

A6028BE
HEARING MARCH 15, 2012

1 CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD
2 PANEL HEARING
3 SAN LUIS OBISPO, CALIFORNIA
4 MARCH 15, 2012
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8 CONTINUATION OF THE
9 HEARING ON THE WAIVER OF WASTE DISCHARGE
10 REQUIREMENTS DISCHARGED FROM
11 IRRIGATED LANDS
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<p>1 A P P E A R A N C E S 2 3 4 FOR THE CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD: 5 6 JEFFREY S. YOUNG, CHAIRMAN, SANTA BARBARA, WATER SUPPLY 7 8 Michael Johnston, Watsonville, County Government 9 Bruce Delgado, Marina, Municipal Government 10 Monica S. Hunter, Los Osos, Public 11 Russell M. Jeffries, Vice Chair, Salinas, Water Quality 12 Frances McChesney, Senior Staff Counsel 13 Michael Jordan, Santa Barbara, Recreation, Fish or Wildlife 14 Roger W. Briggs, Executive Officer 15 16 17 18 19 LEAD STAFF PERSONS: 20 Michael Thomas, Assistant Executive Officer/Ombudsman 21 Lisa Horowitz McCann, Section Manager/Aquatic Habitat 22 Angela Schroeter, Agricultural Regulatory Program/ 23 Basin Planning 24 25</p> <p>19 SPEAKERS: PAGE: 20 Tess Dunham 3 21 22 23 24 25</p> <p align="right">Page 2</p>	<p>1 address some issues that I think would be of interest to 2 the Board. We heard pretty frequently yesterday the need 3 to trust and verify. And I think -- in wanting to clarify 4 some components with respect to what could be added into 5 the Ag Proposal to maybe provide the Board members with 6 that sense of verification and trust would be appropriate 7 that an independent audit that has been done would be part 8 of the farm plan or be a required element of the farm plan 9 that is to be remained on site. If Staff comes to inspect 10 the farm plan, as they are allowed under the Draft Order, 11 that they would then be able to review the audit that was 12 done by the independent auditor through the third party 13 group. 14 In an effort to try to provide some additional, 15 you know, trust and verification to the process, that 16 would be an element that we think would be appropriate and 17 would not be one that we would be opposed to. So we put 18 that forward in the form of clarification here today as 19 something else for the Board to consider should they 20 decide to consider the Ag Proposal, you know, looking for 21 that trust and verification process. 22 The only other thing I really wanted to touch 23 upon here today is really talking about what we mean by 24 individual reporting or group reporting or watershed 25 reporting. There's obviously been significant discussion</p> <p align="right">Page 4</p>
<p>1 SAN LUIS OBISPO, CALIFORNIA 2 THURSDAY, MARCH 15, 2012, 2:15 P.M. 3 --- 4 MR. YOUNG: Folks, it's 2:15. We're continuing 5 Agenda Item Number 4, which is the proposed Conditional 6 Waiver of WDRs for irrigated agriculture. This has been 7 continued from yesterday's session. 8 Dr. Wolff. 9 MR. WOLFF: Yes. Mr. Chair, I will recuse myself 10 at this time from participating to Item 4 due to conflict 11 of interest being an agriculture discharger. 12 MR. YOUNG: Thank you. 13 All right. Mr. Briggs, so we are now at the five 14 minute rebuttal period? 15 MR. BRIGGS: Right. The Ag representatives had 16 their 60 minutes allocated to them, and they chose to save 17 the last five minutes for response to everything that they 18 heard yesterday. And I understand that's going to be Tess 19 Dunham. 20 MS. DUNHAM: Thank you. 21 For the Reporter's purposes, Tess, T-e-s-s, 22 Dunham, D-u-n-h-a-m, with Somach, Simmons & Dunn 23 representing Farmers For Water Quality. 24 I just obviously not going exactly what will be 25 in the Staff response so making some guesses and trying to</p> <p align="right">Page 3</p>	<p>1 with respect to what is the legal standard and the legal 2 requirement. 3 Well, Water Code Section 13269 with respect to 4 monitoring says a couple of basic things. One, it says 5 that you must have monitoring with a Conditional Waiver, 6 and that that monitoring may be individual, it may be 7 group, or it may be watershed based. 8 It also says that the monitoring must support the 9 development and implementation of the Waiver, and it must 10 verify the adequacy and the effectiveness of the Waiver's 11 conditions and that those monitoring results must be made 12 public. 13 We, of course, would contend that what we are 14 proposing does comply with all three of those elements. 15 Specifically, what we were talking with respect to the 16 reporting is group reporting that does verify and provide 17 the effectiveness of the Waiver. If you recall, the box 18 plats that Dr. Los Huertos put forward that really showed 19 and compared growers and really determined whether 20 management practices are working or not is a form of 21 verification in order to make those determinations to see 22 if the Waiver is working or not. 23 And, of course, those public reports or those 24 summaries that would be given to the regional Board would 25 absolutely be public. This is absolutely consistent with</p> <p align="right">Page 5</p>

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1 how it is done in regions five, regions four, and regions
2 six. This is a form, a standard, a process that the State
3 Water Board approved in its 2004 Order when it reviewed
4 the Conditional Waiver for the Central Valley. And it is
5 a format and a process that is allowed under the Water
6 Code.
7 So we hope that as you work on all this today,
8 you take all of that into consideration with respect to
9 the reporting, its group format, and that it does meet the
10 legal standards within the Water Code.
11 Now, policy decision. If the Board decides that
12 it wants something more different, to me that is a
13 different question with respect to whether does it meet
14 the legal standard.
15 That's the main points we wanted to leave with
16 you as you start your deliberations today. And if there
17 are any questions, of course.
18 MR. YOUNG: Any Board questions?
19 MS. HUNTER: No.
20 MR. YOUNG: Thank you. One thing I'd like to
21 just alert you to, I know you lodged some objections
22 yesterday --
23 MS. DUNHAM: Yes.
24 MR. YOUNG: -- at the beginning of our session.
25 I just wanted to remind you to take the opportunity right
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1 now during your rebuttal period if there's anything that
2 you heard that you had objected to that this would be an
3 opportunity for you to rebut what you heard.
4 MS. DUNHAM: The only thing I would add is,
5 there's been a lot of obvious reference and a lot of press
6 media to the recent U.C. Davis report that's come out.
7 And I think it's important for everybody to understand
8 that that report was released on Tuesday. It is over 1300
9 pages. And it's going to take time for everybody to
10 review and comprehend the extent of what that report says
11 and what it means.
12 As with any report, we're all going to pick and
13 choose elements out of it that we like and those that we
14 don't like as it is with any scientific or technical
15 report.
16 I think it may have been mentioned earlier today
17 that the State Water Board is holding a workshop with
18 respect to that report on May 23rd. And from there, we'll
19 be looking to give guidance to the regional Boards, as
20 well. So I think we all need to sit back, take some time,
21 review it ourselves, understand it ourselves, and make our
22 own determinations and conclusions with respect to the
23 information and then participate in the State Board's
24 Hearing.
25 MR. YOUNG: I'm sure you can appreciate that we
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1 haven't read the report.
2 MS. DUNHAM: Neither have I, Chairman Young, so I
3 can appreciate that.
4 MR. YOUNG: There's nothing that we -- we haven't
5 considered it because it's not part of the evidence on
6 this matter.
7 MS. DUNHAM: Understood.
8 MR. YOUNG: Yeah. Okay. Thank you.
9 MS. DUNHAM: Thank you.
10 MR. YOUNG: All right. Mr. Briggs.
11 MR. BRIGGS: So the Order of events, if I've got
12 it right, is that the Staff will have an opportunity to
13 provide their response to comments yesterday, as well as
14 the summary and then back to me for final recommendation.
15 MR. YOUNG: Okay. Can everybody speak up loudly
16 and clearly.
17 MS. McCANN: Good afternoon. Again, I'm Lisa
18 McCann, M-c-C-a-n-n, environmental program manager. I
19 brought my suitcase today in case you make me sleep over
20 again. Just kidding.
21 Last night, we successfully, and you patiently
22 got through all the public comment. And you also gave us
23 a homework assignment. And we took that seriously.
24 And, Mr. Johnston, you specifically asked, What
25 is the most effective Order that you, the Board, can pass
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1 to improve water quality which meets legal standards. And
2 you also asked what legal and policy issues need to be
3 resolved to make the proposed edits and alternative from
4 Farmers For Water Quality work.
5 We reviewed the proposed edits from Farmers For
6 Water Quality and the additional issues that were raised
7 yesterday during comments and during your various
8 questions, and we've prepared responses that we will
9 present to you in -- next slide -- in this Order. This is
10 generally what we're going to address. So it would be the
11 responses to the edits as proposed from Farmers For Water
12 Quality, some other suggested edits in response to
13 comments, and then just, if we have time, interest and
14 response to some of the other issues that were discussed,
15 and then as Roger mentioned, make a recommendation.
16 I do want to assure you that our responses
17 represent the best way to advance water quality
18 improvements so that aquatic habitat becomes healthier and
19 drinking water becomes safe for the communities on the
20 central coast.
21 MS. SCHROETER: I think the easiest way to go
22 through is to actually go through the presentation
23 provided by Ms. Dunham yesterday and talk a little bit
24 about what our response is to the information.
25 In some cases, it's -- a legal response is going
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1 to be required, so I'll defer to Frances for those.
2 We didn't have the opportunity to prepare a
3 handout to go with these slides. So what I'm going to do
4 I'm going to put it in the format where there's notes on
5 the bottom of this presentation. And you can just read
6 off the notes as we entered them last night and this
7 morning.
8 Can you read where it says -- no, no, no, no.
9 Let's just do it the other way, slide view.
10 (Discussion held off the record.)
11 MS. McCANN: I just want to clarify what we're
12 trying to show you here. We put the notes in some of the
13 responses to the edits that were proposed in the notes
14 area in the PowerPoint, so we don't want to use the slide
15 view because then we won't be able to show you the notes.
16 MR. BRIGGS: It's going to be down here.
17 MS. McCANN: So it's going to be a little bit
18 less than the full view of the slides. But hopefully
19 you'll be able to follow along and see exactly what we're
20 trying to help you see.
21 MS. SCHROETER: What I suggest you do is to use
22 your handout yesterday that Ms. Dunham provided to you to
23 go ahead and do your markups.
24 In general, our review focused on all of these
25 items in the presentation but especially in areas where

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1 there were suggested changes. And we'll go through
2 specifically how we responded to the specific changes or
3 not, and provide you with our justification.
4 This first one is a statement here that growers
5 are treated differently, however the treatment is not
6 necessarily based upon the threat to water quality but
7 size of operation. What I wanted to remind you -- if I
8 can pull up -- let's see if I can pull up my
9 presentation -- but with a tiering, the criteria for each
10 of the tiers.
11 In response to comments both in November, as well
12 as in March 2011, we proposed tiers that were based upon
13 threat to water quality. Tier 1, which is the lowest
14 threat. Tier 2, the water threat. Tier 3 is the higher
15 threat.
16 We did evaluate all sources of information in
17 terms of what was causing the impairments in the region
18 for toxicity as well as for groundwater. And we knew that
19 the major drivers for both those items were pesticide use
20 and specific pesticides were causing much of the toxicity.
21 We knew that fertilizer application, specifically
22 excessive fertilizer application was causing the
23 impairments to groundwater.
24 What we tried to do in terms of taking a
25 reasonable approach in advancing the current Order was to

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1 apply this tier criteria.
2 I'm just going to jump down to Tier 3. I think
3 that's where there is a lot of concern about whether or
4 not this really is an indicator of risk. So Tier 3 is
5 those farms that use chlorpyrifos or diazinon and
6 discharge to an impaired surface water, impaired
7 specifically for toxicity and pesticides.
8 So in our Staffs' opinion and judgment, there is
9 no other better indicator for threat to water quality.
10 The use of chemicals known to cause toxicity, specifically
11 diazinon and chlorpyrifos, and the actual discharge to a
12 water body that's already impaired for pesticides and
13 toxicity. Simply that.
14 The second one is nitrogen loading crop type and
15 an acreage grid of 500 acres. It's important to look at
16 how the tiers relate to each other. Remember, again, this
17 is relative threat. In this case, the acreage for Tier 3
18 is 500 acres and the acreage for Tier 1 is 50 acres.
19 All things held the same, for example, a lettuce
20 crop, the potential risk or threat to water quality for a
21 500-acre farm is much, much different than a 50-acre farm.
22 We'll show you also in a moment when we get to
23 other issues how we build the conditions from Tier 1,
24 Tier 2, and Tier 3 based upon that risk. So it's not that
25 the Tier 1 farms don't have any conditions, for example,

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1 related to nutrients, they just have lesser than those in
2 Tier 3.
3 MS. HUNTER: Angela, so what -- if I can just
4 restate what you just said. You're saying it's the size
5 of the operation, but also the type of pesticide they're
6 using and the higher crop potential for nitrogen loading
7 to the groundwater?
8 MS. SCHROETER: Right.
9 MS. HUNTER: So it's not one size fits all?
10 MS. SCHROETER: It's not one size fits all. It's
11 doesn't mean that no one in Tier 1 or Tier 2 have any
12 risk. It's relative risk and the balancing of reasonable
13 requirements relative to that risk.
14 MS. HUNTER: Okay.
15 MS. SCHROETER: The second one is requesting --
16 or is talking about this Ag report in terms of the
17 Executive Officer elevating into Tier 1 and Tier 2. And
18 that you may require also looking at the specifics of
19 operations in farms in terms of the tiering.
20 In response to these, what we're suggesting here
21 is to also address -- I can't remember the gentleman's
22 name -- about the smaller farms. He talked about smaller
23 farms and the 300 -- was it Sanchez? I can't remember his
24 name.
25 MR. YOUNG: Mr. Sanchez.

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1 MS. SCHROETER: Mr. Sanchez -- and whether or not
2 we -- how we were going to deal with those smaller farms.
3 And one of the suggestions that we are suggesting in the
4 Order -- I don't know if it's an appropriate time to pass
5 out these -- is to look at those specific farms that have
6 a specific disadvantage. So USDA actually has a
7 definition for limited resource farmers and to prioritize
8 compliance assistance for those types of farms.
9 In the interest of time, do you think I should
10 just --
11 I'm wondering if I should just jump to those that
12 speak to specific edits.
13 MR. THOMAS: Yes.
14 (Discussion held off the record.)
15 MS. HUNTER: Are you done, then, with that
16 particular issue of the E.O. having the ability to elevate
17 to a higher tier an individual operation?
18 MR. YOUNG: Monica, how about if I suggest this
19 that maybe we all hold our questions, write them down, so
20 we can have Staff tell us what they want to tell us, and
21 then we'll launch in with our questions. That might just
22 help get through this point.
23 MS. HUNTER: Yes. You asked me that yesterday,
24 and I forgot.
25 MR. YOUNG: That's okay.

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1 MS. HUNTER: Thank you.
2 MS. SCHROETER: What I'm doing now is going to
3 their first slide of suggested edits.
4 (Discussion held off the record.)
5 MS. SCHROETER: Starting on Page 18, the Farmers
6 For Water Quality start suggesting specific edits. For
7 example, here their suggestion is related to
8 Attachment 1B. Attachment 1B includes 140 findings. And
9 the solution was not to adopt Attachment 1B.
10 Attachment 1B basically is the attachment to the
11 Order which includes all of the findings about the
12 rationale for conditions in the Order. Staff included
13 these to be transparent about the justification and
14 rationale for those conditions. So we do not agree with
15 the suggestion to not adopt or not include Attachment 1B.
16 There's no page numbers. Sorry. It has the
17 heading here Attachment 1B.
18 Got it? Okay. So next page.
19 MR. JEFFRIES: You're not going page by page?
20 MS. SCHROETER: In the interest of time, since
21 this presentation was 66 slides, I'm going straight to the
22 ones where there was suggested modification to the Order
23 MRP. And then we can go back if you want to discuss any
24 of the other items.
25 (Discussion held off the record.)

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1 MR. YOUNG: Okay. Go ahead.
2 MS. SCHROETER: The second one relates to
3 Table 1A and Attachment 1B. And that, if you recall, is a
4 table of Water Quality Standards. They're specifically
5 culling out the narrative objective for biostimulation.
6 The objection is is that -- we included language here at
7 the bottom which is the water Board Staff estimates that
8 one milligram per liter nitrate is necessary to protect
9 aquatic life.
10 We agree that that's not an adopted standard. We
11 have a suggestion -- or we agree with the edit to delete
12 that.
13 MR. DELGADO: You're agreeing to delete Table 1A?
14 MS. SCHROETER: No, no, no. Just this piece
15 of -- just the sentence in 1A.
16 What Michael is handing out is a supplemental
17 sheet which actually summarizes all of the proposed edits.
18 MS. McCHESNEY: Angela, do have copies for people
19 in the audience, too?
20 MS. SCHROETER: I'm not sure how much admin made,
21 but I think there's a lot of extras there.
22 MR. YOUNG: We need to make sure everybody who
23 wants a copy gets a copy.
24 MS. SCHROETER: You can make as many copies as
25 you want.

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1 (Discussion held off the record.)
2 MS. SCHROETER: We can go to the page. Let's do
3 that.
4 MS. HUNTER: I just want to clarify which
5 sentence is being deleted in Table 1A.
6 MS. McCHESNEY: It's on your yellow sheet right
7 there, number one.
8 MS. SCHROETER: So in front of you, you have a
9 supplemental sheet. What it includes is all of the edits
10 suggested by Staff in response to both the information
11 presented by Farmers For Water Quality as well as some
12 issues that were brought up by the Board members
13 themselves yesterday.
14 If I can just make a suggestion or give you some
15 options for how to go through this. So we have the slides
16 in front of us from Farmers For Water Quality, we have the
17 edits here in the yellow sheet, and we also have the Order
18 itself. So I can connect back to the Order. We can go to
19 the page and we can look at that specific change.
20 MR. JORDAN: On the yellow sheet, Angela, when
21 you don't say Attachment A, does that mean we're back in
22 the Order? Like the second item.
23 MS. SCHROETER: Yes.
24 MR. JORDAN: Okay.
25 MR. YOUNG: Are you ready for the second change

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1 you're going to tell us about or --
2 MR. THOMAS: Yes.
3 MR. YOUNG: -- or proposed change that you
4 addressed and have a response to?
5 MS. SCHROETER: Yes.
6 MR. YOUNG: Go ahead.
7 (Discussion held off the record.)
8 MS. SCHROETER: Just to clarify, our comments
9 relate to specific changes as well as to the general
10 concept described as Part E. And Part E is very large. I
11 think it's going to be an involved discussion. So I'm
12 going to defer the Part E discussions until the very last.
13 Is that okay?
14 (Discussion held off the record.)
15 MR. YOUNG: Okay. Let's continue.
16 MR. THOMAS: I have a suggestion, Mr. Chairman,
17 that -- we have 66 pages that were submitted in the form
18 of slides with recommended changes. Some of those are
19 edits, some are policy things, some are rebuttal. What
20 I'm proposing is that instead of the Board trying to
21 follow along in the Order or in the attachments or even in
22 this sheet that we just handed out, that we just stick to
23 the issue that's on the Board, the slide that's up here,
24 where we are recommending an edit. We'll stop at each one
25 where we are recommending an edit in response to the

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1 suggestion. We'll just focus on that to try and simplify
2 this.
3 MR. YOUNG: I thought that's what we were trying
4 to do.
5 MR. THOMAS: I think what happened is, when we
6 passed out the yellow sheet -- and I can see the Board
7 members trying to follow along with the yellow sheet and
8 with the Order itself trying to match things up. I think
9 it's too complex.
10 MR. YOUNG: Okay. So we'll stick to what's on
11 the screen. Right?
12 MR. THOMAS: Yes.
13 (Discussion held off the record.)
14 MR. DELGADO: Since the audience only has the
15 yellow sheet, perhaps, then maybe you could tell them each
16 slide where it is on the yellow sheet that we're talking
17 about.
18 MS. McCHESNEY: Just to clarify, all the public
19 comment has occurred. Now you're hearing from the Staffs'
20 rebuttal. The Staff needs to communicate with you what
21 they want to communicate. The public isn't going to have
22 an opportunity to say more. The Staff can clarify to the
23 extent they can, but --
24 MR. DELGADO: I understand. But it helps
25 everyone if the public can follow along.

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1 MS. McCHESNEY: I apologize if I sound like the
2 public doesn't need to understand. It's important that
3 you understand and not to get distracted by lots of
4 different things. But just make sure the Board
5 understands the Staffs' responses.
6 MR. THOMAS: I think that these are
7 self-explanatory when we look at them. The Order
8 requires -- currently requires as this states -- I'm going
9 right to the part where it has red text. Organic
10 materials, such as organic pesticides, and we're going
11 to -- we agree that we should cross that out. And
12 registered pesticides that may. We agree to add that
13 language with the exception of taking out the word
14 registered so that it's just pesticides. We're agreeing
15 with most of that edit in that part of the Order.
16 MR. DELGADO: I just want to note that on the
17 yellow sheet, the word registered is not there. That's
18 your point.
19 MR. THOMAS: Yes.
20 MR. DELGADO: That the yellow sheet is what you
21 want to suggest to us?
22 MR. THOMAS: Yes.
23 MR. DELGADO: Okay.
24 MR. THOMAS: Next slide?
25 MR. YOUNG: Yes, next slide.

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1 MR. THOMAS: Next slide, it's slide 28. I'm
2 sorry the slides are not numbered.
3 We agree with this edit as it is presented here.
4 We're agreeing to make this change to the Order.
5 I'm going to keep going unless you stop me.
6 MR. YOUNG: That's fine. Just make sure we find
7 the page before you advance.
8 MR. DELGADO: I'm sorry. I hate to bugger up the
9 process. It would be nice if you would justify the change
10 or the disagreement. On the previous slide, you did not
11 agree to the word registered. And I know that that makes
12 a big difference, whether you talk about registered
13 pesticides or all pesticides. And you're recommending all
14 pesticides.
15 MR. THOMAS: Yes.
16 MR. DELGADO: So that's a big enough difference
17 that I'd like you to explain the justification.
18 MR. THOMAS: The reason that we took out
19 registered is we thought -- it's possible that pesticides
20 might be used that are not registered. That's all. We
21 don't want to --
22 MR. DELGADO: That's because not all pesticides
23 need to be registered. There's a lot of things that you
24 use to address pests that are not toxic enough to require
25 registration; right? Like safe soaps. There's lots of

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1 things that you can use to kill pests.
2 MR. YOUNG: Hold on one second.
3 Folks, it is hard for us up here to hear clearly
4 when there's mumbling in the background. I would
5 encourage you, please don't do it.
6 MR. DELGADO: My question is: Are there
7 pesticides that are legal to use that are not required to
8 be registered?
9 MS. SCHROETER: We were just intending it to be
10 inclusive of any type of pesticide used, registered,
11 unregistered. Any type of thing, chemical, that you would
12 use to control pests.
13 MR. DELGADO: Right. So my question is: Are
14 there pesticides that are legal to use in this context
15 that are not required to be registered with the EPA?
16 MS. SCHROETER: I'm not certain of that answer.
17 What I'm thinking of, for example, are examples
18 like the bait traps that currently -- I'm not sure that's
19 a registered pesticide. That would be an example of what
20 we were thinking of.
21 MS. McCHESNEY: And just to clarify the point of
22 this particular provision is that it's saying what is
23 covered. So the Waiver is covering the discharge of those
24 things. Whether it's a, quote, "registered pesticide" or
25 not, it's just saying that's the scope of this provision.

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1 It's not saying that they're discharging unregistered
2 pesticides just. It's just, this Waiver applies to things
3 that constitute waste, and waste includes pesticides
4 whether they're registered or not. It doesn't really
5 matter if they're registered or not. For this purpose,
6 it's just the scope of the Waiver so that they can be
7 allowed to discharge that. Otherwise, if it doesn't cover
8 it, they would have to go get some other permit to
9 discharge.
10 MR. DELGADO: So Staff is considering this to be
11 in the favor of the growers by expanding the kinds of
12 things that they can apply if it ever is needed to include
13 things that are not registered pesticides?
14 MS. SCHROETER: No. The context of this
15 requirement is to talk about what can be discharged to
16 water, what's covered by this Order.
17 MR. DELGADO: You're thinking that deleting the
18 word registered -- or leaving that word out is favorable
19 to the growers because it allows them to discharge more?
20 MS. McCHESNEY: No. It's not favorable or
21 unfavorable. This is just a general statement that these
22 kinds of things are the kinds of things that could be
23 discharged under the Waiver. So, you know, it's --
24 MS. SCHROETER: The language used to say, "such
25 as organic pesticides. Tess, yesterday suggested that

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1 that language be removed and added registered pesticides.
2 We agree with that statement and just are simply saying
3 that we want to remove the word registered. That might
4 preclude some pesticides that are not --
5 MR. DELGADO: Registered.
6 MS. SCHROETER: -- registered.
7 MR. JEFFRIES: I'm a little confused. I was
8 under the impression that all pesticides are registered.
9 MS. SCHROETER: That's not my understanding, but
10 I am not an expert on pesticides.
11 MR. JEFFRIES: Because homemade ones may not be.
12 But, also, my understanding is before a farmer can apply
13 pesticides, he has to file. He does not? I see people
14 shaking their heads. They don't have to file that they're
15 using that application on their particular farm?
16 MS. SCHROETER: They -- I believe that they have
17 to file if they're using a registered pesticide.
18 MR. THOMAS: Mr. Chairman.
19 MR. YOUNG: Let me just say something. We're
20 getting bogged down on the trees and losing -- you know,
21 we're losing sight of the forest here. This is just
22 describing waste kind of generally. Whether it's
23 registered or not, I don't think is really an issue.
24 Pesticides. It's a type of waste that's involved in this.
25 So there may be some that aren't; there may be some that

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1 are. For this purpose, I don't think it's going to make
2 any difference at all. It is definitional.
3 MR. JEFFRIES: It is definitional. And if it
4 becomes an issue, it can be brought back to the Board and
5 reconsidered.
6 MR. YOUNG: Okay. Yeah. Like anything can be.
7 MR. THOMAS: Next slide is Slide 28.
8 MS. McCANN: They don't have the numbers.
9 MS. HUNTER: We don't have the numbers.
10 MR. THOMAS: I know. I thought that you might
11 count them.
12 MR. YOUNG: We don't have the numbers.
13 MR. THOMAS: We agree with this change. So we're
14 going to make this change.
15 MR. JEFFRIES: As is?
16 MR. THOMAS: As is.
17 MR. JEFFRIES: This is a little easier to follow,
18 this way.
19 MR. THOMAS: We're not agreeing with this change
20 on this next slide.
21 MR. YOUNG: And why?
22 MR. THOMAS: We don't think it's necessary to add
23 the language, quote, "to the extent feasible," unquote.
24 MR. DELGADO: For purpose of the audience, I'm
25 not seeing this in the yellow sheet.

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1 MR. THOMAS: Because we're not agreeing to this
2 change.
3 MR. DELGADO: I want to back up on this because
4 Tess was recommending the words, "to the extent feasible"
5 be added to "Dischargers must to the extent feasible do X,
6 Y, and Z regarding vegetative cover on the creeks, et
7 cetera.
8 To me, they're saying, to the extent feasible,
9 give some wiggle room so that things considered infeasible
10 would not be required of them to do. I think Staff is
11 probably saying that that wiggle room is not room that
12 they want to allow to be put into this language.
13 I just wanted to make sure that that's the
14 justification for not agreeing to this.
15 MS. SCHROETER: There's two main reasons. One,
16 it's difficult to define what is "to the extent feasible."
17 It's an ambiguous term. The other reason is, that's a
18 consideration with all of the requirements. So if a
19 grower has difficulty implementing something because of
20 feasibility, that would be a consideration. So we don't
21 generally apply that to every single condition that we --
22 MR. DELGADO: And I agree with this because I
23 think that every time you have a shall or a must
24 throughout this Ag Order, you could add those words, "to
25 the extent practical, feasible," et cetera. And it

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1 doesn't really change much. But if we're going to change
2 it in one place, we'd want to wholesale change it
3 everywhere throughout the document. Right? Everywhere
4 you had a must or a shall, we could be at this place of
5 considering this addition.
6 MR. THOMAS: The existing language also says, "in
7 aquatic habitat areas as necessary to minimize." So we
8 already have language in there that provides wiggle room.
9 MR. DELGADO: That's wiggle room in a different
10 way; right?
11 MR. THOMAS: Uh-huh.
12 MR. DELGADO: "As necessary" is different than
13 feasible.
14 MR. THOMAS: Uh-huh.
15 MS. McCHESNEY: No. I think the wiggle room is
16 "minimize." You're not stopping it, just minimizing. So,
17 you know, that's -- the feasibility fits into that.
18 MR. DELGADO: You've got two wiggles. You don't
19 need three.
20 MS. McCHESNEY: Exactly.
21 MR. YOUNG: Okay. Next one.
22 MR. THOMAS: Next one, we don't agree with the
23 change. My intent in going through these was actually to
24 stop on the ones where we agree with changes and not spend
25 a lot of time on the ones where we don't agree with the

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1 changes. I wanted to just go to the ones that we do. But
2 we are --
3 MR. YOUNG: I think we want -- I'd like to know
4 which ones you're not agreeing to so we can just take a
5 quick look at it.
6 MR. THOMAS: Okay.
7 MR. YOUNG: Read it quickly and then we can move
8 on if we have no questions on it.
9 MR. THOMAS: The next slide indicates where
10 disturbance of aquatic habitat is necessary for the
11 purposes of water quality improvement or restoration
12 activities, Dischargers must implement appropriate and
13 practical measures.
14 We disagree with the deletion. We think that is
15 necessary and reasonable language.
16 MS. SCHROETER: But we also added language to
17 clarify that it relates to the other permitted activities.
18 So things like the 40, the stream alteration agreements --
19 actually the 401 certifications. So the change would be
20 in a case where disturbance of aquatic habitat is
21 necessary for the purposes of water quality improvement or
22 restoration activities or other permitted activities. So
23 just to clarify that it wasn't only for those water
24 quality improvement.
25 MR. THOMAS: If that makes sense, we're saying

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1 that there can be disturbance of aquatic habitat. And it
2 could be done as part of a stream alteration agreement or
3 a 401 certification program -- or 401 certification. And
4 there are requirements associated with those. For
5 whatever reason the farmer would need to create that
6 disturbance, they can get a permit to do it.
7 MS. McCHESNEY: Angela, it looks like you skipped
8 over Paragraph 35, Page 19, the one --
9 MS. SCHROETER: It's going to come up.
10 MS. McCHESNEY: Okay. Sorry.
11 MR. DELGADO: We have a question to the Chair.
12 Do we care about grammar or English details at this point
13 or does that get cleaned up later by Staff?
14 MR. YOUNG: It doesn't get cleaned up later.
15 MR. DELGADO: Okay.
16 MR. YOUNG: When we vote on something --
17 MR. DELGADO: Okay. So normally when you say
18 "or," you only say it once. So I would say purposes of
19 water quality improvement, comma, delete the first or,
20 restoration activities or other permitted activities.
21 Just like an and. You wouldn't use an and over and over.
22 MS. McCHESNEY: What I would suggest for that is
23 you note it. And then if the Board ends up choosing to
24 make those revisions, then we can correct all that then.
25 We can identify the ones.

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1 MR. DELGADO: Is somebody logging all these
2 little details?
3 MS. McCHESNEY: Yeah.
4 MR. DELGADO: I hate to get to this level. I
5 just wanted to ask the Chair what he thought about
6 grammar, small details.
7 MR. YOUNG: I haven't been concerned with grammar
8 up until now. I hate to admit that. If I can read it and
9 understand it, you know, I'm usually good with that.
10 MS. McCHESNEY: If it's a non-substantive
11 grammar, that can be corrected without needing a Board's
12 vote.
13 MR. YOUNG: If there's confusion to the way it's
14 written, yes, we've got to get it corrected.
15 MR. DELGADO: Thank you.
16 MR. YOUNG: Tell me what page we're on.
17 MR. THOMAS: 31, Slide 31.
18 MR. YOUNG: What paragraph number is that in --
19 okay. Page 43.
20 Okay.
21 MR. THOMAS: This suggestion is to add language.
22 Farm plans must be kept current, kept on the farm, and a
23 current copy must be made available to Central Coast Water
24 Board Staff upon request. The edit is to -- recommended
25 edit is to add the language "should Central Coast Water
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1 Board Staff conduct an inspection of the farm or ranch.
2 MR. YOUNG: Right.
3 MR. THOMAS: We don't agree with that edit. That
4 information should be made available upon represent, not
5 based on a visit.
6 MR. YOUNG: Right.
7 MR. DELGADO: Okay. So comment here. It's
8 obviously a big trust issue. They don't want a document
9 leaving the site because it could be copied, distributed,
10 to who knows -- as far as their perspective, to who knows
11 who. So this is a pretty big issue. Right?
12 We shouldn't be making it up one way or the
13 other. What's the industry standard? How do other
14 regions handle farm plan --
15 MS. McCHESNEY: I can answer that.
16 First of all, under the Water Code, the Board has
17 the authority to require the submittal of technical
18 reports. My recommendation on this is that I can't advise
19 you to accept this edit because the Board has the right
20 and responsibility to have technical reports submitted to
21 them so that they can evaluate water quality.
22 This would, then, preclude the Board from getting
23 information. It's already in the current Order. The
24 Central Valley Order requires these kinds of reports to be
25 submitted as soon as there's one -- automatically if
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1 there's one exceedance of water quality centered -- more
2 than one within three years or upon the request of the
3 Executive Officer.
4 This is the normal process for the Board to
5 implement its laws is to require technical reports be
6 submitted upon request. So this would say the Staff would
7 have to go to the farm, look at it, and then they couldn't
8 take it back to evaluate it.
9 MR. YOUNG: Mr. Johnston.
10 MR. JOHNSTON: Just to be clear about what the
11 concern is that's being expressed, I don't think it's a
12 concern that it would somehow slip out the back door of
13 the Water Board. The concern is: That except for
14 proprietary information in that report, that report, once
15 its received here, does become publically accessible
16 information.
17 MR. YOUNG: Right.
18 MS. McCHESNEY: Right. But that's not correct.
19 They can identify the proprietary information, and the
20 Board is obligated by law to keep it protected. And they
21 already do that. There's quite a few reports in all the
22 different programs that are submitted regularly that
23 have -- basically two reports are submitted, the redacted
24 report with the confidential information deleted. That's
25 the public report and then a private report that this
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1 Staff keeps separately. And that happens in many
2 programs. All the regional Boards deal with this on a
3 regular basis.
4 MR. YOUNG: Okay.
5 MS. McCHESNEY: Just so you know, the Order does
6 very clearly state how the processor, how the person would
7 identify what is proprietary. And they can do that.
8 MR. JOHNSTON: Just out of curiosity, is there a
9 template for these reports? Remind me. I forget.
10 MS. McCHESNEY: I don't know.
11 MR. JOHNSTON: At this point for the farm plan --
12 at this point that -- what -- there's no clarity as to
13 whether what an individual farmer would consider
14 proprietary and what we would consider proprietary in
15 terms of general categories, whether those would coincide;
16 correct?
17 MS. McCHESNEY: Correct. That's why it's up to
18 the farmer to identify what they think is proprietary.
19 And there's quite a bit of case law. This has been a big
20 issue in the case law about how to do that, including in
21 the area of agricultural information. But it's really up
22 to them to identify what they think is confidential.
23 And it only becomes an issue if then someone
24 makes a public record act request for the document and
25 then which -- the process then is to go back to the farmer
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1 and say, "Justify why you think this is proprietary
2 because we've been asked for it." So it's not released
3 until they agree to it.
4 MR. JOHNSTON: I know we're well past the
5 eleventh hour. Were we not, it would certainly be nice to
6 simply have a definition of what the case law says is
7 proprietary. That might answer the question.
8 MS. McCHESNEY: Yeah. It's really up to them to
9 say what they think is proprietary. I've actually been
10 doing -- been an attorney for the Board now for 25 years
11 and only once has anybody ever asked for a report. It's
12 even been an issue in my experience. It's been pretty
13 straightforward. They identify it; we keep it
14 confidential.
15 MR. YOUNG: Okay. Continue.
16 MR. THOMAS: Next slide, Paragraph 46, Page 21.
17 The recommendation is to delete this text. And the rather
18 than read it all, I will read instead our reason for not
19 agreeing with the deletion.
20 This finding is a high property inclusion for
21 environmental justice. Individuals concerned about
22 drinking water and other stakeholders, they've expressed
23 concern about this very issue and wanted it to be in the
24 Order. And the State Water Board does have goals with
25 respect environmental justice as I mentioned yesterday.

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1 MR. DELGADO: And I wanted to jump in here
2 because the rationale I heard from Tess for deleting this
3 was that it was redundant under the law so that it's
4 inappropriate to include it as a condition of the Waiver.
5 MS. McCHESNEY: Right.
6 And, actually, it shouldn't be in this portion.
7 I agree with Tess, too, that it should be -- this is the
8 Order part. It should be -- it can be a finding in the
9 Order. It's not an Order. It's not a part of the Order
10 part.
11 MR. THOMAS: I agree. That's our mistake. We
12 agreed last night that this was going to be moved and made
13 an Order --
14 MS. McCHESNEY: Made a finding.
15 MR. THOMAS: -- made a finding --
16 MS. McCHESNEY: Right.
17 MR. THOMAS: -- and not a condition.
18 MS. McCHESNEY: Right. It's just like more
19 notice to people that these are the kinds of things that
20 can happen.
21 MR. JEFFRIES: This language will be kept, but it
22 will be kept in a finding?
23 MR. YOUNG: Correct.
24 MS. McCHESNEY: Correct. Just an
25 informational --

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1 MR. JEFFRIES: All right.
2 MR. YOUNG: Okay. Continue.
3 MR. THOMAS: Next slide I'm going to skip because
4 we're going to deal with Part E in a few minutes.
5 Next slide is Paragraph 52, Page 22. We're not
6 going to add this language here as suggested because we
7 have included this language in the monitoring and
8 reporting program, and it's not necessary to make this
9 change and include it in the Order, as well.
10 MR. DELGADO: Does it hurt or reduce the quality
11 of the document to include it in an additional location as
12 they're suggesting?
13 MS. SCHROETER: No, it doesn't.
14 MS. McCHESNEY: Well, I had a concern with it
15 because it's kind of ambiguous the way it's written;
16 whereas, in the MRP, it's much more clearly stated under
17 what circumstances you either do individual or group
18 monitoring. So to put this kind of general thing here
19 creates ambiguity later when -- because the MRP -- because
20 the sentence is to comply with the MRPs. The MRP includes
21 the language that's very specific about how you do group
22 monitoring.
23 MS. SCHROETER: The MRP is much more specific
24 about the areas in which it applies.
25 MR. DELGADO: So this might be an example of a

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1 subsequent plain English summary of the Ag Waiver could
2 say something about this being allowed either individually
3 or through a cooperative Monitoring Program. If you
4 choose to do it one way or the other, you need to refer to
5 the MRP for further direction. It's just something to
6 keep in mind as an example of a subsequent plain English
7 summary.
8 MS. SCHROETER: So this is just a list of items
9 in the electronic -- or I'm sorry in the Notice of Intent.
10 They suggested an option related to Part E. We're going
11 to discuss that in a moment so I won't talk about that
12 one.
13 The second one is a suggestion to add a place on
14 the NOI to identify cooperative groundwater monitoring
15 similar to the cooperative surface water monitoring
16 selection. And that's fine. We agree with that.
17 There was an additional suggestion at the end to
18 delete information on the Notice of Intent which is asking
19 farmers if there is the presence and location of any
20 perennial or intermittent or ephemeral streams or riparian
21 or wetland habitats on their farm.
22 We disagree with this deletion. What it does is,
23 having that checkbox, it really is just a checkbox in
24 terms of, do you have a stream adjacent to or running
25 through your property. It allows us to identify those

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1 farms quickly and to prioritize those if necessary. So we
2 disagree with that deletion.
3 MR. DELGADO: Chair, can I jump in?
4 MR. YOUNG: Yes.
5 MR. DELGADO: What I have down that Tess stated
6 on this was that there was no need for a standalone
7 requirement. Those are my words. I may be incorrect.
8 But if I'm correct, is this a standalone
9 requirement, or is it just a checklist item?
10 MS. SCHROETER: This is just a checkbox on the
11 Notice of Intent.
12 What I understood from Ms. Dunham yesterday was
13 she said it was not necessary because they already
14 included the farm map and that the locations of streams
15 were located on the farm map. That's what was written in
16 my notes.
17 This is simply a checkbox. Do you have a creek
18 or not. Without the checkbox, Staff has to go into every
19 single farm map and look at them and see who has a creek
20 running through their property or not. This is just a
21 checkbox to say presence, absence, and allows us to
22 prioritize them quickly.
23 MR. JOHNSTON: What I recall from the discussion
24 wasn't just that you could get this information from the
25 farm map, but that the question of figuring out -- some of
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1 these things -- it's easy to know if you have a stream.
2 If you have a wetland area habitat, her statement was that
3 could require a fairly comprehensive study to answer the
4 question, that some of these -- some of the categories
5 that are in -- I can't really tell from this if it's N
6 or -- the last one there.
7 MR. YOUNG: N.
8 MR. JOHNSTON: -- are fairly obvious, and some
9 are not, and that you would not necessarily get an
10 accurate answer.
11 MS. SCHROETER: This is just a screening level.
12 So we're not using it as a definitive interpretation of
13 whether or not it's an actual wetland per the definition.
14 What we're looking at, is there streams, creeks, or other
15 wetland area, riparian types of habitat running through
16 the property or adjacent to the property.
17 MR. YOUNG: In other words, you're not expecting
18 them to hire an expert to help them answer those
19 questions?
20 MS. SCHROETER: No.
21 MR. YOUNG: It's if they know?
22 MS. SCHROETER: That's correct.
23 MR. JOHNSTON: And it won't change their tier
24 depending on how they answer?
25 MS. SCHROETER: It does not change their tier.
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1 It's merely a screening tool for us.
2 MR. DELGADO: To me a wetland habitat means, in
3 my mind, a pond or a lake. That's your interpretation, as
4 well?
5 MS. SCHROETER: I think that's a fair
6 characterization.
7 MR. DELGADO: All right.
8 MR. YOUNG: The definition may be more
9 complicated than that as to what's a wetland.
10 MR. DELGADO: The official definition is more
11 complicated than that?
12 MR. YOUNG: Yes.
13 MR. DELGADO: But in the farmers' minds and in my
14 mind, a wetland looks different than a creek. It looks
15 like a round object that has surface water.
16 MS. SCHROETER: There is actually a definition in
17 the Order.
18 MR. YOUNG: Yeah. It could be a marsh.
19 MS. McCHESNEY: I don't know if you heard Angela.
20 There is a definition in the Order. They can look at that
21 and say "yes" or "no."
22 MR. YOUNG: Okay.
23 MR. DELGADO: In real-life, I think when they
24 fill this out, they're going to check the box according to
25 their mindset. They're not going to go look for the
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1 definition buried in the Order.
2 MR. JOHNSTON: Right.
3 MR. DELGADO: If they see a seepy area with water
4 on top of it, they may not think of that as a wetland area
5 and they may not check that box or put that on a map.
6 MS. SCHROETER: One thing we could do, then, to
7 address your comment, Mr. Delgado, is, similar to other
8 areas of the Notice of Intent already, we have a link on
9 the side for those that require more definition. And you
10 simply click on that wetland and the definition pops up so
11 they can see it right there.
12 MR. THOMAS: I'm going to skip the next slide.
13 (Recess taken.)
14 MS. SCHROETER: We're moving to Part E. Just to
15 summarize, those are all of the edits, our response to all
16 of the edits, that would result in an edit to the Order
17 based upon the input from Farmers For Water Quality. We
18 do have additional edits which are shown on the yellow
19 sheet which we'll discuss later which are a result of
20 Board member discussion.
21 MR. YOUNG: Are you moving to E right now?
22 Because there's some other pages in here that don't
23 involve E, I believe. Like they've got a Paragraph 61,
24 Page 25. I'm assuming you're not in agreement with adding
25 that language. Oh, cause it does --
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1 MS. McCHESNEY: That is Part E.
2 MR. YOUNG: That is Part E. Okay. Gotcha.
3 All right.
4 MR. JOHNSTON: There was also some groundwater
5 monitoring stuff. Maybe that's going to be covered in
6 your Part E, also. Attachments 2A, B, and C.
7 MS. SCHROETER: That specific edit also relates
8 to some changes related to Board member discussion. So
9 we'll capture those in a moment.
10 MR. JOHNSTON: Thank you.
11 MR. THOMAS: With respect to Attachment E, it
12 was --
13 MS. HUNTER: Is it Attachment or Part?
14 MR. THOMAS: Part E.
15 MS. HUNTER: Part E. Thank you.
16 MR. THOMAS: Part E, language was proposed to add
17 New Part E. The Board directed us to evaluate that
18 language and to consider the pros and cons and answer the
19 question about what would be the most effective Order.
20 MS. HUNTER: Question.
21 MR. THOMAS: So the pros --
22 MS. HUNTER: Question.
23 MR. THOMAS: Yes.
24 MS. HUNTER: I have a question.
25 Can you tell me the title of Part E and where I

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1 can find it in the Order so that I'm sure that I
2 understand what we're talking about. In this case, I do
3 want to know where I am in the document.
4 MS. McCANN: You're asking where in the Order?
5 MS. HUNTER: (Nods head.)
6 MS. McCANN: Page 26. This is where they are
7 recommending to insert --
8 MS. McCHESNEY: It's not in the Order.
9 MS. McCANN: -- a New Part E.
10 MS. McCHESNEY: It's their PowerPoint --
11 MS. HUNTER: Right.
12 MS. McCHESNEY: -- with the new part.
13 MS. HUNTER: What I'm saying is, we already have
14 a Part E. On Page 26, there is a Part E.
15 MS. McCHESNEY: It would replace their proposed
16 Attachment B with a New Part E.
17 MS. HUNTER: But where does the New Part E
18 belong? That's my question.
19 MS. McCHESNEY: Renumber, reletter. So E -- it
20 would be a new E, and E would become F.
21 MS. HUNTER: Become F. Okay. That's what I
22 wasn't clear on. Okay. Got it.
23 MR. DELGADO: So they would replace the Part E
24 that's in the Waiver with their Part E?
25 MS. McCHESNEY: No. They're making some changes

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1 to their Attachment B. Their third party group proposal
2 that they submitted in March and May, they are proposing
3 changes to that, and that's going to be E. It would be a
4 new E, and then E would become F, and F would become G.
5 MR. DELGADO: Okay. The reason I'm a little bit
6 confused is because the title of their Part E is pretty
7 much the same as the title of our existing Part E. So you
8 would have an E and an F that would had the same title.
9 MS. McCANN: There is a difference. Their title
10 says, Additional conditions that apply to Tier 2 and
11 Tier 3 Dischargers -- this is what's new -- through
12 participation in third party group. And ours which does
13 not say per third party group will become Part F. Wait a
14 minute.
15 MR. THOMAS: The pros of the new language, the
16 new language that was proposed. There is more detail here
17 on a potential coalition concept, and that's a good thing.
18 It looks like they did more work on it, thought about it
19 more, and provided a little bit more detail.
20 We thought that was a good thing. We also think
21 that coalitions could be very helpful in the overall
22 implementation of the Order, the Water Board's Order, and
23 that would include any Order. That includes the 2004
24 Order or this proposed 2012 Order.
25 They really could help tremendously with

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1 education, assistance, outreach coordination and grants,
2 inspections, providing incentives, awards, collaboration
3 and leveraging of their efforts with others. I think the
4 coalitions also could help facilitate broad scale
5 implementation. That includes Dr. Los Huertos' ideas.
6 And I specifically call them ideas because they
7 are ideas. They're not developed. They're just concepts
8 or ideas that he has been working on for some time. As he
9 has said, he's not actually working for anyone right now.
10 They're just his ideas.
11 We've talked to him about this individually
12 outside these Board hearings about where he actually
13 stands with this. And he's told us he does not have
14 support, he does not have an infrastructure, he does not
15 have an organization, or the support from any organization
16 to implement what he's talking about doing. He's told us
17 that it is purely an idea.
18 I'm not trying to knock the idea. I'm just
19 trying to put it in the context of how he is presenting
20 it. Because there's -- we heard a lot yesterday and at
21 the last workshop, that we really want you to implement
22 Dr. Los Huertos' proposal. And it's not a proposal that
23 can be implemented.
24 You also heard from Sarah Lopez yesterday about
25 the Quail Creek Project that she did with Preservation,

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1 Inc.
2 We think that the work that they did their to
3 reduce loading is great. We think the coalitions could
4 cause more of that type of work to be done. And we would
5 be very supportive of that.
6 You also heard from Ross Clark who talked about
7 Wetland Treatment Systems. And I don't know if I got the
8 name of his organization correct there. I just was going
9 by memory.
10 MS. HUNTER: Yeah. I think it's Central Coast
11 Watershed Group.
12 MR. THOMAS: Central Coast Watershed Group.
13 Sorry about that.
14 The kind of work that Ross Clark was talking
15 about, we are highly supportive of. We agree with his
16 presentation, and we think it was outstanding. We think
17 the work that he's doing and is proposing to do is
18 outstanding. We will do everything that we possibly can
19 to help him implement those types of projects. And we
20 think coalitions would be a big help in doing that. I
21 actually think that it would be necessary to do it, the
22 kind of collaboration that they could provide.
23 The cons. It is still a concept, though we think
24 it is a concept that could be done. By saying it's a
25 concept, I'm not trying to be overly critical, I'm not

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1 trying to kill the idea. I actually hope that it is
2 developed, and that we do implement it -- or that the
3 industry does implement it. And there may be more than
4 one coalition. We don't know at this point.
5 We're still missing key indicators of pollution
6 reduction and practice effectiveness. The language that
7 is proposed is not what Dr. Los Huertos was proposing,
8 even though what he was proposes was in concept, it's not
9 the same thing -- or it's not the same as what Sarah Lopez
10 did and what she described.
11 If you were to look at the Preservation project
12 that Sarah implemented -- it's already done, that project
13 is already done -- there's a great amount of detail there.
14 It's a scientifically based project. It's statistically
15 significant. The design is based on science and achieving
16 statistically significant results.
17 That kind of approach, that kind of information,
18 is not included in this concept. Again, I don't mean to
19 be overly critical here. I'm just trying to point out
20 that what the context is for this language. And there
21 also isn't a point of compliance, which we discuss in our
22 Draft Order.
23 There's also no risk-based prioritization
24 criteria such as what we have in our Order. No milestones
25 or targets within the term of the Order. The time frames

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1 presented are too long. These Orders -- the one before
2 the Board and the 2004 Order have a five-year term. They
3 have to be renewed in five years for a reason.
4 We are required to -- in order to be consistent
5 with the law, we need to determine the effectiveness of
6 the Order. At the end of five years, we need to be able
7 to say to the Board and the public and ourselves and the
8 growers how effective that Order is. We need to know that
9 so that when we renew it, we can make changes that are
10 necessary to ensure that the Order is effective.
11 MR. YOUNG: Are you, Michael, referring to the
12 2015 date that was proposed as unacceptable because it's
13 too long term?
14 MS. McCANN: I'm not sure what you're referring
15 to. In here, we have a replacement for our timeline with
16 the first milestone at eight years out. I would have to
17 look at it to tell you what the other ones are.
18 MR. BRIGGS: I think there was an 8-15.
19 MS. McCANN: Yeah. Maybe that's what --
20 MS. HUNTER: It's under Part G? Is that revised
21 in Part G, the time frame?
22 MS. McCHESENEY: Yes, it would be G.
23 MS. McCANN: Yes. It would be their Part H
24 replacing our Part G with time schedules that are outside
25 the term of the Order five years -- excuse me -- eight

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1 years. And I think Roger's correct, 15.
2 MR. DELGADO: Can you explain the difference
3 between milestones, targets, and time frames? When I see
4 the time frames that they suggested, I kind of thought of
5 those as milestones. Can you explain the difference.
6 MS. McCANN: I think we're using milestones and
7 targets interchangeably. So maybe we didn't need two
8 words there. Or maybe another way to say it is a
9 milestone is a target plus a time frame.
10 What are we trying to achieve, that's a target.
11 And what's the time frame that we want to achieve it or
12 the date we want to achieve it by. So we have, for
13 example, indicate pollution reduction with some indicators
14 by a set date. It's fair to say that they also have some
15 targets with time frames. I think you're calling those
16 milestones now. But they're eight years and fifteen years
17 out.
18 MR. DELGADO: When you say no milestones/targets,
19 is that true, or did they have some?
20 MS. McCANN: Let me clarify. You have to read
21 the other part of that phrase. Within the term of the
22 Order. There's nothing proposed as a set goal that we
23 would measure something by in terms of pollution reduction
24 or effectiveness of management practices with a date that
25 is within the term of the Order the way the language is

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1 written.
2 MR. DELGADO: So they may have a target of
3 certifying at least 20 percent of the participating farms
4 to an audit. But that certification, that target, is not
5 a water quality numeric target. It's a process target,
6 sort of.
7 MS. McCANN: I agree with your assessment, but I
8 wasn't trying to distinguish between water quality and
9 other types of targets here. Now you're raising a
10 slightly different issue which is, if there are -- to the
11 extent that there are some -- we'll call them process
12 targets to use your term -- they're not reported or
13 they're reported at such a high level, that they won't
14 tell us how much progress we're making in pollution
15 reduction or advancing towards water quality improvement.
16 MR. BRIGGS: Lisa, back from the mic just a hair.
17 MS. HUNTER: By high level, you mean aggregate?
18 They're reported at an aggregate level that does not allow
19 us to understand what's happening? I don't know what you
20 mean by high.
21 MS. McCANN: As far as the language that is in
22 here to be added to the Order, that remains unclear. But
23 when I say high level, aggregate is not -- it's not just
24 aggregate that's high level. It's what's scale and what's
25 the indicator that we're aggregating the information. I
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1 am talking about things like numbers of growers or types
2 of practices.
3 MS. HUNTER: Okay.
4 MR. YOUNG: Go ahead.
5 MR. JOHNSTON: Just a quick question here.
6 Is this list of cons the list of policy and legal
7 issues which would have to be resolved to utilize this
8 concept or is that coming separately?
9 MR. THOMAS: These things would have to be
10 resolved, yes.
11 MR. JOHNSTON: I understand.
12 So this is that list that I was asking for last
13 night; is that correct?
14 MR. THOMAS: Yes.
15 MR. JOHNSTON: Okay. I want to let you walk
16 through it, and then I've got some questions about
17 different things.
18 MR. DELGADO: Okay. I have to jump in if I
19 could, Chair, because I don't see all these as legal.
20 Having risk-based prioritization criteria, is that a legal
21 requirement?
22 MR. YOUNG: They're going to get to that.
23 Whether it's legal or not, they're --
24 MR. DELGADO: They just did get to that. They
25 said, I think, that everything up there are legal
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1 requirements. That's what I think I heard.
2 MS. McCHESNEY: No. I think he said they were
3 some policy, some legal.
4 MR. DELGADO: Okay. I missed that. Thank you.
5 MR. YOUNG: Yeah.
6 MR. THOMAS: So the next thing is that we don't
7 think that the language is responsive to the threat to
8 human health. And that includes not focusing on --
9 because it does not focus on shallow groundwater where
10 most domestic wells are located and where the threat to
11 human health is greatest. There are no targets or
12 indicators of nitrate-loading reduction, no advanced
13 requirements for higher risk operations, operations where
14 the threat is greater, which is how our Order is designed.
15 The last item there, the language and the
16 approach does not meet the legal standard. We talked to
17 our attorney about this last night and this morning. And
18 the Board -- members of the Board said yesterday that
19 Board counsel's advice is a high bar. Just so you know,
20 from the Staffs' perspective, it's the bar.
21 When we have the conflicting attorneys, attorneys
22 giving conflicting interpretations, we take the advice of
23 the Board's legal counsel. We don't take the advice of
24 other counsel.
25 I don't know if you want to jump in here,
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1 Frances.
2 MS. McCHESNEY: I don't know.
3 Do you want to hear my -- these are a couple
4 issues that I had identified as concerns I have with their
5 proposal.
6 So the first one is that Ms. Dunham has expressed
7 the concern that the proposed Order would somehow be
8 interpreted to require immediate compliance with Water
9 Quality Standards because it says, "Dischargers shall
10 comply with Water Quality Standards and protect beneficial
11 uses and prevent nuisance."
12 And my comment on that has been that it's the
13 language in the existing Order, it's the language in all
14 the other Orders adopted by other regional Boards
15 regarding compliance of Water Quality Standards, it's the
16 requirement of the law that they comply with Water Quality
17 Standards.
18 Where the issue has come up is that there seems
19 to be this view that the language means that -- assuming
20 the Board adopts something today, that tomorrow everybody
21 is going to be out of compliance. But there are
22 numerous -- with the Water Quality Standards, there are
23 numerous provisions in the Order, both in the findings and
24 in the Order part that make it clear that for purpose --
25 and in the State Water Board's policy on the Non Point
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1 Source Policy, for nonpoint sources, compliance with Water
2 Quality Standards means to implement management practices.
3 If they aren't effective in reducing discharges to meet
4 Water Quality Standards, that they revise or do new
5 management practices.
6 And it's been made clear in the Order. It's the
7 same language in the Central Valley Order that the Staff
8 has proposed and is currently in the Order. It has not
9 resulted -- it's the same language that's in the Coalition
10 Group Waiver for -- in the Central Valley. It has not
11 resulted in any enforcement actions for not complying with
12 Water Quality Standards.
13 So my recommendation that it not be changed
14 because it's -- it implements a law, and it's been
15 carefully defined within the Order.
16 Tess proposed a different way to address that
17 issue in her proposal, which is the Paragraphs 21 and 22.
18 You know, if you -- there are ways to write it in the way
19 she's proposed, but it would take some rewriting because
20 of some issues that she's raised by her proposed rewrites.
21 And I would -- you know, if you want to consider
22 her proposal, I'd be happy to talk about what I would
23 change about her proposal. But I really think it's
24 working the way it's working. It's a requirement of the
25 law to require compliance with Water Quality Standards.

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1 That's the basic standard of every discharger in the State
2 is to comply with Water Quality Standards.
3 In the case of nonpoint source pollution, it's an
4 integrative process to do management practices and then
5 make them better. There's nothing in the Order that would
6 require them to be in compliance tomorrow. It's made very
7 clear.
8 MR. DELGADO: To the Chair, if I may. If she had
9 suggestions that you just said were workable that also
10 satisfy your needs and our needs, then why wouldn't we
11 take a look at those?
12 MS. McCHESNEY: That's what I said. I did look
13 at them. They would require significant rewrites because
14 she's introduced new issues. She's changed other things
15 in the Order in response to those changes. So it's not
16 just like one thing. It's like going to a whole bunch of
17 different places. Okay. Fix that, now go fix that, now
18 go fix that. If you want me to do that, I can do that.
19 I want to just tell you that I don't think it's
20 necessary to address the concern, and the language works
21 the way it is. So that's one of the legal issues.
22 MR. DELGADO: Okay.
23 MR. YOUNG: Mr. Johnston.
24 MR. JOHNSTON: Yes. Just a suggestion on
25 process, Mr. Chair. Because I know none of us want to be

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1 here at midnight tonight.
2 You know, Staff has done an impressive job on, I
3 suspect, very little sleep of responding to a tremendous
4 volume of stuff. I suggest that we let them finish their
5 presentation. And to the extent that we don't understand
6 stuff that they're presenting, that we ask questions so we
7 understand it.
8 And I think that there are some other proposed
9 edits that they have. We let them run through their whole
10 presentation, and we ask questions as we need to to
11 understand it. And then we circle back around, and we
12 talk about whether we as a Board want to consider trying
13 to implement some version of what we heard yesterday from
14 Tess. And if we decide we do, then I think we need to run
15 through point by point: I think this is the list of legal
16 and policy considerations that would have to be resolved,
17 and the policy considerations to our satisfaction and the
18 legal considerations certainly, I want to satisfy Frances
19 here. That's what we pay her for. I suggest we just run
20 on through, ask questions as we need to to understand, and
21 then circle back around and see how much we want to dig
22 into this.
23 MR. YOUNG: That's fine. So go ahead.
24 Frances had some more, I think, to address this
25 list.

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1 MS. McCHESNEY: I talked about the other one.
2 That's the proposal to delete the provision of the Staff
3 report, the Staff proposal that they provide their farm
4 plans upon request to the Board, and they have proposed to
5 not allow that to happen. And I have already described my
6 legal concern with that, that it's undermining your own
7 authority to get technical reports submitted to the Board,
8 and that I would not recommend that. And the Central
9 Valley's Order has that, the current Order has that. I
10 don't see any need to delete. It would undermine your own
11 authority, which I don't recommend that you undermine your
12 own authority.
13 MR. YOUNG: Okay. Michael.
14 MR. JOHNSTON: So that's the second point, lacks
15 reporting requirements.
16 What about there cannot be a shield. Could you
17 just --
18 MS. McCHESNEY: I think that there is a great
19 improvement with the newer version of the now Part E. And
20 as far as the role of the third party groups in clarifying
21 that individuals are ultimately responsible, there are
22 some areas that sort of create some ambiguity about that.
23 Under the Water Code, a person who discharges
24 waste is required to submit a Report of Waste Discharge,
25 or in this case, a Notice of Intent. And either obtain

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1 Waste Discharge Requirements or a Waiver of Waste
2 Discharge Requirements.
3 It's the individual Discharger's responsibility
4 under the law to comply with the law. So you can't have a
5 third party group that shields the individual from the
6 compliance with the law. Some of the ways that it was
7 written in the previous version appeared to try to do
8 that. Which is somewhat surprising because I would think
9 the third party group would not want to be taking on the
10 responsibility that's really assigned to the individual
11 discharger. So that was a little interesting.
12 I think the newer version does clarify some of
13 those things that the individual discharger is ultimately
14 responsible. But there are some areas that could be
15 clarified better. So that was my other concern.
16 MR. YOUNG: Go ahead, Michael.
17 MR. THOMAS: Our recommendation regarding this
18 new language, New Part E, is that -- and this is not our
19 final recommendation of the day. This is just the
20 recommendation regarding this particular language -- that
21 we cannot recommend adding -- I should have said Part E
22 there -- this language in the Order. We can't recommend
23 it for the reasons I said on the previous slide.
24 However, we want to make it clear, if we haven't
25 made it clear before, that we encourage third party groups

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1 to develop alternative implementation approaches with the
2 key elements on the previous slide. And we also think the
3 technical advisory committee is a good idea. That was
4 mentioned in the proposed language.
5 The question that was asked yesterday --
6 MR. YOUNG: Before you go, Mr. Jordan has a
7 question for clarification.
8 MR. THOMAS: Yes.
9 MR. JORDAN: Before you left that last page, I'm
10 curious, other than the legal items that Frances has
11 identified and the strict policy items that you've
12 identified, is everything else on that page or everything
13 on the prior cons page able to be folded into the existing
14 Order the way it's already written?
15 MR. THOMAS: Yes.
16 MR. JORDAN: Thank you.
17 MR. THOMAS: That's where I was going.
18 MR. JORDAN: Sorry.
19 MR. THOMAS: That's a good question.
20 The question that was asked yesterday, what is
21 the most effective Order to improve water quality and meet
22 legal standards. There's a typo. We were working on this
23 late.
24 What's the answer? An Order that includes the
25 things that we've been talking about and emphasizing to

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1 the Board for years now. Key indicators of pollution
2 reduction and practice effectiveness, risk-based
3 prioritization criteria, milestones or targets within the
4 term of the Order so that we can demonstrate progress of
5 reducing pollution loading.
6 We need to be responsive to the human health
7 threat. It's our highest priority. We cannot put
8 language into this Order that diminishes or undermines the
9 Board's authority -- diminishes that or undermines the
10 Board's authority. We need to focus on shallow
11 groundwater and targets or indicators of nitrate loading
12 reduction. We have to have advanced requirements for
13 higher risk. This is how the Board conducts its business
14 on every program that it implements. And the language or
15 the approach must be consistent with the law and policies,
16 or it's not defensible.
17 We also need to include in our Order in order for
18 it to be effective an option to implement alternatives
19 that are equivalent or better than what we are proposing.
20 Because there are other options that are equivalent and
21 better than what we are proposing. And the industry can
22 develop those. So we have tried to make the Order as
23 flexible as we can. We tried to include language to
24 encourage and promote these alternatives. And we welcome
25 the industry's effort to do it.

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1 We currently have timelines in the Order. And
2 one of the edits that we are proposing that we'll get to
3 in a few minutes is to extend those deadlines that are in
4 the Order to further promote the development of these
5 third party alternatives that will be submitted to the
6 Executive Officer for approval.
7 We want them. We want them to meet these
8 requirements. So we've designed the Order to do that.
9 And it's not unusual. Many of the Orders that this Board
10 adopts and has adopted over the past years -- over many
11 years includes this approach, where the Board establishes
12 requirements and says, or an alternative that is
13 equivalent or better, and allows the industry or the
14 responsible party to develop that. That is the most
15 effective Order that we can have, to set standards and
16 allow alternatives.
17 If you want to see alternatives from third party
18 groups that meet the law and that have the conditions that
19 we've talked about, then adopting the Order with that
20 option is the way to go. Continuing to delay is going to
21 result in a continuation of what we have had over the past
22 three and a half years. We continue to argue about these
23 things. We continue to have opposing legal arguments and
24 we're stuck.
25 Okay. Other edits.

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<p>1 MR. YOUNG: Let me just say something. It's okay 2 to have opposing legal arguments. Ultimately the Board 3 needs to weigh those and decide where it wants to go with 4 that. 5 Right? 6 MR. THOMAS: Sure. It's okay to have opposing 7 legal arguments. I don't think it's okay for us to 8 continue to delay and not implement actions that protect 9 people that are threatened by this pollution. I don't 10 think that's okay. 11 MR. YOUNG: I understand that. Right. 12 MS. SCHROETER: Now I'm going to -- what Michael 13 put up here on the screen is a list of other edits that 14 Staff is recommending, and they also are reflected on your 15 yellow sheets. So I'm going to talk about them in detail. 16 MR. YOUNG: Angela, hold on one second. 17 Dr. Hunter, you want to quickly ask that 18 question? 19 MS. HUNTER: Okay. Thank you. 20 Again, I'm trying to track how the proposed new 21 Part E, which refers to and puts a lot of detail -- more 22 detail, as Michael said, from Attachment B. So that's an 23 improvement. 24 Where in the monitoring report section, which is 25 1, 2, and 3, do we see any kind of spelling out of how the Page 62</p>	<p>1 for Tier 2 on Page 9, it talks about cooperative 2 groundwater monitoring efforts to minimize costs. This is 3 A6, Page 9 of the Tier 2 Monitoring Program. 4 MR. JOHNSTON: Page 9 of what? 5 MR. BRIGGS: The monitoring and reporting program 6 for Tier 2. 7 MS. HUNTER: On Page 9, what number is it? 8 MR. BRIGGS: Number 6. 9 MS. HUNTER: Okay. I have found it. Thank you. 10 (Discussion held off the record.) 11 MS. HUNTER: Each tier Monitoring Program has 12 that same Number 6 apparently. 13 MR. DELGADO: On Page 9, Paragraph 6 in each 14 tier. 15 MR. JORDAN: Okay. 16 MS. HUNTER: Thank you. I just need to get my 17 bearings. 18 MS. SCHROETER: Now what you have in front of you 19 on the yellow sheet are four pages of additional edits 20 that Staff is suggesting based upon the information 21 submitted by Farmers For Water Quality as well as the 22 Board member discussion yesterday. 23 We already went through a page and a half of 24 them. I'm going to start on Page 2 where it says 25 Paragraph 58, Page 24 and 25. You'll notice on the one Page 64</p>
<p>1 third party process will work? Or do we have that? I'm 2 not seeing it. I just want to know: Do we have something 3 that's equivalent? 4 MS. McCANN: I don't think they proposed any 5 edits to the monitoring and reporting program. 6 MS. HUNTER: I know. 7 MS. McCANN: Okay. 8 MS. HUNTER: So let me ask that question a little 9 differently. 10 MS. McCANN: Okay. 11 MS. HUNTER: The only place that I see third 12 party referenced is in Additional Findings, Number 10. It 13 says it deals -- that's where you deal with third party 14 groups. And it refers to the Monitoring Program Orders. 15 That's why I was wondering: Is it in the Monitoring 16 Program Order, or is that the only place where you refer 17 to third party groups? 18 MS. McCANN: You're referring to our Draft Order? 19 MS. HUNTER: Yes. Correct. 20 MS. McCANN: Okay. 21 MR. JOHNSTON: Besides Condition 10, I think 22 Finding 11 refers to cooperative -- that's not monitoring. 23 Sorry. 24 MR. BRIGGS: Mr. Chairman, in Attachment 2B, 25 which is, for example, monitoring and reporting program Page 63</p>	<p>1 above Paragraph 56, we already discussed that one, about 2 the NOI form and the edits to the NOI form. 3 Paragraph 58 is the middle of Page 2, left-hand 4 column. 5 MR. YOUNG: Do you want the word "an" in front of 6 appropriate? 7 MS. SCHROETER: Yes. Sorry. 8 MS. McCHESNEY: "In the." 9 MS. SCHROETER: "In the appropriate tier." 10 MR. YOUNG: Right. 11 MS. SCHROETER: This one is for Dischargers who 12 do not provide adequate information for the Water Board to 13 confirm. The Executive Officer will place the farm ranch 14 in the appropriate tier based upon information submitted 15 in the Notice of Intent. And I'm bringing this one up 16 because this was left over from Tess' that we didn't 17 address. Her concern was that farmers would be 18 automatically placed on the higher tier. And we agree. 19 So we are suggesting additional edit that they would be 20 placed in the appropriate tier based upon the information 21 submitted in the Notice of Intent. 22 The second change, and this was in response to -- 23 MR. DELGADO: Excuse me, Angela. 24 MS. SCHROETER: Yes. 25 MR. DELGADO: To the Chair, back to that point, I Page 65</p>

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1 think sometimes the Notice of Intent will be incomplete
2 and not allow the Executive Officer based on that
3 standalone document to make a determination. I mean,
4 that's a possibility that I could foresee.
5 If this would say, "Place the farm ranch in the
6 appropriate tier based upon either information submitted
7 in the Notice of Intent or further communication between
8 the Executive Officer or Staff and the applicant, that
9 that -- I think that would be more thorough.
10 MS. SCHROETER: We could add that information,
11 "or further communication with the grower regarding their
12 enrollment."
13 The next one is regarding the sampling of
14 groundwater, individual groundwater sampling. And this
15 actually is in response to a comment that was brought up
16 by Board Member Wolff as a stakeholder. His concern was
17 about the need to have registered professionals conducting
18 the groundwater sampling. We do suggest a change. We
19 understand that comment, and the change is that we would
20 delete the sections that say, "State registered
21 professional engineer, professional geologist, or other
22 similarly qualified professional," and replace that with a
23 qualified third party, for example, technician,
24 consultant, or individual conducting cooperative
25 monitoring.

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1 So, for example, Preservation, Inc., currently
2 conducts surface water cooperative monitoring. Someone
3 like that would be fine to conduct the groundwater
4 sampling, or a certified lab employee, for example.
5 MR. DELGADO: Who would determine the
6 qualifications necessary?
7 MS. SCHROETER: Well, it's per the proper
8 sampling methods and analytical. So someone who's
9 qualified to do the sampling methods and --
10 MR. DELGADO: Who determines that? I might get a
11 lesson from you. And you and I might agree that I'm now
12 qualified.
13 Am I qualified?
14 MS. SCHROETER: What we intended to do was to
15 hold a workshop or provide some assistance for growers of
16 how -- it states very specifically how to conduct the
17 sampling in the MRP. We would have some assistance about
18 that. And then as long as it was a third party familiar
19 and who could implement those methods, it would be a
20 qualified third party. It's deliberately flexible.
21 MR. DELGADO: Okay.
22 MR. YOUNG: Let me just offer some example here.
23 When I used to grow oysters and I was taking
24 water samples, the Department of Health Services showed me
25 how to do it, and then I was responsible myself to go out,

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1 get a clean sterilized jar from the lab, take it in a bag,
2 go get my sample, fill out a label, and submit it, and
3 that was okay.
4 As long as you're going to be able to explain
5 this to people, train them how to be able to do it
6 themselves, with some training, they could become
7 qualified.
8 MR. JEFFRIES: It's also a cost savings.
9 MR. YOUNG: It's a cost savings. And it makes it
10 easier to do. So just consider that.
11 MR. DELGADO: Okay.
12 MS. SCHROETER: That's a good example.
13 The second one relates specifically to the
14 Farmers For Water Quality's suggestion about --
15 clarification about the individual groundwater monitoring.
16 Essentially we agreed with their suggested edits,
17 which are in the underline here. The parts that we added
18 are in that last sentence of the second paragraph, a
19 strikeout, where it says, Qualifying cooperative
20 groundwater monitoring and reporting programs may include
21 but are not limited to regional or subregional groundwater
22 programs developed for other purposes as long as the
23 proposed cooperative groundwater Monitoring Program meets
24 the Water Board's general purpose of characterizing
25 groundwater quality. That's where Farmers For Water

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1 Quality ended.
2 What we'd like to do is to add because this
3 wasn't in our original intent, "and ensuring the
4 protection of drinking water sources."
5 So that really is our general purpose of the
6 individual groundwater monitoring is both to characterize
7 groundwater quality and ensure the protection of drinking
8 water sources. That's the add on.
9 The other change that we made to the suggested
10 edits -- oh, here. So on the third page, at the top of
11 the page, where it says, Adequately characterize the
12 groundwater aquifers in the local area of the
13 participating Dischargers. We agree with that change to
14 strike out represent and add the word characterize.
15 Ms. Dunham had also suggested that we strike out,
16 "characterize the groundwater quality of the uppermost
17 aquifer." Staff disagrees with that strikeout. We feel
18 it's very important for any cooperative groundwater
19 Monitoring Program to also access the uppermost aquifer.
20 It's the most vulnerable to pollution. It's the aquifer
21 that most domestic wells are tapped into and any
22 cooperative groundwater Monitoring Program must include
23 that evaluation.
24 Other than that, we agree with all of the other
25 suggested edits, including the ones which gives them time

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<p>1 here to submit the cooperative groundwater monitoring 2 proposal. So you will see that they have -- someone who 3 wanted to do it cooperatively has a year to submit the 4 proposal. That's acceptable to Staff. 5 So the next suggested edit is the one that 6 Michael specifically referenced. And that relates to the 7 dates regarding individual discharge monitoring. So we 8 understand that any cooperative effort, third party 9 effort, is going to require time. So we want to be able 10 to provide that time before some of the more burdensome 11 requirements kick in. 12 For example, for individual sampling analysis 13 plan, we would like to revise that date to submit to be 14 one year, March 15th, 2014, instead of the previous date 15 which was six months after adoption. 16 In addition, we also are suggesting the edit to 17 revise the date to initiate the individual discharge 18 monitoring, surface discharge monitoring to be 19 October 1st, 2013. So this extends individual to surface 20 discharge monitoring 1.5 years. The previous date was 21 October 1, 2012. 22 MR. BRIGGS: Angela, back up one. Is that the 23 right date there? Because it looks like you mean to say 24 2013. 25 MR. JEFFRIES: That's what I thought. You have Page 70</p>	<p>1 individual discharge monitoring for surface water, the 2 date to submit the plan would be March 15th, 2013. The 3 date to start sampling would be October 1st, 2013. And 4 the date to submit any reporting would be March 15, 2014, 5 two years after today. 6 In addition Staff is also recommending to delete 7 the date of implementation for the irrigation nutrient 8 management plan to allow for the flexibility of 9 considering alternatives before the development of that 10 plan. The previous date was October 1, 2013. We would 11 just suggest -- 12 MR. DELGADO: So you'd leave it open-ended, no 13 date? 14 MS. SCHROETER: Leave that one open-ended with no 15 date. 16 They development and implement that plan at their 17 discretion; however, the next one is regarding the 18 reporting of the elements of the irrigation issue 19 management plan. So here we're suggesting to move the 20 date for reporting the elements of the irrigation issue 21 management plan by one year. 22 Currently it's October 1, 2014, and it would move 23 to October 1, 2015. That previous date notation there is 24 wrong in the note. 25 So those are the suggested edits that relate to Page 72</p>
<p>1 March 15, 2014. 2 MS. SCHROETER: Oh, I'm sorry. Yes, you're 3 correct. Thank you for catching that important 4 clarification. 5 MR. BRIGGS: So that's the first date change that 6 Angela was talking about. 7 MS. SCHROETER: Submit the individual sampling 8 analysis plan. 9 MR. BRIGGS: Right. Revise date to submit 10 individual sampling analysis plan to March 15th, 2013 as 11 consistent with the one year from today. 12 MR. DELGADO: That is a six-month extension 13 compared to the status quo? 14 MS. SCHROETER: That's correct. That is to 15 submit the plan. And an additional extension for actually 16 initiating the sampling, which is the next one. 17 So in addition, we're also revising dates to 18 submit or to report the individual surface water discharge 19 monitoring to March 15th, 2014. The previous date was 20 October 1, 2013. So this basically provides two years to 21 submit the data. So it allows growers two years to 22 consider and implement -- start implementing alternative 23 before they have to report any individual discharge 24 monitoring data. 25 In summary for those three, they all relate to Page 71</p>	<p>1 dates. All those dates were extended out to allow for the 2 opportunity for the development of alternatives, third 3 party groups, or certifications, cooperative efforts. 4 We also are suggesting some additional edits in 5 response to the hearing discussion yesterday. The next 6 one relates to the nutrient balance ratios as a target 7 versus a milestone. In response to the discussion 8 yesterday, Staff is suggesting that we go ahead and make 9 the nitrogen balance ratio a milestone and not a 10 compliance condition. 11 So the edit, then, is by October 1, 2015, 12 Dischargers with high nitrate loading risk must report the 13 progress towards the following nitrogen balance ratio 14 milestones, instead of must achieve the milestones. They 15 have to still report the ratio at a certain date. But 16 it's moving to a milestone instead of a compliance 17 condition. 18 MR. DELGADO: When you say report progress 19 towards, that means any amount of positive numeric 20 progress? 21 MS. SCHROETER: That's correct. Then the next 22 edit would be moving the conditions to achieve nitrogen 23 balance ratio to the specific table. So they go from the 24 compliance conditions table to Table 4. 25 What Table 4 states in the Order is that these Page 73</p>

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1 milestones will be used to evaluate progress towards water
2 quality improvement. That milestone is still how we're
3 going to measure progress. But it's not a compliance
4 condition to achieve it.
5 MR. DELGADO: Is it accurate to say that targets
6 are requirements and milestones are suggestions? Because
7 it seems like now we're saying here's the difference
8 between targets and milestones; whereas, earlier they were
9 interchangeable words.
10 MR. BRIGGS: Mr. Chair.
11 MR. YOUNG: Yes.
12 MR. BRIGGS: I think the key thing is not so much
13 the word target but be consistent with Table 4 which we
14 call milestones as opposed to meet targets. And that
15 applies -- in the heading of the table I think was
16 compliance. So you put all that together.
17 MR. DELGADO: Okay. But for the purpose of
18 understanding this on the part of the growers especially,
19 it would be nice if they knew the difference. Because we
20 knew the difference between targets and milestones. So if
21 there is a policy difference, it would be nice to know
22 that consistent policy difference.
23 MR. JEFFRIES: What you're inferring is that the
24 language of milestones be consistent throughout the Order?
25 It means the same thing?

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1 MR. DELGADO: Sort of. If there is a difference,
2 let's say that targets were things that had to be met to
3 be complaint, but milestones were time frames that were
4 more wishy washy. Or if there was any other consistent
5 difference, it's just important to me that the growers are
6 able to understand.
7 MR. JEFFRIES: I understand and I appreciate
8 that. And this statement earlier in the presentation
9 that -- at least I understood -- that targets and
10 milestones were interchangeable by the Staff and
11 interpretation. Is that correct?
12 MS. McCANN: Maybe we need to clarify something.
13 This is the only indicator -- or place where we
14 use the term target. It's a descriptor for this thing
15 called the nutrient balance ratio. And we want it to be a
16 milestone. First it's a condition.
17 MS. McCHESNEY: I think I can explain it. The
18 difference is is that in Table 3, this is a time schedule,
19 for example, submit your photo monitoring. So that's a
20 specific date. So if they submit it on that date, by that
21 date, they're in compliance. They wouldn't be subject to
22 enforcement. Those compliance dates, the way I understand
23 it, is that they're clearly enforceable dates. Where the
24 milestone is, This is information provided to the Board so
25 they can see if progress is being made, but it's not going

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1 to be an enforceable requirement. If they don't show
2 progress, they're not going to be hit with enforcements.
3 It's just, Okay. Now you need to look at more what you
4 can do to show improvements.
5 Right?
6 MR. DELGADO: So then are targets enforceable?
7 MS. McCHESNEY: Target was only the word used for
8 that thing, and there's no other use of the word target.
9 So it goes away.
10 MR. DELGADO: In the Ag Order and the associated
11 MRP, target comes up in one instance. And in that
12 instance, it's enforceable. But otherwise target's not
13 used, instead milestones are used.
14 MS. McCHESNEY: That was -- because you said
15 yesterday that was the only -- the nitrogen target was the
16 only enforceable thing, if that's a word.
17 MR. JOHNSTON: I think it was enforceable part --
18 the implication I got was -- it was in a table labeled
19 Conditions.
20 MS. McCHESNEY: Right.
21 MR. JOHNSTON: And we have moved it from a table
22 labeled Conditions to a table labeled Milestones and said
23 it will be -- we've stated specifically that you're
24 required to -- excuse me. We said specifically that you
25 must report progress in the direction of that.

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1 MS. McCHESNEY: Right.
2 MR. JOHNSTON: So we've moved it from being a
3 condition you have to meet to something you have to
4 progress towards.
5 MS. McCHESNEY: Right. And so you -- before -- I
6 mean, the way it was originally proposed, if you didn't
7 meet that 1 or 1.2 or other alternative that was approved
8 by that date, you would be out of compliance.
9 Right?
10 MS. SCHROETER: That's correct.
11 And actually Roger said it simply before that.
12 The only reason to change the wording from target to
13 milestone is that it was going to the milestone table,
14 otherwise there wasn't really a distinction. It's
15 compliance condition versus a milestone.
16 MR. DELGADO: So just to beat a dead horse, then,
17 there's no longer the word target in any of the papers
18 before us as far as something you have to meet?
19 MS. SCHROETER: Right.
20 MR. DELGADO: Okay.
21 MS. SCHROETER: That's what we intend.
22 MR. BRIGGS: As long as you go to the next
23 change, which is to make the monitoring reporting program
24 for Tier 3 consistent.
25 MS. SCHROETER: Right. There's the use of the

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1 word target. It's the same change. It just isn't in the
2 MRP.
3 So that brings me to our last edit. And that is,
4 again -- we already started discussing this one -- that's
5 in response to Mr. Sanchez's comment about his concerns
6 related to small disadvantaged growers, especially those
7 that may be non-English speaking.
8 We agree. We would like to prioritize those
9 types of growers for assistance, and we would like to
10 actually add a finding to the Order that states, The
11 Central Coast Water Board recognizes that certain
12 disadvantaged farmers may have difficulties to achieve
13 compliance with this Order.
14 The Central Coast Water Board will prioritize
15 assistance for these farmers, including but not limited to
16 technical assistance, grant opportunities, and necessary
17 flexibility to achieve compliance with this Order, (e.g.),
18 adjusted monitoring reporting or time schedules.
19 So if that issue comes up, that's how we would
20 handle it. And actually the USDA has a definition for
21 growers called the limited resource farmer definition.
22 And those are the types of farmers that they prioritize
23 for assistance for equip funds and other types of grant
24 opportunities.
25 MR. JEFFRIES: Angela, how is a disadvantaged

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1 farmer going to be able to interpret this if they're
2 non-English speaking?
3 MS. SCHROETER: We have increased our efforts to
4 conduct outreach with the non-English speaking community
5 of growers. Our latest example of doing that is working
6 with the Chinese chrysanthemum speakers. So we're really
7 trying to coordinate with commodity groups to identify
8 where that need is. That's actually an example of
9 success. We've increased enrollment in that segment of
10 the agriculture industry where it was not there before.
11 MR. YOUNG: How about for Spanish speakers?
12 I understand that.
13 I just want to know what mechanism do you have
14 right now in place should a Spanish-speaking farmer call
15 the Board to get some help or direction? Is there someone
16 that --
17 MS. SCHROETER: Right now we have two full-time
18 Staff who are Spanish speaking who are actually in the Ag
19 program. It is standard now for all of our letters to
20 have the language on top of the letter that states, "If
21 you need Spanish translation or Spanish assistance to call
22 the numbers of those Staff. We've also held I think three
23 or four Spanish-speaking workshops throughout the region
24 north and south.
25 MR. YOUNG: Have they been attended.

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1 MS. SCHROETER: They have been. Monica can
2 correct me if I'm wrong, but I think those have been the
3 most well attended is with those grower groups.
4 MR. YOUNG: Has anyone called to speak to our
5 Spanish-speaking Staff?
6 MS. SCHROETER: Yes, all the time.
7 MR. JEFFRIES: I'm sure there's going to be some
8 of those folks who are going to fall through the cracks.
9 And I think that's some of the folks that Mr. Sanchez was
10 referring to that are afraid to step forward for one
11 reason or another and to ask or even inquire what they're
12 supposed to do.
13 So that's -- and I don't want to speak for him,
14 but that's what I took from some of his comments, that
15 there's folks out there that are farming, whatever type of
16 farming they're doing, haven't attended any of these
17 workshops. And now they're afraid that there's going to
18 be some Order which means some kind of liability to them,
19 and that they don't understand.
20 Is the form also in Spanish and Chinese.
21 MS. SCHROETER: All of our electronic Notice of
22 Intent forms are all in Spanish. They've all been
23 distributed to the commodity groups, where there are
24 Spanish-speaking growers that we know of. For example,
25 the Alba Group. That's just one example as well as the

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1 local farm bureaus. For example, the Cachuma RCD, we've
2 worked with them to distribute our documents in Spanish.
3 We hear the concern, and our intent is to provide a higher
4 level of assistance and prioritize assistance for those
5 farmers.
6 MR. JEFFRIES: I realize that we can't cover all
7 bases. But eventually I'm sure we'll discover those folks
8 as they --
9 MR. YOUNG: As they pop up.
10 MR. JEFFRIES: -- as they pop up.
11 MS. SCHROETER: Many of them are already
12 enrolled. So I don't want to leave you with the
13 impression that those types of groups are
14 under-represented. They actually are very well
15 represented. I'm sure that we don't have all of them.
16 But they check a box on the Notice of Intent which states
17 what language is their speaking preference, and there are
18 many non-English speaking growers.
19 MR. YOUNG: Mr. Delgado.
20 MR. DELGADO: Yes.
21 I thought I heard you say that the USDA
22 definition is for something slightly differently worded
23 than disadvantaged farmers. If that's true, why don't we
24 call it what they call it. Dollars.
25 MS. SCHROETER: That was a lay edit. We were

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1 trying to find the actual language. That was my recalling
2 of what a definition was. But yes, you're --
3 MR. DELGADO: So what were those two words
4 instead of disadvantaged farmers?
5 MS. SCHROETER: It's called limit resource
6 farmer.
7 MR. DELGADO: Limited resource farmer, CUSDA
8 definition. Is that your preferred language at this
9 point.
10 MS. SCHROETER: That was just a reminder to me to
11 look at that definition so we can strike out the CUSDA.
12 MR. DELGADO: I like the CUSDA definition because
13 then everybody knows that it exists.
14 MS. SCHROETER: Okay. Perfect.
15 MR. DELGADO: And then my other question on this
16 was, if I was a Caucasian grower, I might feel slighted
17 that grants and technical assistance opportunities would
18 be prioritized for somebody else. I just want to make
19 sure that that's both legal and fair in your mind.
20 MS. SCHROETER: Actually it was very difficult
21 for us to articulate what disadvantaged means, which is
22 why we are relying upon an existing definition. The
23 existing definition actually doesn't specify language,
24 ethnicity, anything like that. It's based upon the
25 standard practice of looking at median household income

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1 and other indicators.
2 MR. BRIGGS: Needs based.
3 MS. SCHROETER: Needs based.
4 MS. McCHESNEY: Right. And it specifically says
5 that they can't discriminate based on race, color, nation
6 of origin, all that stuff.
7 MR. DELGADO: But they can discriminate in a way
8 based upon socioeconomic status. That's -- what you're
9 telling us is legal?
10 MS. McCHESNEY: The IACT authorizes the secretary
11 to set aside five percent of available equipped funds and
12 CSB acres for socially disadvantaged farmers or ranchers.
13 MR. YOUNG: Speak up.
14 MR. DELGADO: Socialize disadvantaged. So those
15 are different words than --
16 MS. McCHESNEY: The beginning of it refers to
17 limited resource farmers or ranchers. I mean, it's a
18 federal law that deals with limited resource farmers or
19 ranchers and then provides a certain percentage of funds
20 for a certain limited resource and beginning farmers or
21 ranchers, et cetera.
22 MR. DELGADO: Okay. That sounds more fair. If I
23 was a higher income ranch grower that was having trouble
24 implementing this, that there might be 95 percent of the
25 money still available for people like me and five percent

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1 is set aside for people that are in a lower socioeconomic
2 status than I?
3 MS. McCHESNEY: Correct. That's what it appears,
4 yeah.
5 MR. YOUNG: Mr. Jordan.
6 MR. JORDAN: Actually I want to back up a couple
7 squares if everybody's done with that subject.
8 MR. YOUNG: Okay.
9 MR. JORDAN: Angela, could you tell me quickly,
10 going back up to the top on the nitrate dates changes.
11 Just a couple sentences. What the difference is between
12 developing irrigation and nutrients management program and
13 submitting the elements? What does that mean?
14 MS. SCHROETER: We require them to develop a
15 plan.
16 MR. JORDAN: Right.
17 MS. SCHROETER: The irrigation management plan,
18 and we also require them to report specific elements.
19 MR. JORDAN: You're proposing, then, to eliminate
20 the first part of that and just give them a window to
21 submit; right?
22 MS. SCHROETER: What we are proposing to do is to
23 eliminate the date specified for developing the plan.
24 They still have to develop the plan.
25 MR. JORDAN: Correct.

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1 MS. SCHROETER: Right.
2 MR. JORDAN: There's just no intermediary
3 milestone timeline target.
4 MS. SCHROETER: That's correct. It provides full
5 flexibility as to when to develop that plan.
6 MR. JORDAN: That only applies to a subset of
7 Tier 3; right?
8 MS. SCHROETER: That's correct. It only would
9 apply to a subset of the Tier 3 farms, approximately, if I
10 can recall from yesterday, 61.
11 MR. JORDAN: That subset was developed
12 specifically to recognize a higher risk even within
13 Tier 3; correct?
14 MS. SCHROETER: That is correct.
15 MR. JORDAN: It seems like a significant
16 giveback. I'm wondering what discussions took place on
17 that issue.
18 MS. SCHROETER: It is a very significant
19 compromise, correct.
20 MR. JORDAN: Would you like to share any
21 discussions that were -- well, here's my point, then you
22 can decide. If Staff is willing to give that back, okay.
23 But the particular line where it talks about the strikeout
24 of must meet and is replaced with must report progress
25 towards, that, to me, is a historical line that should be

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1 remembered in three years when you start to work on the
2 next Order. Because that's indicative right there that if
3 conditions continue to worsen that that was clearly a
4 point of giveback for consideration at this point. And
5 that it could have been worse at this time.
6 Does that make sense? Or it could have been more
7 stringent at this time? Worse is probably not the right
8 word.
9 MR. THOMAS: It does, yes. I agree. The
10 conversation that we had about it, we go round and round
11 about whether we should or shouldn't reduce these
12 requirements further or extend these due dates further.
13 And in the interest of promoting this coalition effort, we
14 said what can we change in the Order that would promote it
15 and would allow for opportunity and time for people to do
16 that.
17 We didn't want to -- correct me if I'm wrong
18 here, Angela. We didn't want to set up a situation where
19 people were trying to do both, working on the requirements
20 in the Order and trying to set up a coalition or trying to
21 meet requirements of a coalition at the same time. So we
22 wanted to give space to develop that coalition process.
23 MR. JORDAN: It seems to me to be a huge carrot
24 you're dangling out there. Obviously we went by it really
25 quick, and I'm surprised that nobody had any opinions on

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1 it. But it would also seem to put the ball in the other
2 party's court, and they better do something with that ball
3 that leads to results or else the next time you look at
4 this, the language reverts back to a more stringent
5 language. Just my two cents.
6 MR. YOUNG: What more does Staff have for us?
7 MS. SCHROETER: Those are all of the suggested
8 changes and some other discussion.
9 MR. YOUNG: Okay. Any other rebuttal for Staff?
10 Any other comments to us on anything else you've heard?
11 MR. THOMAS: There were other issues that came up
12 yesterday. So what we would -- instead of -- let me back
13 up here. So instead of going into the issues that came up
14 and rebutting, we're willing to just let it go and go to
15 our final recommendation.
16 I would request, though, that we be allowed to --
17 if we could take a 5- or 10-minute break so we can talk to
18 the Executive Officer and formulate our final
19 recommendation.
20 MR. YOUNG: Okay. Mr. Johnston.
21 MR. JOHNSTON: Before we do that and presumably
22 after the final recommendation, we're going to circle back
23 around and talk about as a policy, as well as a legal
24 matter, if and how we want to approach the stuff that was
25 given to us yesterday.

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1 I have a couple of minor things I'd like to run
2 by Staff that came out of comments. And I don't have
3 something printed on this, but it's pretty simple. This
4 first one, in the Order on Page 7, Paragraph 27. I had it
5 a minute ago. The way that paragraph reads right now,
6 Landowners and operators of irrigated lands who obtain a
7 pesticide use permit from a local County agricultural
8 commissioner may have a discharge of waste that could
9 affect surface water and groundwater and therefore must
10 submit to the Central Coast Water Board a completed
11 electronic Notice of Intent to comply with the conditions
12 of this Order to comply with the Water Code.
13 What that basically says is, if you obtain a
14 pesticide use permit, whether there's any surface water or
15 even whether you're irrigating or not, you must file a
16 Notice of Intent. It seems like -- here's my proposed
17 changes to that. I just want you guys to consider -- if
18 you need to talk about them when you're talking with the
19 Executive Officer, that's fine.
20 MR. YOUNG: Hold on. I think before you get to
21 there, this is conditioned upon it being irrigated lands,
22 which would mean that someone has to be irrigating Ag.
23 MR. JOHNSTON: Correct.
24 MR. YOUNG: That's a precondition.
25 MR. JOHNSTON: Let me just tell you what my

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1 proposed change and Staff can talk about it and they can
2 see what they think. I want to remove the word "may" in
3 the second line after agricultural commissioner and add
4 the words "and that." I want to -- after surface water
5 and before groundwater -- replace the word "and" with the
6 word "or" and strike the words "and therefore."
7 Then it would read, Landowners and operators of
8 irrigated lands who obtain a pesticide use permit from a
9 County agricultural commissioner and that have a discharge
10 of waste that could affect surface water or groundwater
11 must submit to the Central Coast Water Board a completed
12 Notice of Intent, yada, yada, yada. Talk about that.
13 The second thing that was raised in comments
14 yesterday and that I didn't hear a response to and I would
15 just like to get Staffs' take on it. It was raised in
16 comments that some piece of the -- I believe it's the
17 irrigation plan has to be prepared by a certified crop
18 advisor with a certificate in hydrology. There was a
19 certified crop advisor who spoke and said, "You know,
20 that's a really high bar and almost nobody has that."
21 MR. THOMAS: It's gone.
22 MR. JOHNSTON: Oh, it's gone?
23 MR. YOUNG: Yeah.
24 MR. JOHNSTON: Okay. Thank you.
25 MR. JEFFRIES: It was stricken.

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1 MR. THOMAS: We said earlier that we were
2 removing it.
3 MR. JOHNSTON: I missed that.
4 MS. SCHROETER: Actually, you're correct. We
5 heard that also and intended to strike that. We intended
6 to strike it with the one about collecting groundwater
7 samples. We did that one, but we had intended to strike
8 out the language also that said CCA with a hydrology
9 certificate.
10 MR. JOHNSTON: Okay. Thank you.
11 MR. BRIGGS: One more thing, Mr. Chair.
12 MR. YOUNG: Yes.
13 MR. BRIGGS: You should also mention that in the
14 original Staff report, we recommended changes which had to
15 do with -- mostly administrative. Had to do with the fact
16 that the hearing has been delayed, so it changed a lot of
17 dates. Some of those may be superceded by changes you
18 just went over. And then didn't we have another
19 supplemental sheet?
20 MS. McCCHESNEY: Yes.
21 MR. BRIGGS: I mean the one besides --
22 MR. DELGADO: Chair, I have a small request for
23 an edit.
24 MR. YOUNG: A what?
25 MR. DELGADO: A small request for an edit.

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1 MR. BRIGGS: Before we do that, though, let's
2 just -- I want to make sure that --
3 MS. McCCHESNEY: Here it is.
4 MR. BRIGGS: Yes, this one.
5 MR. YOUNG: Prepared March 6th.
6 MR. BRIGGS: Have you got that handy?
7 MS. SCHROETER: I don't have it with me. It
8 should be in the Board member folders.
9 MR. YOUNG: It is.
10 MS. McCCHESNEY: It's in our blue folders.
11 MR. DELGADO: Was the subject the minutes?
12 MR. JOHNSTON: Is it yellow?
13 MR. YOUNG: Yes.
14 MS. HUNTER: Was it Item Number 8?
15 MR. YOUNG: No, Item Number Four. It's a single
16 page.
17 MR. DELGADO: So proposed revisions. Is that the
18 one?
19 MR. YOUNG: Yes.
20 MR. DELGADO: Page 6 and 12?
21 It was in our little blue Peechee folder.
22 MR. BRIGGS: It may have gotten lost in the
23 shuffle.
24 MR. THOMAS: Does anyone need a copy?
25 MR. JOHNSTON: I need a copy.

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1 MR. BRIGGS: I think we can share here.
2 MR. JEFFRIES: I don't have one.
3 MS. McCCHESNEY: Here, you can take mine. If you
4 need a copy, make a copy.
5 MR. BRIGGS: I just want to make sure we've got
6 all the pieces.
7 Okay, Mr. Chair.
8 MR. YOUNG: What's the question that's pending?
9 MS. McCCHESNEY: Bruce had a question.
10 MR. DELGADO: Mine was in the additional findings
11 that is Attachment 1B on Page 6, finding Number 20,
12 regarding NPS policy. It's actually 1B, Page 6, the 20th
13 additional finding.
14 MR. YOUNG: What's the edit change?
15 MR. DELGADO: It has the words, "never may." So
16 the sentence reads, Management practice implementation
17 never may be a substitute for meeting water quality
18 requirements.
19 MS. McCCHESNEY: Instead of may never.
20 MR. DELGADO: Instead of may never, or I would
21 prefer it to say is not necessarily a substitute for
22 meeting quality water requirements.
23 MS. McCCHESNEY: And the language is from the Non
24 Point Source Policy, but I don't think it's an exact
25 quote. So I would recommend that we say what's in the Non

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1 Point Source Policy so I can check what it actually says
2 to make sure it's an accurate -- I don't think it says
3 "never may," so I'll --
4 MR. DELGADO: It could say may never, or it could
5 say something else.
6 MS. McCCHESNEY: Right. So I'll check it.
7 MR. DELGADO: Thank you.
8 MR. YOUNG: We're going to take a break, right,
9 for about 10 minutes?
10 (Recess taken.)
11 MR. YOUNG: Okay, folks. We're going to resume
12 our meeting.
13 We are at the point where we heard from Staff.
14 And the Board is now at the point where it can begin to
15 deliberate.
16 MS. McCCHESNEY: No. Recommendations, Roger's.
17 MR. JORDAN: Roger's got something.
18 MR. JOHNSTON: All roads lead to Roger.
19 MR. YOUNG: Yes. But -- and actually before
20 that --
21 MR. JORDAN: You mean comments from the Board
22 members?
23 MR. YOUNG: Comments from Board members, is what
24 I meant. We're at the point where it's in the Board's
25 hands. We're still going to hear from Roger on any kind

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1 of final recommendation before we actually consider what
2 to do.
3 But, Mr. Johnston, did you have anything at this
4 point? I thought maybe, or not, or wait --
5 MR. JOHNSTON: I gather you're aware,
6 Mr. Chairman, because it was shared with you, although
7 none of the other Board members, is I have worked with the
8 Executive Officer and counsel over the last week or two on
9 a couple of different pieces of language. And the
10 principal stuff in there is -- well, three different
11 things, really.
12 One of them deals with a coalition monitoring of
13 groundwater. And the other two deal with setting up a
14 little more defined process for third party groups to come
15 to make proposals to the Executive Officer and a technical
16 advisory committee to review and make recommendations on
17 the acceptability of those proposals.
18 And my thought on that language, frankly, is that
19 we, as a Board, should decide which of two roads we want
20 to go down. And one road is to work -- to look at the
21 stuff that Ag presented yesterday. And to take point by
22 point by point each of the policy issues on Staffs' con
23 slide. And each of the legal issues on that slide. And
24 resolve them, modify the Ag Order -- excuse me -- the Ag
25 Alternative that was proposed yesterday. And see if we

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1 can come up with something that we wish to adopt. And I
2 think if we're not interested in doing that and instead we
3 want to simply kick down the road to the Executive Officer
4 and a technical advisory committee the question of the
5 details of how third party alternatives would work, then I
6 would propose that language.
7 But I think, at least in the way I'm looking at
8 it, kind of the first step would be for us as a Board
9 to -- I guess polling ourselves or something to decide how
10 much interest there is in trying to work through what Ag
11 proposed and use it as a base. I want to come out with an
12 Order today no matter what. I don't --
13 MR. YOUNG: Right. The question you're posing is
14 for each of us to respond to are the changes Staff has
15 just given us in response to Tess Dunham's presentation
16 acceptable as a path to go down, or would you prefer that
17 we go back and revisit the cons and try to take each of
18 those and tweak the Ag Alternative to meet -- no.
19 MR. JOHNSTON: I wouldn't put the question quite
20 that way.
21 MR. YOUNG: Okay.
22 MR. JOHNSTON: I think the changes that Staff has
23 proposed sort of stand on their own. And most, if not
24 all, of them actually made sense to me. I think that the
25 followup question to that, though, is: Do we as a

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1 Board -- I think --
2 MR. YOUNG: Let's put those up, if we can, since
3 we're talking about, those cons.
4 MR. JOHNSTON: Put the cons up?
5 MR. YOUNG: Put the cons up so we've got
6 something to look at.
7 (Discussion held off the record.)
8 MR. JOHNSTON: I suspect -- I don't want to speak
9 for anyone else on this Board --
10 MR. YOUNG: Right.
11 MR. JOHNSTON: -- but I suspect that there would
12 be general consensus on the pros that are up on the slide
13 that we're looking at right now. That there certainly are
14 some advantages to the ideas however un-fleshed out they
15 are. And whatever failings they may have, either in
16 policy terms or in legal terms, that there are some
17 advantages to the pros on here and those ideas.
18 And I think that the question that we as a Board
19 face is -- I suspect there's general consensus on that on
20 this Board. That's just my sense from our -- from our
21 public discussion.
22 I think the question we as a Board face is:
23 What's the best way to capture those pros in an Order that
24 we can pass. And one alternative is to -- I'm not saying
25 this would involve rejecting the edits that Staff has

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1 proposed. But Staff has made a very clear recommendation
2 that we don't really go past those edits and use what Ag
3 presented as any sort of a framework for how third party
4 coalitions could be formed and participate and provide
5 some alternatives.
6 I think one alternative for us as a Board is to
7 say: Let's take that framework, let's --
8 Can you give me the next slide.
9 I take very seriously everything on that list. I
10 don't think that Staff is raising any of this to be
11 obstructive. They're all of the policy issues, which is
12 really everything except the last three points. I think
13 we need to seriously talk about it, I think we need to
14 decide as a Board issue by issue do we agree with Staff on
15 it? Does that require us, if we're going to use the Ag
16 Proposal as a framework to make changes in that proposal?
17 When we get to the last three, I think we need to
18 look at the legal questions, as well, and say what do we
19 need to do to change in that proposal if we're going to
20 use it as a framework to comply with the law in our Order.
21 That's one alternative. And it's certainly the more labor
22 intensive one. I want to go home tonight.
23 MR. BRIGGS: Mr. Chair.
24 MR. YOUNG: Yes.
25 MR. BRIGGS: To that point, may I say

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1 something --
2 MR. YOUNG: Yes.
3 MR. BRIGGS: -- that I was going to say in the
4 concluding remarks. I think it might be helpful in not
5 having to go such a labor-intensive route. And that is
6 that I don't think you need to resolve all the cons that
7 are listed there. But I think you can realize the pros,
8 the advantages that were listed on the previous slide.
9 And that's because Part E can be developed as an
10 alternative.
11 Right now it's kind of a cloud. It's a moving
12 cloud. It can be developed as a proposal. And within the
13 framework that we have provided here, plus all the changes
14 that we've added to encourage this flexibility, it can
15 come back as a proposal for E.O. consideration. And if
16 the E.O., whether it's me or somebody else, disagrees,
17 they can come to the Board -- and come back to the Board.
18 That's what we've been trying to get to in terms of a lot
19 of the changes that we've been making to our proposal to
20 not only allow that but to encourage that kind of
21 approach.
22 We've made significant changes to the Order to
23 support that kind of alternative development. Without the
24 Order in place, however, we won't have the incentives to
25 do that. We will have incentives to continue to debate

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1 and to argue without making progress.
2 In trying to assist with that question, I think
3 you framed the question really well, but I think that's a
4 really reasonable route for the Board to take is to adopt
5 the Order with the flexibility that we built into it to
6 encourage something like Part E to come back to the Board.
7 MR. YOUNG: Mr. Jordan.
8 MR. JORDAN: To that end, I guess, I'll ask my
9 question again to Mr. Briggs.
10 In the result of all the edits we saw today in
11 the existing Order, wouldn't it be your opinion that the
12 cons are already envisioned within the wording of the
13 existing Order and the process you just described of
14 coming back with the proposal is already existing in the
15 existing Order as we discussed today?
16 MR. BRIGGS: I'm not sure I understood your
17 question. I'm sorry.
18 MR. JORDAN: Let me try again.
19 We added a bunch of edits today that were the
20 result today of public comment and proposals.
21 MR. BRIGGS: Right.
22 MR. JORDAN: There were some other edits that
23 Staff added that both strengthened language and were
24 givebacks as a result of comments yesterday. The
25 inclusion of the full proposal of Section E as brought by

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1 the Ag group, at this time is not being -- at this time is
2 not part of Staffs' recommendation into the Order.
3 MR. BRIGGS: Correct.
4 MR. JORDAN: But both the list of cons that are
5 up there and the possible inclusion of other segments of
6 the proposed Section E are contemplated within that end
7 product of the Order as we have it right now.
8 MR. BRIGGS: Where I'm not following you is that
9 we're not including the list of cons.
10 MR. JORDAN: I'm saying they're already in the
11 existing Order.
12 MR. YOUNG: In terms of they're addressed.
13 MR. JORDAN: Correct.
14 MR. YOUNG: They're addressed.
15 MR. BRIGGS: Okay. That's why I wasn't following
16 you.
17 MR. JORDAN: I'm saying those issues that are
18 cons have been recognized and addressed in the existing
19 wording of the Order.
20 Is that a fair statement?
21 MR. BRIGGS: Yes.
22 MR. YOUNG: Yes.
23 MR. JORDAN: I also -- my experience is, when
24 this can move up the food chain is to look to policy and
25 look to law and look to goals and not get too involved in

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1 the last three lines on the cons list that have to do with
2 my legal interpretation of the issue.
3 Somebody else is going to get to chew on that
4 another day. And I'd be happy to offer my two cents as a
5 reminder to my peers of what the goal of this particular
6 body are. I think you guys all know them, so I don't need
7 to read them out. That's what I think the focus should be
8 on. Are we moving toward those goals consistent within
9 the policy and law. And can we say that the Order meets
10 that criteria at the end of the day, whether it can be
11 legally challenged or not is somebody else's fight another
12 day. It's not my fight today.
13 So, thanks.
14 MR. YOUNG: To that end, I am not in favor of
15 going through the con list and trying to work that in
16 terms of the Ag Alternative. I am in favor of taking the
17 language that I saw that you worked on, I think that that
18 has merit. And I'd like to see that offered up and
19 brought into the recommendation.
20 MR. JOHNSTON: How about this? I think
21 ultimately what we need to do is kind of just decide
22 between one of those two approaches.
23 MR. YOUNG: Right.
24 MR. JOHNSTON: I'm perfectly happy to put that
25 language out now, and we can have a sense of alternatives,

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1 if that language works. As I said, I've run it by the
2 Executive Officer and counsel. But I think that that's --
3 I think that's sort of the moving-forward question.
4 Which of those -- I agree with you, Mike. What
5 we need to do is, we need to come out with an Order. We
6 need to do it without further delay, and it needs to be
7 the Order that will best improve water quality. I am very
8 definitely intrigued and interested in the potential for
9 getting better results in some situations from the
10 coalition approach, absolutely.
11 And the question is, what's going to give us the
12 best chance of doing that. If you want me to put that
13 language out, Mr. Chairman --
14 Have we got it on the thumb drive, Angela, or on
15 the computer? Have we got copies of that for people?
16 MS. HUNTER: We can put it up.
17 MR. JOHNSTON: Yeah.
18 There are two different pieces. The first piece
19 is designed to come up with some more specificity as far
20 as cooperative groundwater monitoring. And it starts with
21 some changes on Page 4 of the Order, to Paragraph 11.
22 Page 4, Paragraph 11.
23 MR. JEFFRIES: That's of the Order itself?
24 MR. JOHNSTON: That's of the Order itself.
25 I take it back. It's -- I'm in findings. It's

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1 Attachment 1. It's the Order itself. It's Attachment 1.
2 MS. SCHROETER: We're making copies for you.
3 MR. JOHNSTON: Should we just wait for the
4 copies? Would that be easier?
5 MR. YOUNG: Yeah.
6 MR. JOHNSTON: That's awfully tiny to read.
7 MR. YOUNG: I think we need to make more than
8 just for the Board would be helpful.
9 MR. JOHNSTON: I would point out that because
10 this is done in red and black rather than underline
11 strikeout, hopefully the copies will be readable if
12 they're done on a monochrome printer.
13 MR. DELGADO: Just to get going, can we enlarge
14 the --
15 MR. JOHNSTON: Sure. We can go there.
16 MR. DELGADO: Can we enlarge the font, is what
17 I'm suggesting.
18 MR. BRIGGS: Enlarge the font.
19 MR. JOHNSTON: Not zoom in, but change the font.
20 (Discussion held off the record.)
21 MR. JOHNSTON: So this is language regarding
22 encouraging Dischargers to coordinate, and we include
23 cooperative monitoring and reporting efforts. And my
24 intention with the word reporting is not just reporting
25 results. I take it back. It is reporting results.

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1 Excuse me.
2 Cooperative monitoring and reporting efforts.
3 And then if you go down, we add, in cases where
4 cooperative water quality improvement efforts were local
5 or regional treatment strategies, and we add in
6 coordinated by a third party group. Example, watershed
7 group, water quality coalition, or other similar
8 cooperative effort, or by a group of Dischargers,
9 necessitate alternative water quality monitoring or a
10 longer time schedule to achieve compliance. The
11 Dischargers can request a different schedule.
12 And then we go on down to, Dischargers may submit
13 an alternative water quality monitoring and reporting
14 plan. And there's some language that we'll get to in the
15 next section as to why reporting is in there.
16 Then it says groups of Dischargers, added
17 language, and/or third party groups. Example, a watershed
18 group or water quality coalition may submit to the
19 Executive Officer for approval of alternative water
20 quality monitoring and reporting programs. An alternative
21 water quality monitoring and reporting program must
22 include collection of data that will provide indicators of
23 water quality improvement or pollution load reduction.
24 And aggregate monitoring and reporting must be on a scale
25 sufficient to track progress in small sub basins and be

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1 sufficiently representative of conditions.
2 Aggregate monitoring may apply to surface and
3 groundwater. The Executive Officer will evaluate the
4 alternative monitoring and reporting programs on a
5 case-by-case basis considering the potential effectiveness
6 of the aggregate or alternative monitoring. Example,
7 request to conduct aggregate monitoring for a certain time
8 frame to give new practices or treatment time to maximize
9 effectiveness and other factors such as whether the farms
10 are currently significantly contributing to impaired
11 surface water or groundwater, with drinking water wells,
12 or whether farms are in compliance with other provisions
13 such as enrollment or submittal of annual compliance
14 information.
15 Dischargers who participate in an alternative
16 monitoring and reporting programs maintain individual
17 responsibility to comply with the Order's provisions. And
18 there's just a couple more changes in this, if you go down
19 to the next paragraph.
20 MR. YOUNG: It does say the word conditions, not
21 provisions.
22 MR. JEFFRIES: Yeah, conditions.
23 MR. YOUNG: Mike, is that --
24 MR. JEFFRIES: The word up on the screen was
25 conditions. You said provisions.

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1 MR. JOHNSTON: It says conditions. Thank you.
2 MR. YOUNG: Yes.
3 MR. JOHNSTON: Dischargers may continue to
4 implement the alternative treatment or monitoring programs
5 approved, and Dischargers may seek review of E.O.
6 decisions by the Water Board.
7 Let me explain my intent with this. The Order
8 requires basically every farm to do at least one round of
9 groundwater monitoring. And besides the concern that has
10 been expressed by growers around potential liability and
11 other issues regarding disclosing individual results,
12 which has been somewhat dealt with by blurring both the
13 location and identity of the farm the well's on.
14 The question I was raising was, it seems like we
15 need the monitoring to get a good baseline picture of
16 what's going on in the groundwater. And I think that's a
17 mutual interest with agriculture. We don't necessarily,
18 in every situation, need every well. And there's a cost
19 involved in this.
20 And so the concept here is, if you can do
21 monitoring in the sub watershed that's on a fine enough
22 scale geographically -- and that's both north, south,
23 east, west and up/down geographically to get the picture
24 we need, we maybe don't need data from all the wells.
25 I was looking at this as a potential cost savings

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1 to be able to get aggregate results on a fine enough scale
2 that it's useful to us and to the affected farmers,
3 frankly. And we may well be able to do that with fewer --
4 with less sampling of wells, or for that matter, there are
5 going to be surface water situations where this is
6 applicable, as well.
7 MR. YOUNG: Why don't you go through the other --
8 MR. JOHNSTON: Yeah. Let me go through the
9 others.
10 Page 13, Condition 10, that is -- we're on into
11 the -- this is the language that already talks about how
12 Dischargers can comply with the Order by participating in
13 different kinds of groups or cooperative efforts. What
14 was added in here is the language including implementing
15 water quality improvement projects and then it references
16 the MRPs.
17 Because, we're providing below, an alternative
18 way to do the monitoring. We're saying, or the
19 alternative monitoring and reporting programs as provided
20 in Condition 11 below. And Condition 11 is a new
21 condition. And what -- you want to page down past --
22 since we're already on this page, we can come back to 72
23 and 73. Actually, let's go back up.
24 72 and 73 are from the Tier 3 MRP. And we're
25 just adding, or alternative monitoring and reporting

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1 programs as set forth in Finding 11 and Condition 11.
2 That's just enabling language for what's happening in the
3 new Condition 11.
4 MR. JEFFRIES: Is that date still good,
5 October 1st of '12?
6 MR. JOHNSTON: That date may not be good.
7 MR. DELGADO: Whatever the date is --
8 MR. JOHNSTON: Whatever the date is it is.
9 MR. DELGADO: We've already agreed on it as a
10 change.
11 MR. JOHNSTON: We've talked about. We haven't
12 voted on anything.
13 MR. THOMAS: Mr. Chairman and Mr. Johnston.
14 MR. YOUNG: Yes.
15 MR. THOMAS: I'm sorry I interrupted you.
16 Backing up, it says here, Dischargers may comply
17 with this Order by participating in third party groups.
18 And at the end of that sentence, it says, approved by the
19 Central Coast Water Board. The direction you're going in
20 would be -- that would have to be changed to, approved by
21 the Executive Officer.
22 MR. JOHNSTON: I would -- yeah. I would say by
23 the Central Coast Water Board or the Executive Officer.
24 There is an appeal from the Executive Officer in the thing
25 I'm about to get to.

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1 MR. THOMAS: The way this is set up, it would
2 have to come back to you.
3 MR. JOHNSTON: I understand. So I would say
4 approved by the Executive Officer or the Central Coast
5 Water Board because what we've got down -- the next thing
6 we're going to go through is the process of getting
7 approval for third party groups. And it goes to the
8 Executive Officer, and it's appealable to the Central -- a
9 decision -- a denial by the Executive Officer is
10 appealable to the Board. So I would assume we would want
11 to put them both in there.
12 Thank you for catching that, Mike.
13 MR. DELGADO: So it would be and/or? It would be
14 the Executive Officer and/or?
15 MR. JOHNSTON: And/or, yes. No, the Executive
16 Officer or.
17 MR. DELGADO: Or.
18 MR. JOHNSTON: Because it may well not come to
19 the Central Coast Water Quality Board at all. The
20 Executive Officer approves it, they're not going to appeal
21 it. It's not going to come to us.
22 So let's go down to the new Condition 11. This
23 is all new language. And basically the point of this is
24 to set up some criteria for third party groups, to set up
25 a process to evaluate proposals for third party groups

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<p>1 involving a technical advisory committee, and to set up -- 2 which then makes a recommendation to the Executive 3 Officer, and then to set up a process where an Executive 4 Officer denial is appealable to the Board. 5 Do I need to read this whole thing? 6 MS. HUNTER: Yes. 7 MR. JOHNSTON: I can read it. 8 Did people get copies yet? 9 MR. YOUNG: Yes. 10 MR. JOHNSTON: All of what's in Condition 11, 11 while it's not bolded, it's all new language. 12 MR. YOUNG: Right. 13 MR. JOHNSTON: The entire condition is new. It 14 would renumber the Condition 11 that follows to 15 Condition 12 and everything down below it. 16 And it reads as follows: Dischargers may form 17 third party groups to develop and implement alternative 18 water quality management practices, i.e., group projects 19 or cooperative monitoring and reporting programs to comply 20 with this Order. At the discretion of the Executive 21 Officer, Dischargers that are a participant in a third 22 party group that implements Executive Officer approved 23 water quality improvements projects or Executive Officer 24 approved alternative monitoring and reporting programs may 25 be moved to a lower Tier. Example, Tier 3 to Tier 2, or</p> <p style="text-align: right;">Page 110</p>	<p>1 provided to the Water Board. Monitoring points must be 2 representative but may not always be at the edge of farms 3 so long as monitoring result demonstrate water quality 4 improvement and the efficacy of a project. 5 In addition, monitoring must, one, characterize 6 and be representative of discharge to receiving water. 7 Two, demonstrate project effectiveness. Three, and verify 8 progress towards water quality improvement and waste water 9 production. 10 Project proposals will evaluated by a technical 11 advisory committee comprised of two researchers or 12 academics skilled in agricultural practices and/or water 13 quality, one farm advisor NRCS or RCD, one grower 14 representative, one environmental representative, one 15 environmental justice or environmental health 16 representative, and one regional Board Staff. 17 The TAC must have a minimum of five members to 18 evaluate project proposals and make recommendations to the 19 Executive Officer. The Executive Officer has discretion 20 to approve any project after receiving project evaluation 21 results and recommendations from the committee. 22 If the Executive Officer denies approval, the 23 third party group may seek review by the regional Board. 24 As stated in the NPS policy, management practice 25 implementation is not a substitute for compliance with</p> <p style="text-align: right;">Page 112</p>
<p>1 Tier 2 to Tier 1, and/or provided alternative project 2 specific timelines and milestones. 3 To be subject to tier changes or alternative 4 timelines, projects will be evaluated for, among other 5 elements, project description. The description must 6 include identification of participant's methods and 7 schedule for implementation. 8 Purpose. Proposal must state desired outcome for 9 goals of the projects. Example, pollutants to be 10 addressed, the amount of pollutant load to be reduced, 11 water quality improvement expected. 12 Scale. Solutions must be scaled to address 13 impairment. 14 Chance of success. Projects must demonstrate a 15 reasonable chance of eliminating toxicity within the 16 permit term, five years, or reducing discharge of 17 nutrients to surface and groundwater, long-term solutions 18 and contingencies. Proposals must address what new 19 actions will be taken if the project does not meet goals 20 and how the project will be sustained through time. 21 Accountability. Proposals must set milestones 22 that indicate progress towards goals stated as above in 23 purpose. 24 Monitoring and reporting. Description of 25 monitoring and measuring methods and information to be</p> <p style="text-align: right;">Page 111</p>	<p>1 water quality requirements. If the project is not 2 effective in achieving Water Quality Standards, additional 3 management practices by individual Dischargers or third 4 party groups will be necessary. 5 The point of this is to -- is to -- if we choose 6 not to use the Ag Proposal as a framework and give -- make 7 a set of decisions today on a detailed program to give a 8 framework within which such proposals can be brought to 9 the Board -- or excuse me -- can be brought to the 10 Executive Officer after evaluation by a technical advisory 11 committee -- and we know that the technical advisory 12 committee, back before this process became so polarized, 13 was a functional group that got some stuff done. And my 14 hope in proposing this is that it would provide some 15 balanced way to evaluate stuff, provide input to the 16 Executive Officer and to the Board as well stuff that's 17 appealed to the Board. 18 MR. YOUNG: I think it's a great proposal. I 19 think what you've done is taken what Staff has always said 20 was achievable as part of what they have been proposing, 21 and essentially put down in writing what it might look 22 like, and make that part of what we're going to 23 incorporate in the Order and the Monitoring Program. 24 So how much of this did you write? 25 MR. JOHNSTON: About half.</p> <p style="text-align: right;">Page 113</p>

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1 MR. YOUNG: Good. It's great.
2 MR. BRIGGS: Mr. Chair.
3 MR. YOUNG: Yes.
4 MR. BRIGGS: Mr. Johnston asked --
5 MR. JOHNSTON: In answer to your question about
6 what I wrote, this was a back and forth between --
7 MR. YOUNG: I understand.
8 MR. JOHNSTON: -- myself, Roger, Frances. And I
9 would imagine that Roger was consulting other Staff on it.
10 MR. YOUNG: Right.
11 Is this acceptable to Staff?
12 MR. BRIGGS: That was the reason Mr. Johnston
13 wanted to vet it instead of dropping it here was to see if
14 it would be acceptable. Mr. Johnston asked me to help
15 flesh out some ideas for a technical advisory committee.
16 But I wanted just one -- I think it's a typo type of
17 admission. In the last paragraph that you just referred
18 to, the second line, that parenthetical -- I think my
19 intent was for that to be an, e.g., for example NRCS, or
20 RCD. And we should spell that out, too, instead of using
21 acronyms.
22 MR. DELGADO: Can I ask a specific question?
23 MR. YOUNG: Yes.
24 MR. DELGADO: On New Condition 11, all new
25 language, there's about seven black dot bullets. And the
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1 fourth bullet is Chance of Success. It says, must
2 demonstrate reasonable chance of eliminating toxicity
3 within the permit term of five years. And I just wondered
4 if you meant to say eliminate toxicity or more
5 realistically would substantially reduce or reduce or
6 something?
7 MR. JOHNSTON: It says, within the permit term or
8 unless this got -- let me compare.
9 MR. YOUNG: The first part deals with toxicity;
10 the second part deals with nutrients.
11 MR. JOHNSTON: Right.
12 MR. DELGADO: Toxicity theoretically could remain
13 high, low, or medium. But then if you reduced nitrates to
14 surface and to the groundwater, the toxicity would be let
15 lie.
16 MR. JOHNSTON: What it says is, if these are
17 the -- it says that it has to demonstrate a reasonable
18 chance of eliminating toxicity within the five years,
19 which is a goal of this, or reducing the nutrients.
20 Everybody knows we're not going to eliminate those
21 nutrients in five years. That's no secret.
22 Go ahead, Roger. You look like you're about to
23 jump --
24 MR. BRIGGS: I was going to point out that there
25 could very well be projects -- most likely will be
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1 projects that are geared towards one or the other. You're
2 likely to not have the perfect silver bullet for both
3 toxicity and nutrients.
4 So, for example, the wood chip, pretty simple
5 technology that can be pretty effective with nitrates, but
6 it's not really targeting toxicity.
7 MR. JOHNSTON: So what could fit within this
8 framework is a variety of things, from something like what
9 Ag was proposing, which was a large scale coalition
10 across -- I would suspect they were looking at across
11 multiple growing areas, multiple crops that could fit
12 within this. But what could also fit within this is a
13 much more limited scale project that's addressing -- maybe
14 not even addressing every issue in the Order, but
15 addressing certain issues in the Order.
16 It may be that such -- now, the Ag Proposal calls
17 for -- participation in that proposal brings you to
18 Tier 1. This says it can drop you down Tier 3 to Tier 2,
19 Tier 2 to Tier 1. So it could be that this is a very
20 limited scope project that tries to accomplish one thing,
21 and it moves you from Tier 3 to Tier 2. There's the
22 ability to propose a lot of different kinds of projects in
23 here.
24 MR. YOUNG: Okay.
25 MR. JEFFRIES: Good job.
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1 MR. YOUNG: Good job. All right.
2 So what would we like to do? Do you want to have
3 a motion put on the table? Is there more discussion
4 needed?
5 Dr. Hunter.
6 MS. HUNTER: Well, I do appreciate this last
7 conceptual and also very well-defined and spelled-out
8 opportunity to open the door to the intent New Part E. So
9 I really appreciate that language, and I believe -- and
10 I'm glad to know that there was time for Staff and
11 Mr. Briggs and Frances McChesney to also consider the
12 language. Knowing that, I would like to propose that we
13 accept those suggest revisions wholesale.
14 With that in mind, I would like to move the
15 motion to approve. So unless others have anything they
16 want to add to that.
17 Mr. Johnston.
18 MR. YOUNG: As part of your motion, are you
19 incorporating the Staffs' recommendation?
20 MS. HUNTER: Why don't I go ahead and make the
21 motion.
22 MR. JORDAN: Okay.
23 MS. HUNTER: I want to move to approve the
24 renewal of the Conditional Waiver of Waste Discharge
25 Requirements for discharge from irrigated lands, which is
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1 Order Number R3-2012-0011. And that's the revisions
2 listed by Staff and reviewed by the Board today, as well
3 as the changes in language noted by Ms. McChesney to
4 insert specific language that is consistent with language
5 in the Non Point Source Policy. And that the revisions to
6 the Order -- pardon me -- and that revisions to the Order
7 with noted corrections submitted by Mr. Johnston be
8 incorporated into the final language of the Order.
9 So I'm proposing that the motion to approve
10 include all of the Staff edits that we reviewed and
11 discussed today, that Ms. McChesney's noted consistency
12 with Non Point Source Policy, and then your printed and
13 written out, submitted revisions that we just reviewed,
14 that all of those changes be incorporated into the permit
15 and that we ask Mr. Briggs to oversee the final revisions
16 to ensure accuracy and that they be taken from the record.
17 MS. McCHESENEY: Can I just add one more thing?
18 MR. YOUNG: Yes.
19 MS. HUNTER: Yes.
20 MS. McCHESENEY: I did check the Non Point Source
21 Policy and the quote is actually accurate from the policy.
22 MR. JEFFRIES: That's good.
23 MS. McCHESENEY: The second thing is that the
24 Staff had agreed that the Order part of the Order number
25 46 that referred to the authority to issue Orders and
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1 require groundwater stuff would be moved into a finding
2 instead of in the Order part, which would be Number 46.
3 That wasn't specifically included in the Staffs' proposal.
4 MS. HUNTER: We would want to include that
5 correction, as well -- or that revision?
6 MS. McCHESENEY: It's Page 21 of the Order, and
7 it's Number 46 would be moved to a finding. I don't know
8 what finding number, but that's okay.
9 MR. YOUNG: Okay.
10 MS. McCHESENEY: And then Roger did have something
11 he does need to add. Right?
12 MR. BRIGGS: I think you actually covered a
13 couple of logistics things because you said all edits that
14 we discussed today, which includes the two -- the changes
15 in the Staff report as well as the supplemental sheet that
16 was in your folders, we want to point out that this
17 item -- consideration of this item includes the entire
18 record for this matter.
19 MS. McCHESENEY: Right. From -- the 2004 adoption
20 until today including all the written comments, Staff
21 reports, audios, and everything else.
22 MR. BRIGGS: I also want to point out that I
23 think with the motion it would be a good idea to direct me
24 to have Staff monitor the implementation of this Order.
25 And after a quarter, perhaps four months, something like
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1 that, "agendize" a status report for the Board so that you
2 can see how things are going. Others would have a chance
3 to address you in terms of how things are going and at
4 probably some regular intervals after that.
5 I do think that from my perspective of having
6 worked on a lot of contentious issues in a few decades
7 here that in 6 months -- 3 months, 6 months, whenever,
8 that you will probably look back and say, gee, what was
9 all the fuss about? Because we've prompted management
10 practices that are more effective. We've acquired some
11 accountability for those. And we're on the road to
12 improvements.
13 When you consider that perspective, if you can
14 find yourself to accept that, and you weigh that against
15 the urgency of acting in the face of severe toxicity
16 problems we have throughout the region, as we discussed
17 over and over again, and severe public health threats that
18 are unprecedented in their scope in this region,
19 unprecedented in this region's history, it's clear to me
20 now is the time to act on this motion.
21 MS. McCHESENEY: I want to make sure your motion
22 includes a certification of the subsequent EIR -- right --
23 include certification of the subsequent EIR that's part of
24 the Staffs' --
25 MR. THOMAS: It's on the screen.
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1 MS. McCANN: Okay. Good.
2 MR. THOMAS: Also the MRP.
3 MS. McCHESENEY: Also I wanted to clarify that
4 yesterday there were quite a few slide presentations that
5 included slides about the report that came out on Tuesday.
6 And I want to make clear that the record does not include
7 those slides that were -- the record generally includes
8 the slide -- it includes the slide presentations, but
9 we'll specifically delete those slides that had anything
10 to do with that.
11 MR. YOUNG: Which report? Can you be more clear.
12 MS. McCHESENEY: The -- I -- what's the --
13 MS. HUNTER: Davis --
14 MR. THOMAS: The U.C. Davis Harter SBX2 Report.
15 MR. YOUNG: I just want to make sure the record
16 is clear.
17 MS. McCHESENEY: And I made a list of those slide
18 numbers and presentations to be sure that Staff --
19 MR. YOUNG: Okay.
20 MS. McCANN: -- excludes those from the record.
21 And then the other thing to clarify is that the
22 record -- it starts with the 2004 Order and goes through
23 today. There are some things that may be necessary
24 preceding 2004 in order to make the record complete. For
25 example, with respect to CEQA. But generally the record
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1 preceding the 2004 adoption is not part of this record.
2 MR. YOUNG: Are those changes acceptable?
3 MS. HUNTER: Yes.
4 MR. THOMAS: Mr. Chairman.
5 MR. YOUNG: Yes.
6 MR. THOMAS: No one has said out loud yet, but we
7 are also recommending adoption of the monitoring and
8 reporting program that goes with this Order.
9 MS. HUNTER: I would add to my motion that we
10 adopt the monitoring and reporting program Number
11 R3-2012-0011.
12 MR. THOMAS: And the CEQA resolution.
13 MS. HUNTER: I'm sorry. I thought we already
14 agreed to that. Yes, the CEQA resolution.
15 MR. YOUNG: Mr. Jordan.
16 MR. JORDAN: Not to stop the momentum, but I'll
17 be happy to support the direction we're going and to thank
18 Mr. Johnston for his efforts, but I'll continue to want to
19 note the significant giveback that Staff made on the
20 nitrate loading. I continue to feel that that was
21 significant concession on the part of Staff.
22 One of the provisions of Board work alone is not
23 just to improve but to protect from degradation. I take
24 that phrase as an aggressive statement, not a reactionary
25 statement, but one that puts the burden on this Board to

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1 act to protect rather than just seek actions to improve
2 situations. In fact, along with outside the box, I think
3 improving water quality is probably one of the misused
4 phrases because it infers that water quality is already at
5 some level of acceptability, and you're just ratcheting it
6 up a little better.
7 The fact of the matter is, it's really at a
8 degraded point right now. We're really trying to catch
9 up. I think the ball clearly should be in the
10 Discharger's court now. You've been given some
11 significant concessions and significant tools to work
12 with. And in five years from now, we hope to see better
13 results. I hope that we don't have to go through this
14 process again and talk about some of these more stringent
15 give-ups that we did today.
16 Thank you.
17 MR. YOUNG: Is that a second to the motion?
18 MR. JORDAN: I'd be happy to second it with those
19 comments.
20 MR. YOUNG: We're not going to vote yet on it.
21 MR. JORDAN: Okay.
22 Go ahead.
23 MS. McCHESNEY: I just want to make one
24 clarification. Your MRP number, that includes all three
25 MRPs, that number? Because in the draft, they had three

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1 different numbers.
2 MS. SCHROETER: It has a dash 01, 02 and 03 --
3 MS. McCHESNEY: Okay.
4 MS. SCHROETER: -- in all of them.
5 MS. McCANN: The numbers are consistent.
6 MR. YOUNG: Mr. Johnston and then Mr. Jeffries.
7 Go ahead.
8 MR. JOHNSTON: I hate to tie myself on the tracks
9 in front of the train here. I know we all want to go
10 home. But, quite frankly, my purpose in running through
11 that language was to lay out a choice for the Board for
12 two alternatives that we take to move forward on passing
13 an Order tonight.
14 And given the -- everybody on all sides has put a
15 huge amount of work into this. But given the work that
16 went into what was put before us yesterday, I still think
17 it appropriate to see if there is interest on the Board
18 in -- and I'm prepared to stay tonight as late as I need
19 to -- in working through the Ag Proposal and seeing if we
20 can accommodate and resolve the policy issues raised by
21 Staff and the legal issues raised by Staff.
22 I am interested in extracting the maximum amount
23 of collaboration possible without diminishing our results
24 in terms of water quality -- can add to our results in
25 terms of water quality. So I mean, I'm mentally counting

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1 noses and suspecting that there's not support on the Board
2 for that, but it's a question I'd like to ask.
3 And I'd hoped to ask it before a motion was made.
4 Perhaps I can be advised as to if there's an appropriate
5 parliamentary way. I suppose I could propose to amend the
6 motion. That's kind of clumsy to something that's
7 completely different.
8 Frances.
9 MS. McCHESNEY: I just looked at the rule. This
10 is what's called a main motion, and you can debate the
11 main motion, and then, I assume, included in the debate is
12 whether to -- what to do about that motion and then vote
13 on it and then do something else.
14 MR. JORDAN: What you're saying is that --
15 MS. McCHESNEY: Let me look some more about what
16 to do about that.
17 MR. JOHNSTON: -- is that the only way to address
18 on the Board before we vote on Dr. Hunter's motion,
19 whether there's interest in the Board in going through and
20 attempting to revise the Ag Proposal, is to first vote
21 down Dr. Hunter's motion?
22 MS. McCHESNEY: No. That's not what I said. You
23 can discuss your idea, and I'll keep looking.
24 MR. YOUNG: Let's have everybody speak to the
25 motion, and we can address, I think, the questions.

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1 She'll provide the answers.
2 MR. JORDAN: We can count noses that way.
3 MR. YOUNG: Yeah, yeah.
4 Let me just state how I feel about this. I know
5 Russ and I have been through this from the beginning. We
6 enjoy the experience of having seen the development of
7 this whole process from its very beginning to where it is
8 today.
9 There's been a huge amount of effort put into
10 this by everybody, both the Ag community, the
11 environmental community, and now we have the environmental
12 justice interests involved in this, which we've never had
13 before. That wasn't part of our first permit. This is a
14 new element.
15 We've had the revelation of the extent of the
16 groundwater contamination with nitrate that was not there
17 before. We had a little bit of indication that it was
18 there, but it had become really apparent with a lot of
19 data that it is quite widespread, and people are drinking
20 water that needs to be addressed in terms of, you know,
21 remediation, source control.
22 The list of the cons, I'm not interested in going
23 through and trying to piece by piece address them. I
24 appreciate the offer up of the choice that we could do
25 that and spend the time to do it. I think there are some

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1 fundamental differences when you really boil everything
2 down to what Ag has proposed that I don't think we're
3 going to be able to reconcile.
4 I think what we've had for many years is an
5 approach that takes the data and keeps it, to some degree,
6 from public scrutiny, kind of camouflages it somewhat. I
7 know Tess Dunham is of the opinion that that can be done.
8 It can be done through coalitions. It can be aggregate
9 collection and then reporting summaries.
10 I'm just not comfortable with that approach.
11 Fundamentally I'm not comfortable with that. I read the
12 Water Code statute, and my take from that is that this
13 agency has a responsibility to be transparent to the
14 public process in terms of requiring efforts that will
15 change over time these sources of contamination, that
16 there will be accountability to those that are making
17 changes on the ground.
18 And it's a public -- these are public resources
19 that we are addressing and are statutorily mandated to
20 protect both the groundwater, surface waters. We're the
21 only agency in this State for this region that has that
22 responsibility. It's not going to be the Department of
23 Pesticide Regulations.
24 We have had them come before us -- actually,
25 before the three of you came on board, but they did tell

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1 us their focus was in labeling and application of
2 pesticides. It's not in looking at protecting beneficial
3 uses.
4 We have had Fish and Game come before us and tell
5 us they -- and the Department of Health all really in
6 concurrence with what we're trying to do. So I appreciate
7 ag's added effort. I mean, they have moved this process,
8 I think, immensely in a direction to where they'd like to
9 go. I know they'd like to get it further, but I think,
10 practically speaking, we're at a point now where we can go
11 ahead and vote and adopt what's being proposed.
12 I feel comfortable with it. I think my only
13 remaining issue would be -- and this is something
14 Dr. Wolff had mentioned.
15 I wish you would have approached Roger, which you
16 could have done before the Board meeting, that this may be
17 a huge implementation task for the agency in terms of
18 getting everybody on board, making sure we have all the
19 growers, making sure they know what they're supposed to be
20 doing, and making sure that the agency has shifted some
21 Staff, at least, to get the ball rolling in this, and that
22 there should be some kind of an additional technical
23 advisory committee, if you want to call it that. I think
24 Dr. Wolff called it a management advisory committee.
25 MS. McCHESNEY: Can I just interrupt to --

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1 MR. YOUNG: Yes.
2 MS. McCHESNEY: Dr. Wolff had -- his conflict of
3 interest precluded him from discussing this with Staff.
4 You mentioned him talking to Roger, and he couldn't do
5 that.
6 MR. YOUNG: He couldn't? I thought he could.
7 MS. McCHESNEY: No. He can only comment as an
8 individual representing himself. He could not discuss --
9 MR. YOUNG: He could never have discussed it?
10 THE WITNESS: No.
11 MR. YOUNG: Okay.
12 MS. McCHESNEY: I just wanted to clarify that.
13 MR. WOLFF: So I'm off the hook.
14 MR. YOUNG: But after today, there will be no
15 pending matter, and he could participate in --
16 MS. McCHESNEY: Yeah. I'll check on that, but I
17 don't think we need to go there right now.
18 MR. YOUNG: That would be my -- I think he made a
19 good suggestion with that, to make sure that things get on
20 board and implemented properly.
21 To answer your question, Mike, I'm in favor of
22 the motion as it stands. But let's hear --
23 Russ has a keen interest in this issue. I do
24 because of how far back we go with this firm's origin.
25 How do you feel?

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1 MR. JEFFRIES: I have mixed emotions. I was
2 really in favor after I heard all the testimony yesterday
3 ask what the Ag presented and all the testimony. I was
4 really -- after I heard all the testimony because I'm the
5 type of person -- it's a public hearing. I like to hear
6 all the information before I make a decision. I was
7 really leaning toward the Ag Proposal, and then the
8 legality issues came up.
9 And, Mike, if you're looking for an answer, I'd
10 be willing to stay here and iron this out. But I don't
11 know if we would be that much further along than we are
12 today, what you've just proposed and what the motion is in
13 front of us.
14 We have to remember that there's always the
15 opportunity, if there's some refinement that can be
16 brought to the Executive Officer and to the Board for us
17 to open up the Order again and change the Order to make it
18 better.
19 Orders are always in flux because each time that
20 they come up for renewal, there's a little bit of changes
21 and hopefully they're for the better. So I'm looking --
22 you know, you'd like to have a win-win situation for
23 everybody.
24 And I think the -- from where the first Order the
25 Staff proposed for us and for what they've done today, the

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1 Staff has conceded considerably.
2 I think what Ag has proposed, from what they
3 originally proposed, they have conceded some and made some
4 moves in the right direction.
5 So my interpretation of this is that it is kind
6 of a win-win type situation. Again, I think it's time --
7 I think I said this a couple meetings back -- I'd like to
8 have this Order completed before I leave the Board -- that
9 we can move forward.
10 I think that if we give that direction -- and I
11 like the cooperative monitoring. I really like that. I
12 think it's got some real merit in there. Not only that,
13 but it really puts responsibility back on to the people
14 that are using it. And I think that's kind of good. And
15 I think they kind of proposed that and said, look at, you
16 know, we'll take that responsibility on, and we'll be the
17 ones that monitors that.
18 It would relieve the Staff. And I questioned
19 yesterday and I've questioned before, do we have enough
20 Staff to handle all this to implement it. And, quite
21 frankly, I still have that question. And I'm not really
22 sure. But I guess I'm going to find out pretty soon
23 because if it doesn't work, all these folks that are here
24 today and the ones that were here yesterday are going to
25 be back here pounding on the table and saying, look, it

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1 doesn't work. You've got to do something. We need some
2 help. We need some direction from Staff, and we're not
3 getting it.
4 I thank Mr. Johnston for doing what he's done. I
5 think it's a great compromise. But I think you and I are
6 probably thinking on the same lines. I'll stay here and
7 hammer it out if you want to.
8 MR. YOUNG: He just offered it up as an option.
9 MR. JEFFRIES: I know he did. I'm trying to tell
10 him --
11 MR. YOUNG: Right.
12 MR. JEFFRIES: -- there's still the opportunity
13 to have that happen. And those folks can come back and
14 say, these are the areas that we're having problems with,
15 and this is what we're proposing to make that better.
16 So I'll stop.
17 MR. YOUNG: Mr. Delgado.
18 MR. DELGADO: If I was an Ag member or a
19 grower -- and I considered the Ag Proposal -- I had some
20 ownership. It's kind of like my preferred alternative;
21 it's my plan. I might feel some relief that there seems
22 to have been some changes in my direction and fairly
23 significant ones.
24 We now have the spelled-out option of aggregate
25 monitoring and aggregate reporting being a potential which

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1 wasn't part of the plan, you know, half an hour ago.
2 We have some extensions on some of the -- the
3 most immediate near-term deadlines. Something that they
4 were asking for. We have a new carrot process to move
5 down from Tier 3 or down from Tier 2. That was a big
6 message that we heard. So that would give me some relief
7 and hope if this was my Ag plan that I wanted. I would
8 want more. But I would be getting more than I had when I
9 came in this morning or came in yesterday and that would
10 make me feel good.
11 If I was a member of the environmental justice
12 community or the environmental community, I would think,
13 oh, God. Now they've moved further toward Ag and further
14 away from what I wanted. I wanted something that was
15 similar to 2010. And we've made so many changes in the Ag
16 direction before today. Now there's more changes, more
17 significant changes. I would feel frustrated in hearing
18 this option to stay later tonight to potentially adopt the
19 Ag Alternative.
20 As an environmental justice or environmental
21 member, I'd feel the opposite of relief and hope. But I
22 am willing personally now to stay until midnight if need
23 be. But I think one option is to approve the motion
24 before us with a friendly amendment that subsequent to
25 that approval, and as soon as we're done approving it,

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1 that we take a shot at staying tonight to address the
2 fundamental differences that remain between what we
3 approved in the Ag Alternative with the option of a second
4 vote later tonight to accept a revised Ag Proposal.
5 Yesterday we talked about non-negotiability and
6 whether there were any nonnegotiable items. And Sam Farr
7 and others seemed to indicate, well, maybe they're not if
8 you get down to it. But we left that question unanswered.
9 If we can negotiate those fundamental differences
10 to our satisfaction -- I don't mind staying later, but I
11 really like the idea from an environmental justice and
12 environmental perspective to get something done today
13 that's been in motion for a long time.
14 MS. HUNTER: Can I speak to my own motion?
15 MR. DELGADO: That wasn't a friendly amendment.
16 MR. YOUNG: I want to know if you were facetious
17 with that amendment.
18 MR. DELGADO: No, it wasn't facetious.
19 MR. YOUNG: Okay.
20 Dr. Hunter.
21 MS. HUNTER: I will speak to my own motion. I
22 will be very brief.
23 I am with you on that last element. What I'm
24 satisfied in is the way this Order has taken shape at this
25 point in time. What satisfies me is that now we'll start

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1 to see some groundwater data coming out of the program.
2 And that has been my priority all along.
3 I also have tried to be, along with the other
4 Board members, prior to your all joining us, as responsive
5 as we could be to the sensitive issues that emerged from
6 the stakeholder process.
7 As Chair Young led in his leadership in
8 recognizing that the Board needed to be more involved and
9 opened up the process to workshops and some other ways in
10 which we supported Staff to get things back on track, that
11 we've seen this process come an enormous distance back to
12 a place where I think we -- at least I believe we all see
13 the potential and the openings that have been discussed
14 both conceptually. To some degree, there's been more
15 specificity that's emerged in that process and then the
16 potential involvement of very talented individuals like
17 Dr. Marc Los Huertos.
18 That all gives us great energy now; whereas, we
19 were all weary, I feel like there's some energy back in
20 the room. I want to thank Ms. Dunham for her
21 extraordinary work in moving the Ag Proposal to a point
22 where we could see the connections.
23 I hope that's true for all of you who support --
24 in support of the Ag Alternative.
25 At the same time, I want to say to the

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1 environmental side and the E.J. side, I think we're going
2 to start to see and develop greater understanding of our
3 watersheds in coastal systems that are both contributing
4 to marine degradation as well as to the fresh water
5 issues.
6 So for that reason, I do believe we are ready to
7 implement this permit program now. And I don't think that
8 it would serve any of us to try to now address this kind
9 of parking lot of elements that we know are not being
10 accommodated at this point; however, I want to thank
11 Mr. Jordan for pointing out -- some important changes have
12 occurred. I think Reese Nelson said the same thing, and
13 in spirit, of course, Mr. Johnston.
14 Some important changes have occurred in a very
15 short period of time. And the framework that we have now
16 before us allows us to do all of these positive and
17 progressive things in the right direction. So I would
18 urge my fellow Board members to support the motion and
19 that we look forward to -- Mr. Briggs suggested that we
20 regularly schedule updates and presentations to the Board
21 in a way that Staff could accommodate that mode. Because,
22 again, we're working with great limits right now.
23 But that we want to shepherd the implementation
24 of this. And the Board will have a good and close sense
25 of how it's working. And that there will be opportunity

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1 for stakeholders to come to us with feedback and where are
2 the gaps and where they need some assistance.
3 So I fully anticipate that we're going to
4 continue in that spirit which started about a year and a
5 half ago when the Board became more engaged.
6 So that's my final statement.
7 MR. YOUNG: Before I call for a vote on
8 Dr. Hunter's motion, I just want to say to the Ag
9 community and the public that I certainly don't expect to
10 see possibly even immediate, you know, water quality
11 changes. I don't care if it says five years in there.
12 What I'm looking for -- and this is my own
13 personal opinion with this and perspective -- is that
14 we're seeing a good faith effort to work towards improving
15 the water quality degradation. That's what I'm looking
16 for.
17 I know that this is going to take in some
18 regions -- some part of our regions years and years and
19 years to get to where we want to be. And I know that
20 we're at the point we are because of decades of acceptable
21 practices. And these have been culturally acceptable.
22 The public has been okay with them. There hasn't been
23 scrutiny on them before. And I think we have to recognize
24 that to expect a huge, diverse complex entity, if you want
25 to call it an entity, is Ag, to be able to change so

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1 quickly, I'm not expecting that in terms of the
2 groundwater and surface water improvements. But I am
3 looking for the good faith effort to make progress in that
4 end.
5 Having said that, Mr. Johnston.
6 MR. JOHNSTON: Couple of things.
7 First of all, the question I posed to Staff
8 before the break regarding Paragraph 27, Page 7, the
9 coupling between filing a pesticide use permit and being
10 required to submit a Notice of Intent.
11 Did you guys have a chance to take a look at
12 that? If so, what is your recommendation?
13 MS. SCHROETER: I think the changes that you
14 suggest, I think are fine. I don't have any objection to
15 the changes.
16 MR. YOUNG: Is that included in your motion,
17 Dr. Hunter?
18 MS. HUNTER: Yes. I would ask that Staff include
19 that in the list of revisions.
20 MR. JOHNSTON: Speaking to the motion, were there
21 four votes for proceeding to try and see if we can make
22 sausage out of the Ag Proposal. I think that would have
23 been the appropriate way to proceed. It does not appear
24 there are. So I will support Dr. Hunter's motion.
25 MR. YOUNG: All those in favor of the motion say
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1 aye.
2 MR. JORDAN: Aye.
3 MS. HUNTER: Aye.
4 MS. McCHESNEY: Aye.
5 MR. JEFFRIES: Aye.
6 MR. JOHNSTON: Aye.
7 MR. DELGADO: Aye.
8 MR. BRIGGS: Aye.
9 MR. YOUNG: Any opposed?
10 The motion is carried unanimously.
11 Is there another motion being proposed,
12 Mr. Delgado?
13 MR. DELGADO: Sure. I'll throw it out there.
14 MR. YOUNG: You can throw it out there.
15 MR. DELGADO: It was my friendly amendment. I'll
16 motion that we stay tonight to address the fundamental
17 differences that remain between the approved motion that
18 we just heard and the most recent version of the Ag
19 Proposal that Tess brought to us yesterday with the option
20 of taking a second vote later tonight on a revised Ag
21 Proposal -- on acceptance of a revised Ag Proposal.
22 MR. YOUNG: Do we need a second for that?
23 MS. McCHESNEY: No, you're not required to have a
24 second.
25 MR. YOUNG: The effect of that is what? We've
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1 already passed the recommendation by Staff.
2 MR. JOHNSTON: The motion for reconsideration.
3 MR. YOUNG: Okay. Well --
4 MR. DELGADO: I don't know if it's a motion for
5 reconsideration. It's a motion for a subsequent step to
6 the last motion passed.
7 MR. BRIGGS: May I speak on that?
8 MR. YOUNG: Yes. Go ahead.
9 MR. BRIGGS: I really think that what you're
10 doing is talking about doing Staff work, not only that, at
11 a late hour. And, actually, I think maybe the ball would
12 be in the court of Ag to take a look at the cons, see if
13 they're interested in talking about those cons.
14 And as I said before, what we have adopted now
15 allows the flexibility for that proposal to come forward.
16 I think it makes a lot more sense for that proposal to be
17 developed by the folks on the ground who have proposed
18 that in the first place. And if -- you know, if the Order
19 being adopted allows for it to come to the Board, if it's
20 stymied, in other words, if a proposal comes to me and I
21 say, no, it's still not there, you have the option to come
22 to the Board, but then it would be a cooked proposal.
23 A proposal that is fleshed out, that is not a
24 moving cloud, as I said. I think that is appropriate. I
25 don't think it makes sense for this Board to not only take
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1 your time -- I appreciate your offer to do that -- but
2 basically you would be taking everybody else's time, too,
3 after two very long hearing days, and I just don't think
4 that is reasonable.
5 MR. YOUNG: Also, I think that there are some
6 things that aren't reconcilable with the cons.
7 MR. BRIGGS: Yes.
8 MR. YOUNG: There are some that may be; there are
9 some that are not.
10 MR. BRIGGS: By the way when I mentioned taking
11 everyone's time, I'm willing to stay here myself. I'm
12 talking about everyone else here, the folks out there,
13 it's not fair to them.
14 MR. JORDAN: Mr. Chair.
15 MR. YOUNG: Yes.
16 MR. JORDAN: I'd also point out that I think
17 there's an issue of noticing involved with that motion.
18 The action that we just took was noticed, but we certainly
19 did not notice that we were going to pass that motion and
20 then the work on revising that action. That certainly
21 wasn't publically noticed.
22 MR. DELGADO: And I'd like to counter it. Within
23 the sideboards of what was listed on the agenda, we could
24 have ditched that Ag Order and rubber-stamped the
25 alternative, the Ag Alternative component. So to consider
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1 modifying the Ag Alternative for approval would be within
2 those same sideboards.
3 MS. McCHESNEY: I am looking at this. So when
4 you adopt -- when you make a motion and you vote on the
5 motion, you can make a motion to reconsider at your same
6 meeting if the main motion is carried or lost. There was
7 a motion. It was carried. You could make a motion to
8 reconsider your motion. But to make the motion like you
9 did, you know, isn't in the list. You could rescind your
10 motion or repeal your motion, whatever you --
11 MR. YOUNG: What are you reading from, Frances?
12 Roberts?
13 MS. McCHESNEY: No. Sturgis rules that apply to
14 your proceedings.
15 MR. DELGADO: I'd like to ask the Chair -- you
16 just mentioned that you thought there might be some
17 irreconcilable differences between the Ag Alternative and
18 what we approved just a few minutes ago. I thought -- I
19 don't know what those are, but they sound like the
20 nonnegotiable potential that we heard last night and we
21 discussed last night.
22 Are there really irreconcilable differences? And
23 if there are, I would think it would be a short list. I
24 would like to know what that short list was, and then my
25 motion was to stay tonight to work on that short list to
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1 see if Ag was willing to change their alternative so that
2 those irreconcilable differences were resolved.
3 MR. YOUNG: Dr. Hunter.
4 MS. HUNTER: Okay. I'm with you on that, the
5 idea that we need to explore and really understand where
6 those irreconcilable differences fall. In order to have
7 that discussion, however, we need stakeholder input, and
8 we need to have a thoughtful process. And I think the
9 review that created that set of pros and cons was the
10 result of Mr. Johnston's request to the Staff. And I
11 think that satisfied his request. But I don't believe
12 that that set of points was intended to drive the changes
13 or the building out, if you will, the filling in of the
14 details of the permit that is to be implemented.
15 So I would hesitate to take that summary which
16 was created for a different purpose and use it now to
17 drive a new discussion, or at least the next generation of
18 this discussion, and expect that both the regulated
19 community and interested stakeholders are going to be able
20 to participate in a discussion at this point in the
21 evening really fully prepared. So what would we
22 accomplish?
23 I think we'd hear a lot of the ideas that have
24 already been stated over the last three years. We've been
25 hearing these things evolve forward, and I think we're
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1 clear on the positions that are reflected among the
2 stakeholders that are involved, that have been involved,
3 that have engaged in this process.
4 I want to see that discussion take place over
5 time in a thoughtful and productive way. I don't see that
6 occurring in the course of the next few hours.
7 I would urge you to reconsider.
8 MR. YOUNG: Mr. Johnston.
9 MR. JOHNSTON: I do not believe that it would be
10 appropriate tonight for us engage in a discussion with
11 agricultural stakeholders about whether they're willing to
12 modify their Proposal. We have closed public comment.
13 And we're at the point that it's -- we can ask questions
14 of Staff, or whatever. We're at the point where it's us,
15 the Board, figuring out what we're going to do. And --
16 MS. McCHESNEY: Right.
17 MR. YOUNG: Yeah.
18 MR. JOHNSTON: Let me just finish, Counselor.
19 I think that if we were to pass a motion to
20 reconsider, really our only option would be, can we now
21 sufficiently amend what was offered in order to make it
22 satisfy our policy and legal concerns. I think it would
23 be patently unfair to all of the stakeholders for us to
24 start discussion with one group of stakeholders hoping --
25 that's not practical.
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1 MR. YOUNG: Right.
2 MS. McCHESNEY: What I was just going to say is
3 that it would be hard for me to give you advise given that
4 we got the Proposal yesterday, and I would rather be able
5 to sit down with Ms. Dunham and others. If you want to
6 schedule that for some other time, to have a discussion,
7 then you can do that. It's not noticed to have that
8 discussion with stakeholders participating so they're not
9 all here.
10 MR. YOUNG: Right.
11 MS. McCHESNEY: So, anyway.
12 MR. DELGADO: I appreciate that, what you just
13 said, Frances.
14 I'll withdraw my motion. What I wouldn't want is
15 to leave tonight and not start implementing what's been
16 approved because there might be something else coming down
17 the pipes. Everyone just remains in limbo.
18 I would hope that if we stay later tonight, we
19 would either learn more that is helpful to everybody or we
20 would come up with a revised product that we are even
21 happier with. I do understand that that's highly
22 unlikely, but I just thought the time spent trying would
23 be of benefit.
24 MR. YOUNG: Okay. So you're withdrawing your
25 motion?
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1 MR. DELGADO: Yes.
2 MR. YOUNG: All right.
3 I think that concludes this agenda time.
4 Thank you very much.
5 We are off the record.
6 (Proceedings were concluded at 6:09 p.m.)
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1 DECLARATION UNDER PENALTY OF PERJURY
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4
5 I declare under penalty of perjury under the laws
6 of the State of California that the foregoing is true and
7 correct and that this declaration was executed on the 29th
8 day of March, 2012.
9
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13 _____
14 DEBORAH L. HOLDEN, CSR No. 8885
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