent. Thank you.

We can proceed with the staff record.

(Thereupon an overhead presentation was presented

as follows.)

ASSISTANT EXECUTIVE OFFICER LANDAU: Good morning.

For the record, I'm Ken Landau, Assistant Executive Officer with the Board's Rancho Cordova office serving on the Board's Advisory Team.

I have taken the oath.

The item before us at this point is the administrative civil liability Order against the Sweeney Dairy in Tulare County.

--o0o--

ASSISTANT EXECUTIVE OFFICER LANDAU: In May of this year, the prosecution issued an administrative civil liability complaint against the Sweeney Dairy for failure to submit the 2009 Annual Report and for failure to submit the Waste Management Plan as required under the Dairy General Waste Discharge requirements. A maximum liability is over $6,000 and the proposed liability was $11,400.

--o0o--

ASSISTANT EXECUTIVE OFFICER LANDAU: The panel hearing was held in Fresno again with Dr. Longley serving as Chair, and Mr. Odenweller and Ms. Meraz comprising the rest of the panel. Mr. James Sweeney appeared and testified on behalf of the dairy. A copy of his written testimony for that hearing has been available to the Board

previously. And I've provided additional copies of that to the Board this morning.

Also, the Board members who were not present at the Fresno panel hearing were provided copies of the court reporter transcript for that. The report of the panel is included in the agenda package for this meeting. And the panel recommendation --

--o0o--

ASSISTANT EXECUTIVE OFFICER LANDAU: -- is for adoption of the proposed ACL in the amount of $11,400.

With the panel hearing having been completed previously, the Board would not normally accept additional testimony. But as the Chair explained, we will be taking additional evidence as is allowed under the Water Code. The Board may make additional evidence as may be necessary before making its decision regarding ACL.

--o0o--

ASSISTANT EXECUTIVE OFFICER LANDAU: Before, during, and after the panel hearing, Mr. Sweeney has contested this enforcement process. For most of his concerns, his requests have been denied either by the Panel Chair Longley, Board Chair Hart, or by both.

For one of Mr. Sweeney's concerns, however, Chair Hart and the Advisory Team concur with Mr. Sweeney. The prosecution introduced evidence at the Fresno hearing

regarding compliance rates of various sizes of dairies with reporting requirements of the dairy general waste discharge requirement. This evidence was not directly specifically at Mr. Sweeney's dairy had complied or not, but with the overall compliance rates of dairies throughout the Central Valley. Compliance rates by similar facilities can be considered by Board members in deciding whether to issue an ACL or the amount of the ACL.

As Mr. Sweeney had not seen compliance rate data prior to when it was actually shown at the Fresno hearing, he could not have prepared rebuttal evidence or arguments. Therefore, Mr. Sweeney will be allowed time at this hearing, as has been described, to provide additional rebuttal evidence and a closing statement regarding that. And the prosecution will also have an opportunity to comment on Mr. Sweeney's additional information.

--o0o--

ASSISTANT EXECUTIVE OFFICER LANDAU: This is a slide of the dairy compliance rates from the July 14 hearing as presented by the prosecution. This slide breaks down the compliance rates by three different dairy sizes: Large, which are greater than 800; medium, 300 to 700; and small, less than 300, giving the total number of dairies in the second column for each size and providing the number of dairies and the percent compliance rate for

each of these sizes for the 2008 Annual Report, 2009 Annual Report, the Waste Management Plan, and the Monitoring Well Installation Plan.

As you can see, there is a large percentage of dairies that did comply in each size, with larger dairies having higher overall compliance rates.

I would point out that the four different columns on here is a summary of violations result caused by all the dairies that were being considered at the hearings. For the Sweeney Dairy, we're talking only about the 2009 Annual Report and the Waste Management Plan Compliance Report. I don't want to give the impression that all four of these relate to the Sweeney Dairy.

Mr. Sweeney's concerns about this table are explained in his 30 September letter, which you've had previously and was provided to you also today. Mr. Sweeney argues that the prosecution numbers on this chart addressed only existing dairies and that a very large percentage of small dairies have gone out of business due to costs of complying with the dairy General Waste Discharge Requirements. And therefore, the relatively high compliance rate shown in this table by the prosecution are deceptively high and do not show the impact of the regulatory program upon the dairy industry.

--oOo--

ASSISTANT EXECUTIVE OFFICER LANDAU: In Mr. Sweeney's September 30th letter, he provided a table, which I have put on the slide here so I can discuss. I have reversed the Order of these from what Mr. Sweeney had to make the two tables easier to compare, putting the larger size dairies at the top.

Also, when you're looking at the two sets of tables, the prosecution had divided the small versus medium dairies at 300 head. Mr. Sweeney divided them at 400 head. Neither is particularly right or wrong. It's just when you're comparing them, there are a little different that way.

Also, the prosecution numbers deal with the entire Central Valley. Whereas, Mr. Sweeney's deal only with the Fresno office dairies. So if you're trying to compare numbers again, they are different geographic areas.

I have in the packet I just handed out, I provided the Board members copies of both of these tables so you can refer to as the testimony continues today.

--o0o--

ASSISTANT EXECUTIVE OFFICER LANDAU: Can the overall rate of compliance of dairies impact the amount of the ACL? Yes, it can, along with many other factors that the Board would consider.

Violations by other dairies do not eliminate the violations by the Sweeney Dairy, but it can impact how culpable the discharger is judged by this Board in those violations.

If most dairies have not complied, the Board could think of that as something is going on over than just an intent by the discharger. And under the enforcement policy, you could reduce the culpability of the dairy and reduce the amount of the ACL.

Equally, if most dairies have complied, it could be thought of as there is a particular problem with this dairy, perhaps increase the culpability, which would be used to increase the amount of the ACL under the enforcement policy.

In calculating the amount of the ACL that is recommended to you, the prosecution took a neutral stance on that. Under the enforcement policy, basically there are percentages you can increase or decrease a base amount from. And the prosecution did not recommend either a high level of culpability or particularly low level of culpability.

I'd also like to mention again that this is only one of many things that the Board would consider. If, as a result of today's discussions, you get a different perspective of the culpability of the dairy, that in and

of itself does not require you to change the ACL. But you have the discretion to do that.

And with that, I would like to enter this presentation and the Power Point into the record of this. And I'll be happy to answer any questions. And then we would proceed with Mr. Sweeney's testimony.

CHAIRPERSON HART: Thank you, Ken.

Do we have any Board questions right now?

Seeing none, Mr. Sweeney, would you like to come forward to testify?

MR. SWEENEY: My name is Jim Sweeney, and my wife and I are the persons with which this complaint has been brought. I'm here not because I'm charged with being a polluter; I'm here because I'm charged with not filing the annual reports that were due on July 1st, 2010. In other words, I'm a paper violator.

You probably have not been told by your staff that three months before these reports were due on July 1st, 2010, I asked them to schedule a hearing before you so that I could ask a one-year extension of your filing deadline due to financial necessity.

As probably learned, the dairy industry suffered through a dreadful period during 2008 and 2009 when, because of low milk prices and high feed costs, dairies were losing money at an enormous rate and had to depend on

their bank to loan money to make up the shortfall.

My wife and I operate a dairy in which we milk less than 200 cows. Our bank loans -- less than 300 cows. Our bank loans were classified as distressed. We were forced to hire an attorney just so we could stay in business.

STAFF COUNSEL OKAMOTO: Madam Chair, if I can object.

My understanding that the scope of Mr. Sweeney's testimony today would be limited to the documents that he submitted on September 30th. So I --

CHAIRPERSON HART: With respect to the size of the dairy.

STAFF COUNSEL OKAMOTO: Correct. With respect to compliance rates and herd size data. That was also submitted by him on September 30th.

CHAIRPERSON HART: That's duly noted.

Mr. Sweeney, do you understand --

MR. SWEENEY: Can I make an objection to her objection? Because on the website that you have, all your stuff was presented, but none of mine was. And I brought that to the attention of Mr. Landau. And he corrected it for a day. And then I had contacted him and said, you know, that some of the stuff that was on there was actually dismissed earlier, that it wasn't allowed. And

so then when I went last night, there was nothing on there again. So it was just on the website, you know. And it's in his e-mail. And it was to all you guys. It had just all your stuff, but none of my evidence.

CHAIRPERSON HART: Mr. Sweeney, I understand your concern, but I assure you that each and every Board member sitting here right now has read and reviewed all of the documentation that you have submitted. We have listened to the hearing tapes. We are fully advised of what your position is.

And in the interest of moving forward and dealing with this matter, please assume and know -- actually, you would be presuming that we understand what your concerns are with respect to the process. And we are essentially giving you a second chance that actually no one else has even requested with respect to presenting evidence on the size of dairies that may have been impacted.

So we are completely -- we understand the financial situation that you and your wife are in, and we actually are very sorry about that. We do need you to present the evidence on the limited scope that you have before us though. So do you understand?

MR. SWEENEY: Okay. I understand.

CHAIRPERSON HART: Excellent.

MR. SWEENEY: Okay. Could you put that slide

back up for me?

CHAIRPERSON HART: Yes. We will get a slide back up.

MR. SWEENEY: Okay. As you can see from these slides, you know, the herd size -- and the reason I only used the data from the Fresno office, that was the only data that was provided by me as per my request from Jorge Baca.

And you know, as you can see, dairies below 400 cows, 46 percent of them went out of business or did not file reports. And between 400 and 700 cow dairies, 32 percent either went out of business between 2007 and 2010 or did not file the report. But if the dairy was above 700 cows, it was only .6 percent. So there is a big discrepancy between what the big dairies and what the small dairies could afford.

And in the EPA thing, they had -- you know the water quality thing that they have, they have all the dairies under 700 cows exempted. And in those things, the little -- in the information that was provided to me, it's 34,000 pages of documents. They have a thing in there that the EPA does the financial analysis of that. And they found that the dairies under 700 cows could not comply. And I don't think it was ever done for this, for the dairies in California.

MR. SWEENEY: No. If you have something --

CHAIRPERSON HART: I understand the information that you're presenting to us. And when this Board -- I think what you're referencing back to is the general dairy Order. And during the hearings that we had on that Order, this Board was advised. The staff did do a financial analysis. We were well aware of the impacts on the small dairies and understood that there would be a larger impact on smaller dairies than on -- a larger impact on smaller dairies than on the large dairies, for obvious reasons. You have different economic situations going on.

And there was a policy determination that was made with respect to water quality. And while many of us were extremely concerned about the impacts on smaller dairies, we were concerned with respect to the nitrate problems that we have in the Central Valley and the water quality problems that we have. So there was a policy determination made sometime ago. So we do understand that analysis that you're presenting to us again.

MR. SWEENEY: But through the Office of Administrative law, weren't you guys required to do an economic feasibility thing?

CHAIRPERSON HART: Yes. And we did it.

Correct me if I'm wrong, staff.

STAFF COUNSEL MAYER: The 2007 general waste discharge requirements is a quasi -- the action of adopting that permit is called a quasi-adjudicative action. And those actions that the Board may take are not submitted to the Office of Administrative Law. The Office of Administrative Law reviews regulations that the -- quasi legislative acts like regulations that the Board may adopt. So that review did not occur for the general waste discharge --

CHAIRPERSON HART: I think what Mr. Sweeney is getting at is there was a financial analysis that was undertaken at some point in time by this Board on the dairy Order, was there not? A limited analysis done at a minimum?

ASSISTANT EXECUTIVE OFFICER LANDAU: Yes. There was definitely discussion of the impact of the regulations on the dairy industry. And as you've said, full recognition that there would be a disproportionately large economic impact on the smaller dairies.

MR. SWEENEY: Okay. Can I read a couple of quotes?

CHAIRPERSON HART: Sure.

MR. SWEENEY: Ms. Asgil, an agricultural economist, testified, "Because of these regulations, we're probably looking at the smaller dairies going under.

Probably those dairies that we're usually fond of protecting, dairies under 500 milking cows will be going out."

And then a quote from Dr. Longley expressed concerns: "Whereas, larger dairies, a 10,000 cow dairy would be able to absorb the cost; a 100 cow dairy is going to be faced with possible disaster."

And then a letter from the State Department of Food and Agriculture mentioned that Governor Schwarzenegger made a commitment to reject new regulations that unfairly impacts small business. "It is expected that new and existing regulations were reviewed for economic impact to small business. We encourage the Regional Water Board to review your proposal, propose alternatives that are less burdensome."

And you know -- and I don't know if you saw the letters that I submitted --

CHAIRPERSON HART: We did.

MR. SWEENEY: Okay. Well, I want to -- during our July 14th hearing before the hearing panel, your staff member Clay Rodgers testified that he acted as a gatekeeper. That's the exact term he used. It was his decision, he suggested, whether we should be granted any relief from the 2007 Order. But his behavior is unlawful under Water Code Section 13223, which says that only the

Regional Board has the authority to modify waste discharge requirements. The staff has no authority to make these decisions. And I was never allowed to talk to you guys.

CHAIRPERSON HART: Thank you, Mr. Sweeney. And your time is up.

You are always welcome to come before this Board at the public session, the public forum, to request that an item be put on the agenda. So I want you to understand that, first of all.

MR. SWEENEY: Well, I asked that specifically, you know. And I have written documentation that at least three times I asked for a Board -- I asked to appear before the Board. And one time they said that I could have three minutes.

CHAIRPERSON HART: Correct. Under the public forum.

MR. SWEENEY: All the other times, they ignored my request.

CHAIRPERSON HART: Okay. We apologize for that. So in the future going forward, my understanding is your concern is with the requirements that are in the waste discharge Order.

MR. SWEENEY: It's going to put all the little dairies out of business. And you know, this shows -- just look what it did in those three years.

CHAIRPERSON HART: We understand it's extremely frustrating and --

MR. SWEENEY: And I think that legally you guys should have been required to file things through the Office of Administrative Law.

CHAIRPERSON HART: Right. That's not the process for waste discharge requirements. That's a different process that occurs.

But if you could stay right where you are to see if anyone from the enforcement team has questions for Mr. Sweeney.

STAFF COUNSEL OKAMOTO: Yes. For the record, this is Mayumi Okamoto. I'm counsel to the prosecution team for this matter.

Mr. Sweeney, I wanted to ask you a few questions regarding the September 30th letter that you had submitted to Mr. Mayer. So if you have that in front of you, that would be helpful. In your letter, you state that the compliance rate data that appears in this chart on the screen --

STAFF COUNSEL OKAMOTO: I think I have it at my seat.

ASSISTANT EXECUTIVE OFFICER LANDAU: The one with the table?

STAFF COUNSEL OKAMOTO: Yes, thank you.

In your letter, you state that the compliance rate data on the table shown in that letter was provided to you by the Regional Board; is that correct?

MR. SWEENEY: By Jorge Baca of the Fresno office of the Regional Board.

STAFF COUNSEL OKAMOTO: But you didn't submit the actual spreadsheet that Mr. Baca provided you as a part of your September 30th submission?

MR. SWEENEY: If you want it, I could give it to you.

STAFF COUNSEL OKAMOTO: Didn't the spreadsheet that was provided to you consist of mature cow data for dairies in Fresno and not compliance rate data in the Fresno area?

MR. SWEENEY: Yeah. I had to figure that out on my own. But I will -- hold on for one second. Could I give that to you in a few minutes?

STAFF COUNSEL OKAMOTO: Sure. I can move on in the mean time.

MR. SWEENEY: Okay.

STAFF COUNSEL OKAMOTO: You also site dairy statistics from the California Department of Food and Ag. How did you come to the conclusion that California as a whole experienced a loss of 235 dairies from 2007 to 2010?

MR. SWEENEY: No. That wasn't California as a

whole. It was only the dairies that were in this region. You know, I separated them out by county. And here's this thing.

STAFF COUNSEL OKAMOTO: Thank you.

The discussion that is on page 2 of your September 30th letter where it states, "It shows that there were 1,950 dairies in California in 2007 and 1,715 in 2010." That statement refers to --

MR. SWEENEY: No. That statement refers to only the dairies within this region.

STAFF COUNSEL OKAMOTO: And is that information that you got from the California Food and Ag study? Or is that information --

MR. SWEENEY: Yeah, California Food and Ag. They have like a magazine type thing that they put out once a year with all the dairy statistics.

STAFF COUNSEL OKAMOTO: Okay.

MR. SWEENEY: If you want a copy, in that letter, there is a website that you can go to to get it.

STAFF COUNSEL OKAMOTO: You also mention in your letter that there was -- that you calculated 178 dairies lost in the Central Valley region; is that correct?

MR. SWEENEY: Correct.

STAFF COUNSEL OKAMOTO: And is that information -- does that information come from the

California Food and Ag study? Or is that information that you were given by the Regional Board?

MR. SWEENEY: What the Regional Board just gave me a -- you know, it was raw data. Okay. I either figured it out from that data or I got it from those books from the Department of Food and Agriculture.

STAFF COUNSEL OKAMOTO: Okay. Do you know if the combination of increased fee costs and dropping milk prices contributed to the reduction of dairies between 2007 and 2010?

MR. SWEENEY: Well, do you know that the feed price for a dairy above 700 cows and below 700 cows is minimal? And you know, a big dairy is more efficient, so they do have an efficiency level, but not 46 percent worth.

STAFF COUNSEL OKAMOTO: Is it your position that it is more difficult for dairies to stay in business in the Central Valley region than other parts of California due to the Central Valley's General Order, Dairy General Order?

MR. SWEENEY: It's my contention that a small dairy is at a disadvantage for being in the central region.

STAFF COUNSEL OKAMOTO: Okay. So even though you would say that it's harder for smaller dairies to stay in

business in the Central Valley because of the General Order, you site the reduction of dairies statewide and the percent reduction in the Central Valley as identical at 12 percent 2007 and 2010; is that correct?

MR. SWEENEY: Well, I never sited that, but that is true.

STAFF COUNSEL OKAMOTO: I believe it's in your September 30th letter.

MR. SWEENEY: Okay.

STAFF COUNSEL OKAMOTO: I have no further questions.

CHAIRPERSON HART: Thank you. Do we have any questions by Board members? No.

Okay. Mr. Sweeney has used his time.

If you have a very simple closing statement, Mr. Sweeney, I'll give you an extra minute.

ASSISTANT EXECUTIVE OFFICER LANDAU: I believe -- does the prosecution have --

CHAIRPERSON HART: The prosecution --

ASSISTANT EXECUTIVE OFFICER LANDAU: -- an actual statement.

CHAIRPERSON HART: Oh, I'm so sorry. I missed the prosecution statement. We were just doing cross-examination.

STAFF COUNSEL OKAMOTO: Mr. Rodgers will provide

the prosecution team's closing statement.

ASSISTANT EXECUTIVE OFFICER RODGERS: I'm Clay Rodgers, Assistant Executive Officer in your Fresno office. This is --

CHAIRPERSON HART: If you have any comments, but you guys --

ASSISTANT EXECUTIVE OFFICER RODGERS: The only comment I'd like to make a clarification on Mr. Sweeney's statement that we ignored his request to come in front of the Board. Mr. Sweeney did request a full hearing in front of the Board. He wanted two hours to present his case on the issues that he should have an extension on the annual reports.

The annual reports are important in that they need to be submitted annually, because they get that report. So an extension would be problematic.

However, we had one request of approximately 1400 dairies that are under the General Order. We put in writing one time in a response to him that we recommended that he come to the public forum and address the Board so that the Board could hear his concerns and decide whether or not it wanted to take the time to do that.

We did not ignore his request. We continually told him that as a member of the public, he should come and address the Board and seek to do that. And he choose

not to do that.

CHAIRPERSON HART: Thank you, Clay.

MR. SWEENEY: Do I get to make a closing statement?

CHAIRPERSON HART: Sure. You're technically out of time, but I will give you a minute to make your closing statement.

MR. SWEENEY: In response to his thing, we never asked for the two hours until the very end. And you can go back in my letters. And I never asked for two hours until the actual hearing was scheduled. Okay.

And that was -- and also, you know, you can go back in the records, and all of the letters that we exchanged, and only one time did they mention the thing about the three minutes, you know. And we had a meeting with them on August 11th, and I think that he behaved way out of line.

You know, we were supposed to be negotiating a thing, you know, to settle this thing. And he jumped out of his chair at least twice and was pointing at me and, you know, I don't think that that's how people, you know, should be acting that represent the State. I would classify it as an intimidation meeting, not a negotiation meeting.

CHAIRPERSON HART: Okay. Thank you, Mr. Sweeney.

the design and operation [illegible]
Order minimizing the threat to water quality. Failure to complete the Waste Management Plan and the annual reports and comply with the Order means that a dairy may not be implementing best practicable treatment or control, which is foundational to our anti-degradation findings when the General Order was adopted.

Enforcement of the General Order is important, not only to protect water quality, but is also needed to protect the integrity of the program. It is also not fair to those dairy owners and operators to go through the steps to comply with the Order and to protect water quality.

Mr. Sweeney is regulated by the General Order and he is obligated to comply. And we have a number of specifications or specifics here.

The vast majority of owners and operators have

complied and continue to be in business. The primary economic issues that we believe associated with Mr. Sweeney presented in his testimony is the increased operating cost from high feed prices and very depressed milk prices are the primary issues related to dairies not being able to continue in business and not related to our General Order.

We have taken steps to minimize compliance costs.

I'd like to request an additional minute.

CHAIRPERSON HART: Yes. You may have it.

ASSISTANT EXECUTIVE OFFICER RODGERS: Since additional time was given to Mr. Sweeney.

We have taken steps to minimize the costs to comply with the General Order by phasing in the requirements over a period of years.

We also have a California Dairy Quality Assurance Program that's run independently that, upon certification, they get a 50 percent reduction in their fees.

We have modified the monitoring and reporting program to allow representative monitoring in lieu of individual ground water monitoring at every dairy.

We provided an extension to complete the waste management plan by a year when we heard concerns about economics.

We provided funding to Merced County to support

an annual report tool that allows dairy owners and operators to prepare their annual reports for submission that is of no cost to them.

And on those reasons, we believe the proper -- we recommend that the panel hearing recommendations be adopted as proposed. Thank you.

CHAIRPERSON HART: Thank you.

I have a card from a Chris Mallah. It doesn't have an item agenda -- item number on it. I just want to make sure that it's not for this item. No, it is not.

And I received late a card on Agenda Item 9 from a Jennifer -- I can't read the last name -- from Clean Water Action. Yes.

UNIDENTIFIED SPEAKER: I can speak later.

CHAIRPERSON HART: You can speak later. Okay.

All right. Then at this point, I will close the public hearing on this item and we, the Board, may deliberate and vote.

Does anyone have comments or concerns right now?

I'll say before a motion is made by anyone that I understand that the process with the Regional Boards can be very confusing for people -- yes?

LEGAL COUNSEL PULUPA: If Clean Water Action wants to get comments on this, it's before the hearing is closed, not after.

does not need to speak on this item. Thank you.

That the public process can be confusing for folks who don't deal with the Water Boards on a daily basis. But it is all discharger's responsibility to try to understand the process and the Orders that we adopt. And we understand that they can be frustrating and difficult to understand. But our staff is here to help, and I have only to date heard very complementary things about our staff with respect to this program.

So I would encourage you, Mr. Sweeney and Mrs. Sweeney, to continue to seek assistance from our staff. They are here to help you. But it's patently unfair for any size dairy to not comply with the Order. Because whether you're comparing yourself to a larger dairy or smaller dairy, everyone is required to submit those reports. We understand there are financial differences between the size of the dairies. But even just comparing yourselves to the same size dairy, it's unfair for one to have to submit a report and others not to and us not to enforce on those bases.

I would like to note that the maximum liability in this case is upwards of $600,000 and the staff only

recommended an $11,000 or so dollar fine. And this Board does have the discretion to impose the maximum liability. I'm not in favor of doing that here. I understand that there are financial issues and concerns. But I would say that I don't see our staff as being heavy-handed here and as being reasonable.

And with that, I would say I support the Order if a motion is made.

Karl.

VICE CHAIRPERSON LONGLEY: Yes. I'd like to add that, as was mentioned earlier, the Dairy Quality Assurance Program is one way to reduce one's fees and at the same time assure that one is using the best management practices. And I certainly encourage any dairy -- and I have no knowledge whether or not Mr. Sweeney is in that program, but I certainly encourage all the dairies to be involved with that program.

CHAIRPERSON HART: Agreed. We have no other Board members. Do we have a motion?

VICE CHAIRPERSON LONGLEY: I move that the Board approve the motion -- the item in front of it.

BOARD MEMBER MERAZ: Second.

CHAIRPERSON HART: I have a second from Ms. Meraz. This is a voice vote.

All those in favor say aye.

BOARD MEMBER HOAG: Before you take --

CHAIRPERSON HART: Yes, Lyle.

BOARD MEMBER HOAG: Before the voice vote, a comment.

I've heard no objection to this Order, nor to the achievement of its objectives. This is a vexing case. And part of the actions we heard in testimony occurred before my tenure on the Board. On that basis, I'm going to abstain.

CHAIRPERSON HART: Okay. All those -- so we will take the voice vote now. All those in favor say aye.

(Ayes)

CHAIRPERSON HART: Any opposed?

And we do have an abstention, I understand, from Member Hoag. So the motion passes.

(Whereupon Agenda Item 10 concluded at 10:30 a.m.)

CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of November, 2011.

TIFFANY C. KRAFT, CSR, RPR
Certified Shorthand Reporter
License No. 12277