

A504530
PANEL HEARING MAY 4, 2011

1 CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD
2 PANEL HEARING
3 SAN LUIS OBISPO, CALIFORNIA
4 MAY 4, 2011

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7

8 VOLUME II

9

10 CONTINUATION
11 OF THE
12 HEARING ON THE WAIVER OF WASTE DISCHARGE
13 REQUIREMENTS DISCHARGED FROM
14 IRRIGATED LANDS

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1 listen if that's necessary.
2 There's four seats right here. Some seats
3 right down through here. One right there. And that's
4 it, Mr. Chair.
5 MR. YOUNG: Yes. Thank you, Mr. Briggs.
6 MR. THOMAS: We had a possible glitch with the
7 recorder during the roll call.
8 I'd just like for the record to say that the
9 Board members Hayashi, Hunter, JEFFRIES, Wolff are
10 present.
11 MR. YOUNG: Thank you. All right.
12 I take it, Mr. Hayashi, you have something to
13 say.
14 MR. HAYASHI: Yes. For the next time, I guess.
15 I'm recused again. So I will see you next time.
16 MR. YOUNG: That is because you're an irrigated
17 farmer. You're a farmer that irrigates, that's why
18 you're recused from this hearing?
19 MR. HAYASHI: Yes.
20 MR. YOUNG: Dr. Wolff.
21 MR. WOLFF: We'll keep company to my colleague
22 here. I will recuse myself. Since a portion of my
23 property is dedicated, although one half is dry farming.
24 MR. YOUNG: Thank you, Dr. Wolff. All right.
25 Mr. Briggs.

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1 MR. BRIGGS: Item 4 is, as the Chair just
2 mentioned a minute ago, is actually a continuation of the
3 March 17th item that we had in Watsonville, the northern
4 part of the region. And so we're down here in the south
5 central part of our region today for the continuation of
6 that hearing. Concerning the Conditional Waiver of Waste
7 Discharge Requirements Discharged from Irrigated Lands.
8 So just a little overview of what we're going
9 to be doing today. This is a panel hearing, as you just
10 heard, two of our members are forced to being recused on
11 this item, and since we don't have a quorum of the Board
12 sitting up here, we're handling it as a panel hearing,
13 which is what we were doing last time as well, the
14 continuation of that.
15 What that means is then the panel will then
16 come to a conclusion of the panel that will go forward as
17 a recommendation for action to the next quorum of the
18 Board, which is, hopefully, sooner rather than later.
19 So, after I get done with my little overview
20 here we will continue with the public comments.
21 So, we had folks who showed up for the
22 hearing last time in Watsonville, and what our Chair did
23 is -- actually, I'll wait on that explanation. Just an
24 overview of what we're doing today.
25 So, after public comments we'll have a staff

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1 conclusion and recommendation, and then will be time for
2 the Board Panel to deliberate.
3 So that's the order of events today.
4 I just have two slides now that give a little
5 bit of an overview, kind of get our brain engaged again
6 on what we were talking about last time.
7 So, the staff will have pointed out at the
8 last hearing about the severity of the water quality
9 problems. We went over that in some detail with summary
10 of the extensive information documented in our staff
11 report and attachments. The Order addresses those water
12 quality problems. It included three tiers, and I'll talk
13 about that a little bit more in the next slide with the
14 highest tier, Tier 3, having more control requirements.
15 We've had many changes to the Order as it has
16 morphed through the last two-and-a-half years that we've
17 been working on this. And those changes have been in
18 response to many comments that we received. Comments in
19 workshops, in meetings and in writing.
20 Next. So, to begin the tiers, this slide is
21 very similar, not exactly the same as we saw last time.
22 And so you might recall that we started looking at the
23 center column in Tier 2. And the reason for doing that
24 is because it kind of forms the foundation for the Tiers.
25 So everything that's in white here, the white font, is

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1 basically a holdover from the existing 2004 Order the
2 Board adopted seven years ago.
3 So, that Order requires -- is currently in
4 place and effective -- requires water quality standards
5 to be met, signing up. It has the various practices,
6 management measures that are required in the Farm Plan.
7 Surface water monitoring. Just to be clear,
8 because there's a potential for confusion here, so the
9 watering monitoring refers to the watershed scale
10 monitoring, which is ongoing now. That's what's being
11 conducted on behalf of the industry by the Cooperative
12 Monitoring Program. So that's what we refer to there.
13 There was the education component time
14 schedule that applies to all of these things.
15 And then Annual Compliance Report. So that's
16 all part of the existing 2004 Order.
17 So now for our proposed new Tier 2, it takes
18 all the existing and it adds very few items. It still
19 has the compliance report, but it's basically simplified,
20 streamlined to be an online entry. We talked about that
21 fairly extensively at the last meeting.
22 The Order requires groundwater sampling and
23 reporting. While the existing Order included what --
24 meeting water quality standards, all standards including
25 groundwater, the focus was really on surface water. And

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<p>1 we've talked about the water quality issues that are well 2 documented now with groundwater problems. So this is a 3 necessary component from the staff's point of view to add 4 to this middle Tier. 5 And then backflow prevention is also a 6 groundwater prevention or a groundwater protection 7 measure and seems to be kind of a no-brainer. I think 8 it's fair to say we haven't received any comments about 9 that whatsoever. So, very similar to the existing Order. 10 The Tier 1 criteria then is the same as Tier 11 2, minus this annual compliance form. So it's a little 12 bit simpler. 13 And then Tier 3, we have the Tier 2 14 requirements, plus individual run-off monitoring. So in 15 addition to the surface water monitoring, the watershed 16 monitoring, this would be individual run-off monitoring 17 just for those who would end up in Tier 3. 18 The Water Quality Buffer Plan is also 19 actually a subset for those that have riparian areas in 20 their lands or adjacent to their lands. 21 And then Irrigation Nutrient Management 22 Plan. And one of the things I added to the slide was, 23 just parenthetically, it's a more detailed irrigation 24 nutrient management plan. You see over here we have 25 nutrient management and irrigation management. So just Page 395</p>	<p>1 three-minute comments, that they're in alphabetical 2 order, so -- by your last name. 3 So, we will continue with public comments. 4 And one of the things that I wanted to point out to you 5 is that -- I won't point because I'll probably blind 6 you -- but we have the lights up here, the timer at the 7 podium, and we would really appreciate it if you would 8 use that. And the reason for that is to help you. So 9 the yellow light comes on, I think it might be -- we can 10 check on the first person, maybe 30 seconds. That's 11 basically a warning that you should be getting to your 12 conclusion. 13 And so, please, when the beeper goes off, and 14 the red light comes on on your own volition finish the 15 sentence and then that's it. It doesn't mean to be 16 creative with the world's longest run-on sentence. If 17 you do that rather than just ignoring it and going on 18 until the Chair has to interrupt, just, if you could 19 please cooperate and do that. That would be a big help. 20 Just one other logistics point; we do have 50 21 some cards, so that's probably going to take about 22 two-and-a-half-hours or so, see how we do vis-a-vis the 23 lunch break. And also after we do finish all the cards, 24 whenever that is, all the speakers today, then we are 25 going to be asking for a break, so that we -- the staff Page 397</p>
<p>1 to distinguish it it has some more detail, for example, 2 the nitrogen balance that was reported. 3 So those are the -- those are three tiers 4 just as a reminder to you that are proposed. 5 So next, public comments. We received after 6 all the written supplementals that were due by the 7 January 3rd, was our cutoff for written supplementals, we 8 received oral comments at the hearing in Watsonville. 9 Now, the Board could have closed the hearing, could have 10 completed the hearing, could have deliberated, could have 11 taken action at that meeting, it was noticed to do that. 12 But, basically, we got kicked out of room by the City. 13 So in light of that timeline our Chair asked those who 14 could not make it to the next meeting, show of hands, 15 basically, and those who wanted to go ahead and testify 16 in Watsonville, we had them come up to the podium and 17 then our Chair said, okay, so the rest of you who have 18 turned in cards at that meeting will have an opportunity 19 at today's meeting. 20 So we have a fixed number of cards, and we 21 have them on a list here, and so that will just be a 22 continuation of those comments from those who submitted 23 cards at that time. 24 And I'll let you know, it might be helpful 25 for -- in terms of anticipating when to come up for the Page 396</p>	<p>1 can get together and figure out what our final response 2 and comments will be. 3 And I think that's it for preliminary 4 remarks. 5 Did I miss anything. 6 Okay. 7 MS. McCHESNEY: Just to recognize the remaining 8 opposing -- 9 MR. BRIGGS: Oh, right, I meant to mention that. 10 Thank you. That the Farm Bureau folks through 11 prearranged, prior to the March 17th meeting asked that 12 they have a total of 60 minutes -- well, maybe actually 13 more than that, it was granted by the Chair, 60 minutes. 14 And they specifically asked prior to that to reserve five 15 minutes at the conclusion of all the public comments for 16 them to have whatever they want to do, whether it's a 17 summary or some responsive comments or a combination. 18 So, the Farm Bureau folks will have an opportunity for 19 that after all the cards. 20 Thank you for that reminder. 21 If there are any Spanish speaking folks need 22 some assistance, Hector Hernandez is in the back room 23 over here and can help with that. Monica is right here, 24 Monica Barricarte, our staff. 25 Thank you both for assisting. Page 398</p>

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1 MR. YOUNG: I just wanted to go over kind of --
2 where we're at today in terms of speakers and the
3 decision I made in terms of splitting up the speaker
4 cards and what they represent in my mind and why I did
5 what I did.
6 We had about 75 or so speaker cards. There
7 was going to be no way for us to get through everybody
8 and get out when we needed to get out unless I did
9 something like give everyone a minute or 30 seconds. I
10 didn't want to do that. I just felt it was more fair to
11 give everyone the full three minutes and that's why I
12 asked who could show up today and who really could not
13 show up and who opted to give their comments in
14 Watsonville.
15 So, we had about 20 speakers in Watsonville,
16 and that left the balance of about 55 or so speaker
17 cards. Those people are going to get three minutes.
18 That's still going take us the better part of
19 two-and-a-half-hours to get through. I made that
20 decision to try to manage all of the information, all the
21 speakers.
22 I wanted to allow the Board time to
23 deliberate, but we can't deliberate on this in private,
24 it has to be done publicly. So it's important that I
25 allow enough time for that to happen.

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1 I've had a couple of requests for people who
2 speak today that they could not make it. They submitted
3 cards, but they couldn't make it today and there was a
4 request that we make some allocation or exception to
5 that. What I have done is decided. I'm just going to
6 use these speaker cards, if there's an individual speaker
7 speaking on behalf of him or herself, and that person
8 doesn't show up, then I'm not allowing anyone to cede
9 time to someone else from an individual. That person
10 could have submitted written comments to us that would be
11 fine. I think some people have done that. And we do
12 have comments on the back of some of these cards. So
13 that information is getting into the record.
14 We had a request for an organization, is it the
15 Vineyard --
16 MR. BRIGGS: Well, there were two of them. Paso
17 Robles Wine Alliance and Unitarian Church.
18 MR. YOUNG: So with those, because those were
19 organizations what I've decided to do is to allow someone
20 else to speak on behalf of that organization or entity.
21 Just a call I made. And some people may feel that that's
22 not fair, some people may feel that it is fair. I'm just
23 trying to allow as many people to speak as possible and
24 also manage and control the meeting so we can get through
25 it today. I just wanted you to know that as we go

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1 forward.
2 We've also had a request for someone to give
3 their objection to the way we're going to handle the
4 proceeding today, the hearing. And although I'll go
5 ahead and allow anyone who wants to give us their
6 objection on what we're going to do today, why don't we
7 go through those right now.
8 MR. BRIGGS: One other clarification.
9 MR. YOUNG: Go ahead.
10 MR. BRIGGS: Chair Young mentioned that something
11 about written comments, the written comment period was
12 closed with the exception of that was that people at the
13 hearing in March some of them knew they couldn't stay
14 through the end of the meeting, it was an all day
15 session, so they handed in their cards with their notes
16 of what they intended to say. We typed those up and
17 distributed those to the Board members. Then we've had a
18 couple, maybe one other person who has done that in the
19 meantime said I can't make it, and they submitted those.
20 I've also distributed those to the Board members as well.
21 MR. YOUNG: If anyone wants to put their
22 objections on the record, I'll give those individuals a
23 minute-and-a-half to do so.
24 MS. PREASLEY: My name is Carol Presley. I'm a
25 registered civil engineer. I reside in Oxnard.

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1 I'm just commenting about the Conditional
2 Waiver. It's about a public process issue.
3 Due to work commitments I was unable to
4 attend the March 17 meeting and was therefore unable to
5 fill out the card. However, my statement also responds
6 to new material presented at that meeting and, therefore,
7 is subject to the full implication of the Baglakeen Act.
8 The intent of Baglakeen Act is clear. The
9 Board is expected to list the public comments before
10 acting. The Act specifically points to the fact that
11 when new information has been presented as it was by
12 virtue of testimony brought forward and heard on March
13 17th, that the public has the right to respond to the new
14 information.
15 As a public agency employee myself I would
16 think it prudent for this Board to limit risk to
17 litigation particularly over the triviality of not
18 allowing public input.
19 Thank you.
20 MR. YOUNG: Thank you for your comments.
21 Mr. Shimek.
22 MR. SHIMEK: My name is Steve Shimek from the
23 Monterey Coastal --
24 (Interruption by the reporter.)
25 MR. SHIMEK: Sure. My name is Steve Shimek,

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1 Shimek, S-H-I-M-E-K. The organization is Monterey
2 Coastal.
3 It came to our attention that the groups were
4 organizing people to read other people's statements. And
5 so, we actually went out and we told some people that we
6 would like to organize the same thing. So we have
7 statements from people like -- that cannot make it from
8 organizations on organizational letterhead such as
9 Pesticide Watch that they would like read into the record
10 when their name is called.
11 So, we would like to know as soon as possible
12 if we will be able to read those letters into the record.
13 There are also in addition to the
14 organizational letters, there are letters from
15 individuals. So I'm just letting you know it's kind of
16 two classes of letters.
17 Thank you.
18 MR. YOUNG: As to the Pesticide Watch did they
19 submit written comments?
20 MR. SHIMEK: I am not aware, so I don't know.
21 MS. HUNTER: Yes, they did.
22 MR. SHIMEK: They did? This is from the Education
23 Watch Education Fund. I don't know if that's
24 significantly different, but that's what's on the
25 letterhead. I would imagine that it is a program of
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1 pesticides.
2 MS. McCHESNEY: Does anybody know if they
3 submitted a card in March?
4 Yes, we did.
5 MR. YOUNG: Yes.
6 MS. McCHESNEY: So there's a person representing
7 the organization that could speak on behalf of the
8 organization?
9 MR. SHIMEK: That would be me.
10 Thank you.
11 MR. CALDWELL: Chairman Young, I'm Andy Caldwell,
12 C-A-L-D-W-E-L-L, with COLAB in San Luis Obispo in Santa
13 Barbara County.
14 Our concern with -- you know, the Regional
15 Board is organized because you have such a big region you
16 rotate your meetings throughout the community to
17 facilitate public access which we very much appreciate.
18 But it's almost a moving target this time
19 around where people from this region had to go up to
20 Watsonville, but you ran out of time in Watsonville, so
21 then some people that couldn't make it there couldn't
22 make it here aren't speaking. Some of the people that
23 were there that, you know, couldn't speak there because
24 they ran out of time ended up not knowing exactly what
25 date you would be having this hearing. And, like, I know
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1 one particular person your Board originally intended to
2 have it in April thought, well, I'm going to be here in
3 April, I'll go, it turns out you pushed it to May now she
4 can't be here. And so it's kind of like it's a moving
5 target. And I know this is not your intention, it's just
6 the way it worked out.
7 I'm very appreciative we're going to get
8 three minutes versus one, but one of the very low cost
9 ways to address this is to have video teleconferencing
10 for public access. Santa Barbara County Board does it.
11 It costs virtually nothing. And that way people aren't
12 expected to give up their whole day and travel 100 miles
13 for three minutes.
14 Thank you.
15 MR. YOUNG: Thank you for your comments.
16 MS. ISAKSON: I'm Nancy Isakson with the Salinas
17 Valley Water Coalition. I-S-A-K-S-O-N.
18 MR. YOUNG: Hold on for a second.
19 So, folks, we have a reporter here, just like
20 we did in Watsonville sitting over here to my left. So,
21 everyone really needs to speak up, and she's asking
22 everybody to spell their names when they come to the
23 podium. So try to remember that.
24 Thank you.
25 MR. BRIGGS: One other thing for staff, instead of
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1 spelling it, just say who you are. We do have name tags
2 up here when the staff is speaking as well.
3 MS. ISAKSON: Thank you.
4 We did submit speaker cards at the March 17th
5 meeting and weren't able to stay, and so we had asked to
6 have our letters submitted. And, subsequently, I wanted
7 to confirm that they have been distributed to the Board.
8 And my understanding is that they were not because they
9 were not -- seems like in the form of note cards and that
10 they were letters, something that I was told there would
11 be no way you could read them, the entirety into the
12 record. If I could object to you not allowing people to
13 submit written comments after your January cutoff date.
14 Staff changes have been made, and I think
15 that it is really -- you're doing a disservice to this
16 Board and a disservice to the public by not allowing us
17 to comment on the changes and the subsequent discussions
18 that have occurred at the Board level.
19 So, we were not allowed to give you our
20 letters, and but we are making a presentation today, a
21 slide presentation, but we -- I do want to voice my
22 objection I think that's very unfair and against the open
23 public law.
24 Thank you.
25 Public Meeting Law.
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1 MR. YOUNG: Thank you for your comments.
2 You know, we have input from staff and
3 members of the public continually through an agenda item,
4 so new information is always coming up that we're
5 considering and listening to. That doesn't just open up,
6 you know, more time for public comment just because
7 people are submitting information to us.
8 Staff may go ahead and respond to something
9 an hour or two from now after hearing something from
10 speakers that doesn't trip another round of everyone
11 having more time to comment on what staff might come up
12 with. It's not going to work that way. We'll never get
13 through it, with the meeting, if it goes on that way.
14 Okay. Does anyone else wish to address us
15 and give us their objection to the way we're going to
16 handle this meeting?
17
18 (No response.)
19
20 MR. YOUNG: Okay. As to Mr. Shimek's request, Mr.
21 Shimek, as long as you were representing an entity, an
22 organization, you can speak on behalf of that entity.
23 That's fine. Okay.
24 These have all been put down by Mr. Briggs in
25 alphabetical order. So we'll do it that way because it

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1 will make it easy for me. I've got a list in front of
2 me.
3 The first speaker is Karen Araujo. Is she
4 here?
5
6 (No response.)
7
8 MR. YOUNG: The second one is Harold Biaggini.
9
10 (No response.)
11
12 MR. YOUNG: The third one is a speaker on behalf
13 of the Paso Robles Wine Company Alliance.
14 The next one is Tim Borel, Nunes Vegetables
15 and than Mike Broadhurst, Cambria Farms.
16 MR. BROADHURST: Good morning. Mike Broadhurst,
17 B-R-O-A-D-H-U-R-S-T. I own and farm about 20 acres near
18 Cambria. Thank you for listening to me.
19 Staff portrays all farmers as dischargers,
20 perpetrators, offenders, culprits; you chose the word,
21 it's implicit that we are people who lack morals and have
22 polluted your drinking water for our own benefit.
23 Many in the public have apparently bought
24 into this notion and can't understand why farmers don't
25 just come clean and pay for the damage they caused

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1 because they'll just pass on the cost. Really.
2 Let me dispel some faulty thinking. First of
3 all, all food companies don't care where your food comes
4 from, nor do they consider quality; they only consider
5 costs.
6 Food companies buy produce from the lowest
7 cost producer based upon what they can charge you,
8 American consumers, whose number one priority is price,
9 not quality.
10 And second, farmers are, in fact, generally
11 pretty good people, although crazy enough to do what we
12 do because we love the land. So, who should share the
13 responsibility here? Could it be the people who made the
14 fertilizer? Those who ship it? The companies who sell
15 to the farmers? You're probably thinking that's a
16 stretch.
17 The truth is the Board staff has completely
18 missed the guilty party. Just look next to you; your
19 neighbor in the next seat who shops at supermarkets and
20 demands rock bottom prices.
21 To illustrate my seemingly preposterous
22 allegation imagine yourself standing in a produce aisle
23 at your local supermarket looking at lettuce. Odds are
24 those pristine heads of lettuce come from a grower in the
25 Salinas Valley.

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1 The fact is no matter where you are in the
2 U.S. the majority of your lettuce and spinach, cold
3 crops, et cetera, come from the Salinas Valley year
4 round. The general climate allows them to do it on a
5 massive scale and they do a great job. But agriculture
6 over the decades has pushed the limit of the land to
7 produce. It now requires hundreds of pounds of
8 fertilizer and pesticides to be applied every year for
9 each acre. Otherwise long ago exhausted soil would
10 produce little. And a bit of that fertilizer and some of
11 those pesticides end up in your water.
12 So who's really responsible for this mess we
13 find ourselves in? I would argue that you, consumers,
14 who don't care how long and how it happens as long as
15 it's cheap.
16 So let me conclude by asking. What is the
17 real cost of your cheap food and who should pay for water
18 quality?
19 Thank you.
20 MR. YOUNG: Thank for your comments.
21 MR. BRIGGS: I noticed that -- clarification, when
22 the yellow light comes on is when you have one minute to
23 go.
24 MR. CARTER: Steve Carter. C-A-R-T-E-R.
25 The Paso Robles Wine Country Alliance and the wine

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<p>1 industries in general strive to work cooperatively with 2 our governmental and community partners. But these 3 efforts can be thwarted by excessive regulation that 4 requires monitoring for reasons that have not been 5 identified, are not stable overdriven, they can 6 jeopardize proprietary information, create redundancy 7 amongst jurisdictions or result in negative economic 8 consequences.</p> <p>9 Your Board quantifies the objectives for the 10 next five years during the May, July workshops of 2010 to 11 focus on surface water nitrates and organophosphates. 12 Secondary sediment and riparian issues should be 13 addressed later. Staff's proposal continues to take on 14 too much without the necessary tools or ability to make a 15 difference in improving water quality.</p> <p>16 Only the constituents identified should be 17 addressed in this order: Nitrates, Chlorphyrifos and 18 Diazinon. The entire list of 303D impaired water body 19 should not be the reference point. Some of the 20 impairments are due to other pollutants where Ag is 21 neither the identified nor sole contributor.</p> <p>22 We object to measurements in monitoring a 23 criteria that are not a subject of this Order. Monetary 24 and reporting needs to remain proprietary and on farm. 25 We continue to encourage voluntary-based incentive group Page 411</p>	<p>1 crisis for the state.</p> <p>2 Thank you.</p> <p>3 MR. YOUNG: Thank you for your comments. 4 Next speaker.</p> <p>5 MR. BOREL: Good morning. Tim Borel, B-O-R-E-L, 6 Nunes Vegetables in Salinas. And I'd like to talk about 7 nitrogen balance ratios.</p> <p>8 When the topic came up in March at the 9 Watsonville meeting, Chairman Young, I'd like to quote 10 you. You said you don't have a problem with the target 11 in the Order. And I'm here today to say for me the 12 target is the problem.</p> <p>13 As, you know, after three years into this 14 Order it automatically kicks to a 1.0 balance ratio based 15 on harvest removal rates. What this sets up is an 16 unsustainable deficit situation. We grow our food on the 17 plants that require more nitrogen than we harvest to eat. 18 We have to be able to grow the whole plant to grow a 19 crop.</p> <p>20 So, I've looked into this. I work with Dr. 21 Tim Hartz from UC Davis, the leading authority on 22 nitrogen in cool season vegetables on the coast, and I 23 asked him if he's aware of any research into harvest 24 ratio for nitrogen usage. And he said it would be 25 agronomically impractical to research. That's exactly Page 413</p>
<p>1 programs.</p> <p>2 We appreciate staff, including the 3 certification program as a Tier 1 criteria and ability of 4 other programs to be recognized. We recommend that the 5 California Sustainable Wine Alliance Code and sustainable 6 practices be included as another qualifying program.</p> <p>7 We acknowledge staff added language that 8 allows reporting of depth to groundwater, the 9 construction of the wells be equipped to provide such 10 information, however, we continue to object to 11 groundwater level monitoring as part of this Order.</p> <p>12 Dischargers who do not cause tail water as in 13 the case of vineyards should not be subject to receiving 14 water monitoring.</p> <p>15 We also ask that items 35 through 60 be 16 struck from the Order which requires new measures for 17 eroding control on storm water run-off that are 18 infeasible were not previously disclosed or may -- and 19 conflict or overlap with efforts of the local governments 20 RCDs and NRCS Programs.</p> <p>21 Staff changes create redundancy in regulation 22 and overlap of local jurisdiction control authority. 23 This redundancy and duplication in regulatory authority 24 is counter to the efforts of Governor Brown to reduce 25 government spending and waste in a time of financial-wide Page 412</p>	<p>1 what he stated.</p> <p>2 I've concluded there's not much sound science 3 with respect to this part of the Order. And I think we'd 4 be better off meeting in the middle and accepting what 5 the crop uptake is and try to achieve a 1.0 ratio on 6 crop uptake as a start and leave the Order there. And 7 then we can wait for the science to back it up and arrive 8 at solutions. I don't think we have the solutions from 9 the science side yet to deal with this, and the Order 10 needs to allow for workable solutions.</p> <p>11 I'll pose it another way in a question. How 12 in the Draft Order is a grower allowed to seek a 13 conclusion where he demonstrates that he can achieve 14 water quality goals for water leaving his operation and 15 thus be able to fertilize at any rate other than the 1.0 16 harvest removal rate?</p> <p>17 What I urge you to do is set the nitrogen 18 balance ratio on crop uptake at a 1.0 level. And also 19 include a pathway which solutions to the problem can be 20 found so that growers can seek solutions and demonstrate 21 the ability to continue farming while showing that 22 they're doing beneficial -- beneficial practices in their 23 operation to water quality.</p> <p>24 Just like you can take a flea and say it's an 25 indicator of an ecosystem, why couldn't a grower take a Page 414</p>

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<p>1 simple soil sample as an example of the system on his 2 farm and how it relates to the nitrogen legally on his 3 operation. 4 Some simple solutions that we can include in 5 there to allow growers the chance to do the extra work in 6 the first three years and let the science come along with 7 us and then we can find a workable solution where water 8 quality is protected and farmers can go on operating 9 profitably. 10 Thank you. 11 MR. YOUNG: Thank you for your comments. 12 Would you make just a note what that speaker 13 said at the end he can back to us with a comment. 14 All right. Next speaker. I need to call him or 15 her. 16 Chris Bunn, Crown Packing Company. 17 Andy Caldwell. Bob Campbell, Lompoc Growers. Bill 18 Carrothers from Salinas. 19 MR. BUNN: Good morning, Chairman Young, Board 20 Members and Staff. 21 My name is Chris Bunn, B-U-N-N. I'm from 22 Salinas, California. Part of a fifth generation farming 23 family located in the lower regions of the Salinas 24 Valley. We have homes there with the Japanese families. 25 The Japanese families partnership of over 80 years. <p style="text-align: right;">Page 415</p></p>	<p>1 seen how agriculture is such a very complex science and 2 art. I'd like to quote a pastor who said, "Farmers do 3 five percent of the work, God does the rest." 4 We have so little control of our environment 5 and must learn more on how to work with it and take 6 charge of it. 7 Government has the power to enforce as a 8 servant, you all to us, the people, the Ag community, you 9 have a responsibility. But I think if you allow us to 10 take the responsibility as an Ag community to prove 11 through reasonable science, as this young man just spoke 12 about, and methodology that our precious water resources 13 can be protected for future generations if you give us a 14 chance to do that. 15 I think your Board has already heard much 16 testimony to Ag's expertise and hands-on experience, 17 that's really an important point, hands-on experience, 18 people who have farmed for generations here. 19 Please enforce the Ag Alternative Proposal 20 and let the people truly govern. 21 Thank you. 22 MR. YOUNG: Thank you for your comments. 23 Mr. Caldwell. 24 MR. CALDWELL: Caldwell, C-A-L-D-W-E-L-L. 25 I'm Andy Caldwell representing the Coalition <p style="text-align: right;">Page 417</p></p>
<p>1 I want to speak to the Ag 2 Alternative Proposal for the 2011 Waiver. 3 First; farmers have collaborated over the 4 past five years on only mandatory farming plants, but 5 have used BMPs and made some of the most extensive 6 testing monitoring for water quality in history of any 7 agricultural entity. 8 Your observation will show you what's 9 occurred beyond mandates and laws. In the past 10-plus 10 years the innovations of drip irrigation, measured 11 levels, minimum tillage, all kinds of soil testing have 12 contributed to major quality, water quality improvements. 13 Secondly, the Farm Bureaus, shippers 14 associations and other Ag organizations here, which you 15 have seen, know their members and have the best resource 16 to mobilize and implement the best water quality plan for 17 this nation. 18 I was fortunate enough to work with the first 19 water quality groups before the Ag Waiver. I saw the 20 kind of commitment and organizational skills these 21 farmers and ranchers have. You've observed their passion 22 in a lot of your meetings. 23 Lastly, government has a tendency, as you've 24 heard many times, to solve problems with one solution 25 fits all. As in previous testimony as you have heard and <p style="text-align: right;">Page 416</p></p>	<p>1 of Agriculture and Businesses, Santa Barbara, San Luis 2 Obispo Counties. 3 We do believe on the rule before you will 4 represent a Class 1 impact both to wildlife habitant 5 because in essence you're going to be cutting off the 6 only water supply it has throughout much of the area and 7 agriculture by the loss of land, but secondly, the 8 impacts of creating habitant by their produce, which 9 means they won't be able to sell that produce. 10 But it's a Class 1 impact with a twist 11 because by definition Class 1 impact is significant and 12 unavoidable. But what we are trying to beg your 13 attention today is that the impacts are avoidable because 14 the agricultural community is willing to achieve and 15 pursue the same goals before you and that is, obviously, 16 clean water, viable habitants and a healthy environment. 17 The best way to get to those goals is through 18 cooperation. You've got major organizations representing 19 most all of the major growers on the Central Coast saying 20 they're willing to cooperate to achieve the goals that 21 outline the law and the Order, but these rules have to be 22 based on reason, science and best available control 23 technologies. And you do have to take into consideration 24 the economy. 25 One of the most ignorant things I heard last <p style="text-align: right;">Page 418</p></p>

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<p>1 time is, Chairman Young, you asked this question about, 2 well, is there going to be some places where they just 3 won't be able to grow strawberries or vegetables and use 4 nitrates? And staff said, "yes, they can grow something 5 else." 6 Well, that speaks of an ignorance that land 7 values determine what can be grown. Why is there very 8 little agriculture left in Coastal California? Because 9 of the cost of land. You can only do high valued crops 10 in that region if the land gets converted to other uses 11 which in and of itself is a Class 1 impact Ag. 12 We ask you to take a different approach. 13 We're asking you to garner cooperation, which has been 14 demonstrated over the last five years and to check what 15 the background levels are. Do some pilot projects with 16 cooperating landowners. Focus on the most -- the areas 17 that have severe contamination, focus on that first -- 18 create a pilot project. Get landowners involved. Get 19 grant money. Have demonstrations that you can clean this 20 up. 21 You know, this problem didn't happen 22 overnight. And it's not going to be solved overnight. 23 We're asking you as folks that represent the public and 24 represent the regulated community and represent 25 municipalities and everything else to say we'll work with <p style="text-align: right;">Page 419</p></p>	<p>1 those questions. 2 It was very clear to me that in many cases 3 you're staff presented less accurate information, and was 4 either unable or unwilling to answer simple questions. 5 For one example, when a Board member asked 6 your staff about their proposal with vegetative buffer 7 zones being in conflict with food safety regulatory 8 agencies, their answer was that the only conflict would 9 be between the Water Quality Control Board and the 10 industry's end users. We all know that's simply not 11 true, and that there would be a conflict between 12 government agencies because of food safety regulations. 13 While I don't know whether staff was 14 ill-prepared or unwilling to answer that and many other 15 questions correctly, in any event, it was inexcusable. 16 As I see it, you have two proposals before 17 you. The first proposal presented by your staff does 18 little more than set up the agricultural industry for 19 failure as it is based on inaccurate information and 20 unattainable goals within the time frame set. 21 On the other hand, you have a proposal from 22 the Ag industry that allows the growers to involve their 23 process that does address the water quality issues that 24 we are all facing, but with obtaining goals and practical 25 solutions in a reasonable time frame with oversight by <p style="text-align: right;">Page 421</p></p>
<p>1 you, you meet us, we're going to agree on what the goals 2 are, we're going to have a reasonable time frame, we're 3 going to see what the technology, the science, and the 4 economy allow and we're going to go for it. 5 This doesn't have to be a command and control 6 approach. And it certainly doesn't have to be task 7 masters versus public servants helping the public all the 8 way around and across the board. 9 And so we would just beg you to work with 10 them versus against them. 11 Thank you. 12 MR. YOUNG: Thank you for your comments. 13 Bob Campbell. 14 MR. CAMPBELL: Good morning. My name is Bob 15 Campbell, C-A-M-P-B-E-L-L. I am a third generation 16 farmer, rancher, Santa Barbara County. I have a grandson 17 who is currently enrolled in the Cal Poly Ag Crop Science 18 Program and we are hoping that we will still be a 19 profitable family business when he graduates so he can 20 get involved. 21 I attended my first Regional Water Control 22 Board Meeting in 2011 in Watsonville, California. While 23 I appreciate the numerous questions that were asked by 24 the Board members at that meeting, I was disappointed in 25 your staff's presentation and their ability to answer <p style="text-align: right;">Page 420</p></p>	<p>1 your Board. 2 Several years ago with the outbreak of Ecoli 3 the Ag industry had food safety concerns like never 4 before. And as you probably know the Ag industry proved 5 itself willing and able by taking the lead and making the 6 necessary changes in food safety standards, and we can 7 continue to do that today. And we can do it with this 8 issue and these challenges if we're given the chance. 9 As stated by one of the Board members at the 10 last meeting regional water quality standards set by your 11 Board will not be reached overnight, but will require 12 some time and effort from all of us. 13 Setting agriculture up for failure with 14 unobtainable goals is not the answer. I urge you, 15 please, consider seriously the proposal that the Ag 16 industry presented to you so we can all work together to 17 reach what we all want to do and that's have good quality 18 water. 19 Thank you. 20 MR. YOUNG: Thank you for your comments. 21 Is Bill Carrothers here? Mr. Carrothers. Okay. 22 I don't see him. 23 Mr. Fred Chamberlin, and Coates and then Jim 24 Cochran. 25 MR. CHAMBERLIN: Good morning. My name is Fred <p style="text-align: right;">Page 422</p></p>

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<p>1 Chamberlin, C-H-A-M-B-E-R-L-I-N. I live on a ranch in 2 Los Olivos, California. 3 I think you have before you a decision to 4 make as to whether you follow a science-based regime to 5 solve the problem you set up to solve or follow an 6 arbitrary rule-based regime put forward by staff. And 7 that's really the choice that you Board members have to 8 make. 9 If you will follow science and work with the 10 farmers you will be able to solve the problem. If you 11 don't, it won't be solved. If you follow your Board's 12 recommendation, which is not based on science, your staff 13 recommendation, this will end up through years of 14 litigation and eventually if it's not based on science, 15 it won't happen. 16 I would suggest then that you follow the 17 science-based approach and that you work on the areas 18 where the problems are. 19 Thank you. 20 MR. YOUNG: Thank you for your comments. 21 Anne Coates. 22 23 (No response.) 24 25 MR. YOUNG: Jim Cochran. Jim Cochran.</p> <p style="text-align: right;">Page 423</p>	<p>1 application soil based testing program conducted by a 2 certified crop adviser. But the Draft Order states that 3 leaf samples must be analyzed before applying more 4 nitrogen. 5 My CCA doesn't support this as an application 6 trigger because it's not telling you what's in the soil 7 available for plant uptake. So on the one hand you're 8 mandating the use of CCAs, yet on the other you're 9 mandating a practice contrary to the advice and direction 10 that they've given me in which I've supported with 11 substantial investment. 12 When Dr. Tim Hartz says commercial vegetable 13 production would be severely disrupted by restricting 14 nitrogen fertilization to the amount of nitrogen removed 15 in the harvested product, someone better be listening. 16 With regards to tiers, for some reason size 17 is still entering into the equation. And there's a 18 scenario where two vegetable growers with similar crops 19 and practices are not only not in the same tier they're 20 not even in the adjacent tiers. With the only difference 21 being the size of the operation, one grower ends up in 22 Tier 3 and the other grower ends in Tier 1, yet the staff 23 report says that "staff acknowledges that operations less 24 than 1,000 acres may discharge similar or greater amounts 25 of waste and thus cause similar or greater risk to water</p> <p style="text-align: right;">Page 425</p>
<p>1 (No response.) 2 3 MR. YOUNG: Kevin Collins. Kevin Collins. 4 5 (No response.) 6 7 MR. YOUNG: All right. David Costa. And then 8 Gail Delihant. 9 Okay. 10 MR. COSTA: Thank you, Chairman Young. My name is 11 David Costa, C-O-S-T-A. 12 There's so many areas of this draft that is 13 problematic for me. In no particular order, the proposed 14 future nitrogen reporting data comes out on October 1st 15 of 2014, which is during the ongoing fertilizer season 16 for crops we just finished planting, three or four weeks 17 earlier, so it's not even a natural break in the cropping 18 cycle. 19 I'm really confused on how you can require 20 ponds to be lined to avoid percolation in one paragraph 21 then promote percolation basins and recharge projects in 22 another paragraph, while yet in another paragraph 23 promoting the benefits of percolating surface water 24 despite exceedences of water quality standards. 25 Last year I spent \$119,000 on a pre-nitrogen</p> <p style="text-align: right;">Page 424</p>	<p>1 quality." 2 The reason I raise that point is to say that 3 there's an additional burden placed on Tier 3 growers is 4 a huge understatement because the expectations and 5 requirements of Tier 3 are exponential as compared to the 6 other tiers, even Tier 2. The devil is in the details of 7 Tier 3 and was not up on the slides to start this 8 meeting. And believe me, having some of those burdens to 9 require only a subset of Tier 3 growers as I read so 10 often in the Draft is of no consolation. 11 The volume of documentation, reporting, 12 monitoring, compliance, milestones, timelines, 13 evaluations and analysis that are required of Tier 3, I 14 mean, leads me to believe in my opinion Tier 3 growers 15 are so being set up to fail and in doing so you fail. 16 Thank you. 17 MR. YOUNG: Thank you for your comments. 18 Gail Delihant, followed by Deirdre Des Jardins, 19 and then Darlene Din. 20 MS. SALAS: Good morning. My name is Sonya Salas. 21 And I am for Western Growers. I'm here standing in for 22 Gail Delihant, who is unable to represent Western Growers 23 because of conflicts in the legislation in Sacramento. 24 MR. YOUNG: Excuse me, could you spell your name? 25 MS. SALAS: Yes. S-A-L-A-S. First name is Sonya.</p> <p style="text-align: right;">Page 426</p>

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1 MR. YOUNG: That was your last name?
2 MS. SALAS: Salas.
3 MR. YOUNG: Okay. Thank you.
4 MS. SALAS: So I'm here simply to put questions on
5 the record in support of the agricultural proposal and
6 encourage the Board to also support a viable and prudent
7 alternative to meet requirements for water improvement.
8 I'm also here to say that Western Growers are
9 willing to work with the growers to ensure the proposal
10 and to help the members achieve the requirements in these
11 proposals.
12 With that I want to thank you for allowing me
13 the opportunity to express the support of the agriculture
14 proposal.
15 MR. YOUNG: Thank you for your comments.
16 Deirdre Des Jardins, and Darlene Din, and then
17 Joe Dillon.
18 MS. DE JARDINS: My name is Darlene Des Jardins,
19 D-E-S, J-A-R-D-I-N-S.
20 I'm speaking for the Santa Cruz Groups of the
21 Sierra Club.
22 We applaud the Regional Board for maintaining
23 requirements to preserve riparian habitats.
24 Pinto Lake in Santa Cruz County has the
25 highest level of DTD of any lake in the state. Legacy
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1 pesticides are carried by sediment run-off. As you heard
2 in previous testimony, riparian corridors are critical
3 for eruption control of filtration so these regulations
4 are essential to restoring the health of this lake.
5 However, we feel that it is critical to have
6 a prescribed width for riparian corridors as there was in
7 the original draft regulations because these corridors
8 are being in a critical and very sensitive and protected
9 areas.
10 As an example, I brought these pictures of
11 Bennet Slew, which is part of the designated critical
12 habitat for salamanders. These before and after
13 satellite photos show that the riparian vegetation around
14 the Slew was clear cut sometime in late 2004, early 2005
15 in spite of an 800-acre conservation easement, the
16 federal endangered Species Act and the State Coastal Act.
17 This just shows you the kind of damage that is being done
18 and this is why we need these regulations in the Ag Order
19 so it's applied uniformly.
20 Pinto Lake also has one of the highest levels
21 of micro toxins ever measured in a lake. We believe that
22 research will show that nutrient loads in the watershed
23 are associated not only with the tier grading
24 groundwater, but with massive toxic algae lutes in the
25 lake, which are washing down into Monterey Bay and
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1 getting into the shell fish and killing sea otters. This
2 is a sentinel species, and we believe that we should
3 adopt the -- the Central Coast Water Board should not
4 wait until there's a massive dead zone in Monterey Bay
5 and we have irreversibly contaminated the aquifers to
6 take these actions.
7 I have here a box of 500 letters that was
8 gathered by community members in support of the original
9 regulations and in support of clean water. The Board --
10 there would have been many more letters but for the
11 January 3rd cutoff date.
12 Thank you.
13 MR. YOUNG: Thank you for your comments.
14 MS. DES JARDINS: I also wanted to submit these
15 photos. I've got copies and copies of the designated
16 critical habitat.
17 MS. McCHESNEY: Excuse me. Can you give those to
18 me? Do you have -- are those letters you have are those
19 letters that were submitted in January? That box?
20 MS. DE JARDINS: Yes. They were submitted by the
21 Environmental Coalition for Water.
22 MS. McCHESNEY: They're not new letters?
23 MS. DES JARDINS: Yes.
24 MR. YOUNG: Wait. Are they new letters?
25 MS. DE JARDINS: No, they're not new letters.
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1 There would have been a lot more but for the cutoff date.
2 MR. YOUNG: Okay.
3 MS. DIN: Darlene Din, D-I-N.
4 Thank you, Board, for the opportunity to
5 speak before you.
6 In reading the Draft Orders for -- during the
7 many processes there were too many points that I felt to
8 even cover, that I chose to use my three minutes to talk
9 about process and lag time and public involvement.
10 And why this is so important is that there's
11 been a breakdown in the communication between the
12 regulated community, the staff, other technical advisors,
13 conservationists, labor, agricultural, advocates,
14 environmental justice, the different groups have,
15 unfortunately, become paralyzed within this process. And
16 when I looked at that I think that the best way to solve
17 a problem is to find the areas that we intersect or how
18 we can find a way to work towards water quality
19 solutions.
20 So, I have worked with other agriculturalists
21 and members of the environmental community conservation
22 community, NRCS, RCD, public official's staff, public
23 water agencies, labor farm worker advocates to try to sit
24 down and determine what would a solution to water quality
25 be. Because from the point of view that we've looked at
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1 it in working towards this end solution, the process that
2 has come forward, unfortunately, is broken and does not
3 work. There's a lag time within science and it's a
4 complex issue.
5 So when you -- one of the most important
6 things that I hope that you think about today is you can
7 write whatever regulatory scheme that needs to be done
8 for you to meet certain standards, but if the science
9 isn't there, if the technical capacity isn't there, if
10 the groups aren't working towards a solution to a
11 regulated community, it will be chaotic.
12 And I have found at these meetings that we
13 have started to move together, that everyone is looking
14 to have a voice. They're trying to find out how do we
15 make it work. The approach that appears at this time
16 that would work the best for agriculture and the public
17 is the Ag Alternative which is the coalition approach to
18 be able to sit down and look at watershed, sub-watershed,
19 to be able to work on, through commodities, through
20 science, to actually start to look at water quality
21 solutions is very hard to prescribe an end game. And as
22 David Costa talked about Tier 3 growers, you're not going
23 to solve it when one grower is heavily regulated just by
24 the fact he's a successful grower of over 1,000 acres,
25 when maybe a grower of a smaller acreage in the same
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1 watershed is not able to work in conjunction with him and
2 her to make it work.
3 I just ask you to really look at the
4 coalition approach and find a way for us to work towards
5 water quality solutions.
6 Thank you.
7 MR. YOUNG: Thank you for your comments.
8 Joe Dillon, followed by William Everett -- Elliott
9 and then Jody Frediani.
10 MR. DILLON: Good morning. My name is Joe Dillon,
11 D-I-L-L-O-N. I'm a Regional Water Quality Coordinator
12 for the National Marine Fisheries Service.
13 We have jurisdiction over ESA listed green
14 sturgeon and some other critters running around the
15 ocean.
16 We submitted many comments, letters on this.
17 I'm sure you got them. There is -- I appreciate staff's
18 response to them. There were some very good responses to
19 some of our comments.
20 One topic that was brought up in Watsonville
21 that I would like to revisit just briefly.
22 Chairman Young, Mr. Jeffries, you've asked
23 why only organic phosphate pesticides were being
24 explicitly called out in this regulation when there was a
25 long list of various pesticides that had been detected in
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1 the water bodies. Well, just because the one pesticide
2 has been detected doesn't mean that they're there often
3 enough that they're problematic. But one class of
4 pesticide, pyrethroids has been shown to be there often
5 enough that it is problematic and it should be added into
6 the regulation explicitly. In defining your tiers an
7 application of pyrophosphate, diazoma were the subset of
8 pyrethroids that were on the list should be added in in
9 making your tiering decisions and that should trickle
10 down to all the other subsequent places when the
11 department looks at to add to the Diazinon and
12 Chlorphyrifos.
13 The addition of the monitoring sediments
14 using -- will help get some of the information. Will
15 help get some detections when we go down that path, but I
16 still advise you to explicitly call up pyrethroids.
17 We think that you've been more than
18 reasonable in accommodating agricultural interests. Some
19 of the slides struck me very prominently up in
20 Watsonville when the last few speakers put up comparisons
21 between the February 2010 requirements and the March 2011
22 requirements. So, when we hear that things are still too
23 much and that you're not -- people aren't being listened
24 to, just take a look at the record and remember that the
25 staff's recommended proposal had a lot more items in it,
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1 would have been a lot more strict right outside of the
2 gate, and that you have the interest, you have heard
3 that, and you tried to define what is a reasonable
4 starting point and a reasonable first bite at the apple.
5 We will be back here in five years. There
6 will be more monitoring data available. And,
7 unfortunately, this job has turned me into a pessimist
8 and I think the long term data is going to show that
9 there are problems and we'll be having some of these
10 discussions all over again.
11 I empathize with your position. My agency
12 has to make these tough decisions. You're in between a
13 rock and a hard place, but sooner or later you're going
14 to have to take that vote. And I encourage you to get on
15 with it.
16 MR. YOUNG: Thank you.
17 Mr. Jeffries:
18 MR. JEFFRIES: In your opinion or your analysis is
19 there a difference between liquid or granule Diazinon?
20 Does it make any difference as it travels through the
21 root zone into the --
22 MR. DIL LON: It does --
23 MR. JEFFRIES: Do you understand my question?
24 MR. DIL LON: And it does make a difference, but
25 it has much to do with the application rate and the
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1 to pack them into three tiers, which is better than one,
2 I'll agree, but we're trying to pack this into three
3 tiers when everybody is very, very different. And I
4 think we have to go back and start looking at the fact
5 that we aren't all a factory, we're all -- somebody said
6 mother earth kind of regulates how things go, and mother
7 earth is not one thing.
8 I do urge you to take a good serious look at
9 the Ag Coalition Alternative, it is looking at what is
10 practical and what can be done by our agricultural
11 community.
12 Thank you.
13 MR. YOUNG: Thank you for your comments.
14 Dr. Hunter.
15 DR. HUNTER: Yeah. Thank you, Joy, good to see
16 you here today.
17 Just so I'm clear on the small farmer
18 comments that you bring into us today and your concern
19 about the 1,000 acre trigger. Are you --
20 MS. FITZHUGH: Not the 1,000 acre trigger, I'm
21 more concerned about the fact that through no -- nothing
22 that they have done, because they might be on a 303D
23 listed stream within that area, and small acreage, when
24 you talk about buffers and so forth, you may end up
25 taking their whole production land with a buffer. So
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1 that's what we're -- what these people are worried about.
2 DR. HUNTER: Okay. I just wanted to be sure I
3 understood it.
4 MS. FITZHUGH: But the 1,000 acre people do have
5 an automatic trigger which -- also. So you're looking at
6 both ends of the spectrum possibly being caught in this
7 Tier 3.
8 Thank you.
9 DR. HUNTER: Thank you.
10 MR. YOUNG: Jody Frediani.
11
12 (No response.)
13
14 MR. YOUNG: Okay.
15 Cliff Garrison. Cliff Garrison.
16 MS. McDONALD: He had to leave.
17 MR. YOUNG: He had to leave. Was he here this
18 morning?
19 MS. McDONALD: I have written comments if you
20 would like for me to read it.
21 MR. YOUNG: Okay. Are these for the Cattlemen
22 Association?
23 MS. McDONALD: Yes.
24 MR. YOUNG: Okay. Well, why don't you --
25 MS. McDONALD: I still have my own comments.
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1 MR. YOUNG: Well, I don't have a problem with
2 that. You have comments on behalf of the Cattlemen
3 Association?
4 MS. McDONALD: Yes.
5 MR. YOUNG: If you have comments on behalf of the
6 Cattlemen Association, go ahead and give us those
7 comments. And then I'll call you up and you can give us
8 some additional comments.
9 MS. McDONALD: Thank you.
10 My name is Susan McDonald, M-C-D-O-N-A-L-D.
11 I live in Cambria.
12 Cliff Garrison is the operations manager for
13 the Hearst Ranches in San Simeon and in Chalame. We
14 operate in both San Luis Obispo County and Monterey
15 County. We are primarily a cattle operation with range
16 land grazing since 1865. Our farming operation consists
17 of six acres of avocados at the Hearst Ranch and 150
18 acres of alfalfa and our Jack Ranch, as well as dry
19 farming hay in irrigated pastures.
20 I'm here, also, in support of our farmers and
21 Regional Board to cooperate in achieving water quality
22 goals.
23 Some of our thoughts on the Draft Order are
24 as follows. If you irrigate, there's no way to opted
25 out. You are assumed to be discharging agricultural
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1 waste into waters of the state even if you do not do so.
2 The regulations are based on the chance that
3 we could discharge, and we can not support that
4 assumption.
5 At the Hearst Ranch in San Simeon we operate
6 80,000 acres under a conservation easement and use best
7 management practices to eliminate risk of waste discharge
8 from our six acre avocado orchard.
9 We support tier zero, as mentioned at the
10 last hearing and an exception from the Order. Tiers
11 should be tied to actual risk, each property must be
12 individually analyzed.
13 In general, we do not support how the tiers
14 are set up, especially how proximity to an impaired water
15 body put us into a higher tier. Recently Chalame Creek
16 was put on the 303D list for Ecoli and that places our
17 ranch in a higher risk tier.
18 The listing was based on samples taken from
19 the one and only monitoring site under the Degenara
20 Water Bridge on Chalame Creek, a place inhabited by 100s
21 of swallows, pigs and other uncontrollable sources. Cows
22 are assumed to be a problem because they are
23 controllable.
24 These samples do not represent the overall
25 health of our stream or the management practices of our
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<p>1 ranch.</p> <p>2 Sampling and monitoring must be supported by</p> <p>3 science and sound practices the farmer and water board</p> <p>4 can agree on. There has to be accuracy of measurements</p> <p>5 on the farmers, either nitrate contributors or discharges</p> <p>6 for uncontrollable sources; in our case wildlife.</p> <p>7 Sampling should be a cooperative effort done</p> <p>8 at intervals to demonstrate transit water quality.</p> <p>9 A good example of this is at San Simeon at</p> <p>10 the Arroyo Villa Cruz, it's on the impaired list for</p> <p>11 exceedent of Ecoli from a sample taken in 2006. I found a</p> <p>12 lot of inaccurate data in the document. The monitoring</p> <p>13 cite was unrepresentative of 11.2 miles of water body</p> <p>14 that we manage solely. We collect our own water quality</p> <p>15 data during conservation easement monitoring.</p> <p>16 MR. YOUNG: Thank you for your comments.</p> <p>17 Dirk Giannini, Alice Grip, Norm Groot, Edward</p> <p>18 Hard.</p> <p>19 MR. GIANNINI: Good morning, Chairman Young and</p> <p>20 Board Members.</p> <p>21 My name is Dirk Giannini, G-I-A-N-N-I-N-I.</p> <p>22 I'm a fourth generation farmer in the Salinas Valley. My</p> <p>23 wife and two beautiful daughters as well as my parents</p> <p>24 live in homes on a farm in Salinas.</p> <p>25 We have grown crops on this farm for over</p> <p style="text-align: right;">Page 443</p>	<p>1 and the Porter Cologne Act due to the groundwater</p> <p>2 recharge benefits. This new Draft Order reverses this</p> <p>3 practice and the negative environmental consequences of</p> <p>4 impermeable containment structures on groundwater</p> <p>5 recharge would be substantial, particularly in the</p> <p>6 Salinas Valley area.</p> <p>7 The Draft Order from staff is requiring an</p> <p>8 agricultural community to clean tail water. Water that</p> <p>9 leaves the ranch to a level that is better than drinking</p> <p>10 water standards.</p> <p>11 Municipalities do not drink treated water to</p> <p>12 these standards until the water is actually being served</p> <p>13 up for consumption. This Draft Order asks farmers to</p> <p>14 become hydrologists and essentially install waste water</p> <p>15 treatment systems if they are to discharge any water from</p> <p>16 their fields, which is a far different requirement than</p> <p>17 drinking water consumption.</p> <p>18 This standard is based on a presumption that</p> <p>19 a flea placed in a lab water sample setting fails to</p> <p>20 survive regardless of any other contributing factors to</p> <p>21 the flea's mortality. The farmers can not recharge</p> <p>22 groundwater and are required to contain their own water</p> <p>23 and storm water in impermeable ponds based on a mortality</p> <p>24 of a flea that does not even survive in the wild along</p> <p>25 the Central Coast, then the reasonableness of this Draft</p> <p style="text-align: right;">Page 445</p>
<p>1 80 years. I was born and raised on this ranch and we</p> <p>2 currently use the same domestic well for our drinking</p> <p>3 water needs today that my parents raised me on. This</p> <p>4 well, which is on the lower draining end of the ranch, is</p> <p>5 surrounded by lettuce, broccoli, and strawberry</p> <p>6 production which has been in place since the 1970s.</p> <p>7 Obviously, this well, which is tested</p> <p>8 regularly, meets drinking water standards. I can state</p> <p>9 with a sense of pride that our production of crops over</p> <p>10 these decades has not degraded our domestic well water</p> <p>11 quality.</p> <p>12 The Ag Order proposed by your staff has a</p> <p>13 number of unintended consequences including the</p> <p>14 curtailing of groundwater recharge if all retention ponds</p> <p>15 to be required to be impermeable. Under in the Draft</p> <p>16 Order by staff farmers and ranchers that use these</p> <p>17 retention ponds for reservoirs would be required to</p> <p>18 reconstruct them in a manner which prohibits any</p> <p>19 groundwater recharge that may contribute to existing</p> <p>20 water quality standards. This means that all ponds and</p> <p>21 reservation water on farm operations must be lined, which</p> <p>22 is a very expensive proposition for any farmer or rancher</p> <p>23 of any size or volume.</p> <p>24 Previously, these retention ponds and</p> <p>25 reservoirs were recommended by the Regional Water Board</p> <p style="text-align: right;">Page 444</p>	<p>1 Order by staff must be called into question.</p> <p>2 MR. YOUNG: Thank you for your comments.</p> <p>3 MR. GIANNINI: In closing I'd like to</p> <p>4 just support the Ag Proposal before you later today.</p> <p>5 MR. YOUNG: Alice Grip.</p> <p>6</p> <p>7 (No response.)</p> <p>8</p> <p>9 MR. YOUNG: Norm Groot.</p> <p>10 MR. GROOT: My name is Norm Groot, G-R-O-O-T. I'm</p> <p>11 the Executive Director of The Monterey County Farm</p> <p>12 Bureau.</p> <p>13 As a former agricultural producer now</p> <p>14 representing my local agricultural community my main</p> <p>15 function is to advocate for the ability of farmers and</p> <p>16 ranchers to do what they do best, which is farming and</p> <p>17 ranching.</p> <p>18 The very waters that we're discussing here is</p> <p>19 the very livelihood of all farmers and ranchers. Without</p> <p>20 this resource there would be no food on your table</p> <p>21 tonight. Agriculture knows the value of these resources</p> <p>22 appreciates that water quality is important to our</p> <p>23 environment. And I come here today in dismay that the</p> <p>24 multiple versions of the Ag Order Proposal put forth by</p> <p>25 your staff lacks one key element, and that is common</p> <p style="text-align: right;">Page 446</p>

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<p>1 sense.</p> <p>2 Agriculture is fully aware of the impairments</p> <p>3 within our regional watershed and is committed to improve</p> <p>4 water quality along the Central Coast. No credit has</p> <p>5 been given to agriculture for the improvements made to</p> <p>6 production practices that resulted in improved water</p> <p>7 quality. We know this from the data collected throughout</p> <p>8 the current Ag Order when that was successfully deployed</p> <p>9 using cooperation among the stakeholders.</p> <p>10 The multiple proposals from your staff lack</p> <p>11 any cooperation from any stakeholders within region three</p> <p>12 and any input from agricultural stakeholders in this</p> <p>13 process has been met by resistance from your staff.</p> <p>14 This exclusion of common sense approach to</p> <p>15 developing an Ag Order that all stakeholders can agree to</p> <p>16 is what's missing here. If our legislators, such as Sam</p> <p>17 Farr, Anthony Canella and Louie Salejo find that this</p> <p>18 process has gone off track, then there's cause for</p> <p>19 concern that your staff has exceeded its boundaries.</p> <p>20 The assumptions made by staff are based on</p> <p>21 data anomalies and use subset science as a backup. As</p> <p>22 you've heard in Watsonville the very water quality</p> <p>23 reports that the staff proposals are based on has</p> <p>24 suggested data sampling techniques.</p> <p>25 Agriculture within your region has stepped up</p> <p style="text-align: right;">Page 447</p>	<p>1 MR. YOUNG: Thank for your comments.</p> <p>2 MR. GROOT: You're welcome.</p> <p>3 MR. YOUNG: Edward Hard.</p> <p>4 MR. HARD: Good morning. Edward Hard, California</p> <p>5 Department of Food and Agriculture.</p> <p>6 My comments today are coming directly from</p> <p>7 the Secretary, Karen Ross.</p> <p>8 We are here in spirit in collaboration in an</p> <p>9 effort to find ways to solve these problems that we've</p> <p>10 been addressing to you for the last several years.</p> <p>11 I think one of the key pieces that this Board</p> <p>12 should know is what is the CFA's interest in this</p> <p>13 process? Our interests stems fertilizer. We have</p> <p>14 jurisdictional authority for fertilizers -- for</p> <p>15 fertilizers that are sold and distributed across the</p> <p>16 state. We ensure that they are safe, effective and the</p> <p>17 claims that are on the labels meet the guarantees for</p> <p>18 what the labels are asking or demonstrating on the label,</p> <p>19 not the product.</p> <p>20 We have authority to license and have product</p> <p>21 labor review and registration. We also have an</p> <p>22 enforcement division that evaluates whether or not the</p> <p>23 fertilizers that are being sold in bulk or in packages</p> <p>24 are making sure that their claims are meeting what</p> <p>25 they're asking for in terms of their efficacy,</p> <p style="text-align: right;">Page 449</p>
<p>1 with a workable viable solution for the next five years.</p> <p>2 One that achieves water quality improvements that are</p> <p>3 measurable, accountable and verifiable. The object of</p> <p>4 any Ag Order should be to help this industry achieve</p> <p>5 this standard with a common sense approach that allows</p> <p>6 farming and ranching to continue while improving our</p> <p>7 environment within the region.</p> <p>8 I ask that you allow common sense to enter</p> <p>9 into this decision and support the agricultural proposal</p> <p>10 that provides a solution that we all collectively own a</p> <p>11 share of responsibility. We all drink the same water and</p> <p>12 we all like to eat safe, healthy food.</p> <p>13 Thank you.</p> <p>14 MR. YOUNG: I have a question for you, Mr. Groot.</p> <p>15 Are you supportive of groundwater monitoring for nitrate</p> <p>16 as far as this overall effort?</p> <p>17 MR. GROOT: I believe that you will hear later</p> <p>18 from the Ag Panel that will make a conclusion that, yes,</p> <p>19 we are willing to put a proposal on the table concerning</p> <p>20 groundwater monitoring.</p> <p>21 MR. YOUNG: Okay. That effort represents the</p> <p>22 Monterey County Farm Bureau position?</p> <p>23 MR. GROOT: Our position is included in that</p> <p>24 because we are part of the Ag working group coalition and</p> <p>25 it's formulated that, yes.</p> <p style="text-align: right;">Page 448</p>	<p>1 scientifically and what is being put forth in the claim.</p> <p>2 We do not have jurisdictional authority over</p> <p>3 application, but herein lies our concerns with this</p> <p>4 Order. We have concerns and recommendations. Regulatory</p> <p>5 process thus far is extremely heavy on regulatory</p> <p>6 requirements, but short on process that creates a</p> <p>7 scientifically credible outcome. This stands to create a</p> <p>8 lack of credibility and success of this regulatory</p> <p>9 process. This regulatory path forward is unsustainable</p> <p>10 as it is currently drafted.</p> <p>11 There's a disproportionate effect within the</p> <p>12 economic and environmental conditions in this region</p> <p>13 within this Order. It will be undermining successful</p> <p>14 efforts that this agricultural community has demonstrated</p> <p>15 through this region.</p> <p>16 There'll be excessive competition among</p> <p>17 growers to find scientific answers that are not</p> <p>18 scientific. What do I mean by that? This regulation as</p> <p>19 it currently stands, that's in all tiers, would have</p> <p>20 growers trying to figure out what the nutrient uptake</p> <p>21 values are. There are 52, by our count, crops grown in</p> <p>22 this region, give or take one of two. Of those 52 crops</p> <p>23 only two have ever had scientifically evaluated uptake</p> <p>24 values. And those two that have been done are not</p> <p>25 scientifically valid.</p> <p style="text-align: right;">Page 450</p>

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<p>1 of the Groundwater, that's been our mandate. Food Ag 2 Code 1411 Subsection B allows us to do this sort of 3 research on the basic facts. We do not do this alone. I 4 would be foolish to stand here and say we're here with 5 all the capability to do it. This is not a sustainable 6 way for one agency to run it alone, nor a sustainable way 7 for a regulatory body, such as yourselves, to run it 8 alone. We have to do this in collaborative ways. 9 So, getting back and saying, well, how have we 10 engaged UC to date? We have been doing this for 11 21 years. Part of the question now is how does the 12 Regional Board want to participate and help this process 13 move forward. 14 MR. HODGIN: Just like this has been a long term 15 process. We only have evaluations for two, and I think 16 you're questioning the scientific value of those 17 evaluations. 18 MR. HARD: Yes. Prior to me coming here, and I'm 19 not going to mention names, but I did speak with 20 University of California Anne Oren, (phonetic), and that 21 is a problem that they have identified. And we don't 22 even have a nitrogen balance in this region. That would 23 be the goal of the ad hoc committee that was established 24 in 1990. 25 Things, you know, we need sort of a way to go Page 459</p>	<p>1 being mandated as part of nutrient management program. 2 MR. HARD: No practice is being mandated. What 3 I'm saying is there's the option to use practices through 4 that plan in irrigation water. And those practices may 5 or may not be beneficial because we don't have the 6 nutrient uptake values for those crops that those 7 particular growers, wherever they may fit in this region, 8 would be utilized. 9 So, we're kind of like, well, if we do this 10 practice or find a practice through consultants growers 11 may or may not hire, that practice, what's the science 12 behind it? We don't even know the 52 crops in the 13 region, how they -- how those individual crops are going 14 to react to nitrogen uptake. It's putting the cart 15 before the horse. 16 And what we're saying is, to step back for a 17 second, if you have the propensity to regulate you're 18 going to have to do it in such a way that -- this is the 19 devil's advocate problem here -- if you say the worse 20 crops are in Tier 3 or in Tier 2, you mean to tell me 21 that you're not going to regulate Tier 2 and Tier 3 to a 22 science? The same problem that this department is trying 23 to figure out. This is a science and policy problem. 24 Okay? And nobody is good at that. You can't merge the 25 two. This is exactly the problem we're facing here. Page 461</p>
<p>1 from point A to point B. But life is a curve, and we 2 have to stay on topic. And we kind of deviated from 3 that, collectively, we can't do it alone, and nor can 4 you. So we need to collectively put our heads together 5 and figure out how we're going to solve this. 6 MR. YOUNG: All right. I have for you, it has to 7 do with the Nutrient Management Plan. Staff is 8 proposing -- 9 MR. HARD: Irrigation Nutrient Management Plan? 10 MR. YOUNG: Yeah, the nutrient one. Any reaction 11 to that, automatically using that? 12 MR. HARD: Right. I mean, having, you know, we 13 worked with the Central Valley Board on the dairy 14 program, they have a very similar sort of program in 15 place, that is a perfect vehicle, but you're asking to 16 put practices in place, but we don't know whether they 17 work. And you, as a body, cannot prescribe practices. 18 That's against -- the Board, the Water Board, but to have 19 an option to figure out what practices are going to be 20 beneficial for growers using that plan, how would they 21 get there? They can't get there without understanding 22 what that particular crop they're growing is and how to 23 respond to the nitrogen they're using. That's the 24 baseline. 25 MR. YOUNG: What practices are you thinking are Page 460</p>	<p>1 We have a policy department, we have 2 regulation, but yet we don't have the science. What do 3 we do? 4 Let me just tell you that one of the points 5 that our goal here is to integrate science with policy in 6 the department. Of course, all these issues whether in 7 the Central Valley or Central Coast try to communicate 8 constructively, encourage collaboration, identify process 9 improvement. These comments are about process 10 improvements. 11 MR. YOUNG: Thank you for your comments. 12 Dr. Hunter. 13 MS. HUNTER: Thank you. 14 One of the things that I'm most interested in 15 is in working with the several agencies. You've probably 16 heard me speak before on the importance of coordination 17 with agencies. But at the same time I'm really struck by 18 the fact that since the late Eighties and into the early 19 Nineties, the agencies that have had jurisdiction over 20 nitrate in particular, in use of fertilizers, have in 21 some areas no impact on reducing the problem. 22 And today I hear you saying that there is no 23 science. And why is there is no science formally 24 outlining what the issues are and how the problems can be 25 resolved? But you're also suggesting that farmers don't Page 462</p>

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1 understand their own crops and they don't understand the
2 application of fertilizers. I mean that's what I'm
3 hearing you say.
4 MR. HARD: Please don't distort my comments.
5 DR. HUNTER: Well, this is what it boils down to.
6 When you come to the Board and you say within 21 years we
7 have no idea what best practices are for nitrogen.
8 MR. HARD: When it comes to these 52 crops, we do
9 not.
10 DR. HUNTER: That doesn't compute. That doesn't
11 compute.
12 MR. HARD: Statewide is our jurisdiction for
13 evaluating research on nitrogen going to groundwater.
14 DR. HUNTER: Well, what we know is the data is
15 showing that in certain places in Salinas -- or Salinas
16 is one of those areas, nitrogen is increasing, and it's
17 showing in water. So, what we have to do is consider
18 what tools we have, what options we have.
19 But I'm very disappointed to hear you say
20 that we have no science to support that. After all the
21 effort that farmers did, and that farmers also don't
22 understand how to do this application. They have been
23 part of that process as have Monterey County. So --
24 MR. HARD: Farmers do know how to do their job.
25 The issue is in regulation that is prescriptive in nature
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1 basically tells them that they have to do plantings, but
2 if you carefully look at the plant, how could one
3 scientifically objectively look at this and say, wait a
4 minute, Tier 2 and Tier 3, these are the most sensitive
5 areas we're going to target. That's fine, but when you
6 look at how those crops respond to granulated or liquid
7 fertilize application, we don't know, on a baseline, we
8 don't know. So why would you, as a regulatory body, from
9 our perspective, we're saying wait a minute --
10 DR. HUNTER: But you're not -- well, I've made my
11 comments. We're not prescribing practices, we're asking
12 the farmers and they've come up with a number of -- quite
13 a number. We have seen improvements in some places. So
14 I think we have learned. So, I just wanted to be sure I
15 understood your remarks today.
16 Thank you.
17 MR. YOUNG: Thank you, Mr. Hard.
18 MR. HARD: The Department will be in touch with
19 the Chair and the State Water Board for consultation.
20 And part of my presence here today is to inform you that
21 we are taking this extremely seriously. And the horse we
22 have in this race is about the way in which the
23 unsustainable nature of this regulatory approach is to
24 date because there's no solid nitrogen uptake evaluation
25 that has been done. And essentially you're asking her to
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1 perform.
2 We're working in the best interests of
3 agriculture. We can't have a bunch of individual
4 analysis coming out for various crops. It has to be
5 consistent. It will only help your process, and it will
6 only help agriculture. If you have a bunch of
7 individuals analyses for various crops is not going to be
8 beneficial to agriculture or the environment.
9 MR. YOUNG: Well, the troubling part about what
10 you're telling us is that we're not going to have the
11 science for years and years and years. This is the one
12 agency in the State of California mandated for protection
13 of water quality and all beneficial uses.
14 We didn't create this job for ourselves, the
15 legislature did. The buck stops here in terms of making
16 the decision as to whether we follow the law and apply
17 the water quality standards.
18 So, I mean, this is a very contentious issue.
19 There's a lot of competing factors. It may be that
20 whatever form this Order gets passed, it may be the
21 impetus for your agency and other agencies to come
22 together and try to get this figured out. But, you know,
23 we've heard about the Fish and Game having some, you
24 know, having regulatory power with the riparian
25 corridors, DPR has regulatory power. We're looking at
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1 the data that shows impasse. So we're trying our best to
2 try to find a way to get to getting them resolved. So --
3 MR. HARD: We just want to make sure that this
4 agency knows this is more than just the regulatory and
5 executive branch problem. This is water management and
6 water quality issue. And you have water quality
7 jurisdiction. There is no other alternative. Not on
8 surface water.
9 MR. YOUNG: I understand. Okay.
10 Thank you for your comments.
11 We're going to take a break and return at 1:00.
12 Okay. Thank you.
13
14 (Lunch break taken.)
15
16 MR. YOUNG: Okay. Next speaker is Don
17 Hoernschemeyer, then Bridget Hoover, then Nancy Isakson.
18 Oh, yes.
19 Is there anybody in the audience that -- and
20 I don't know if you've seen the list -- but it's all
21 alphabetized. I have a request who's name begins with
22 "Z" to speak out of order because he needs to be
23 somewhere by 1:30 or 2.
24 So if there's anybody that feels that they're
25 got going to have time, if they wait to get their
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1 comments in, I'll consider taking you out of order at
2 this time.
3 Okay. Why don't you come forward.
4 MS. AKIN: I am reading the letter from Dr. Don
5 Hoernschemeyer. I believe you have the spelling over
6 there. My name is Pricilla Akin of the -- anyway, I'm
7 from the Local Unitarian Universalist Congregation.
8 Dr. Hoernschemeyer is from the Aktos
9 Congregation and was not able to get down here.
10 MR. YOUNG: Can you spell the name or do you have
11 the letter?
12 Okay.
13 MS. AKIN: Members of the Central Coast Regional
14 Board, as a concerned citizen writer on the health
15 hazards from water pollution and as a citizen concerned
16 with the health of every person, and especially children,
17 and the health of sea otters and marine mammals in our
18 area, I want to urge you to institute effective
19 regulation of hazardous run-off from agricultural fields.
20 Many farmers want to take action to minimize
21 run-off of fertilizers and pesticides from their fields,
22 and that is commendable, however, history has shown
23 self-regulation is very slow and usually not effective.
24 Pollution regulations with clear enforcement
25 actions are required to protect the health of our rivers,
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1 oceans and aquifers and, ultimately, the health of the
2 people.
3 Of course, the regulations must be feasible
4 and reasonable. The proper role of the farmers of the
5 area is to speak to these issues. I urge you to enact
6 regulations that address every water pollutant known to
7 occur in the Salinas Valley. This should certainly
8 include toxic pesticides such as Chloropherpherl and
9 Indoprofen, which are being band in Europe. And the
10 fungicide and carcinogen Capsin of which 300,000 pounds
11 were applied to crops in this region in 2009.
12 Thank you for your consideration. Don
13 Hoernschemeyer.
14 MR. BRIGGS: Ma'am, I realize she's got Don's
15 name, but I don't know if she's got your name.
16 MS. AKIN: Pricilla Akin. Last name spelled
17 A-K-I-N.
18 MR. BRIGGS: Thank you.
19 MR. YOUNG: Thank you.
20 Sir, come forward, and you must be at the
21 bottom of my card list.
22 MR. ZELINSKI: Yes.
23 MR. YOUNG: You're Dr. Lowell Zelinski?
24 MR. ZELINSKI: Yes.
25 MR. YOUNG: Okay. Go ahead.
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1 MR. ZELINSKI: Dr. Lowell Zelinski,
2 Z-E-L-I-N-S-K-I. And I have a Ph.D in soil plant and
3 water relation from the University of California Davis.
4 And I am a member of the San Luis Obispo County Water
5 Resources Advisory Committee as well as owning a small
6 company that does irrigation and fertility consulting in
7 both Monterey County and in Paso Robles.
8 I want to commend the staff for responding a
9 to a lot of questions I had submitted in the past and
10 they did clarify a number of issues that I had. There
11 are still some other ones. But what I am most concerned
12 about is the nitrogen use sufficiency requirements, you
13 can only put on, though, the ratio of one pound of N for
14 part of N removed.
15 Part of my Ph.D dissertation was looking at
16 nitrate uptake sufficiency of cotton, and we use labelled
17 nitrogen so we could track how much was taken up. The
18 best we could ever do was recover 50 percent of the
19 nitrogen we applied in the whole plant that we analyzed.
20 So there's -- a number of speakers have spoken about this
21 about how it would be difficult to obtain that one-to-one
22 relationship, and I think it's impossible without
23 suffering yield losses. The plants are not just that
24 sufficient in taking up nitrogen.
25 Additionally, I wonder -- I'm sure the
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1 Board's aware, but I'd like to reiterate, that the
2 vegetable growers in Salinas Valley plant a number of
3 crops a number of times a year and in small blocks within
4 larger fields, and if they're required to prepare a
5 nutrient budget for each one of those plantings, there
6 would be potentially tens of thousands of nutrient
7 budgets that need to be submitted. They'll go by a
8 3-acre block of lettuce and then two weeks later they'll
9 find another 3 acre block, and two weeks later they'll
10 find another 3 acre block. So I just wanted to make sure
11 that that was clear.
12 One other thing I want to mention is that one
13 of the questions I did submit to staff was does the
14 incidence of methemoglobin anemia in Monterey County
15 support the contention that a lot of people are drinking
16 high nitrate water. And the response is, no, it does
17 not.
18 That's all my comments. Thank you.
19 MR. YOUNG: So, just a followup question for you.
20 So, what you're saying is that you have to over-fertilize
21 because at least with your experience with cotton it's
22 not very efficient in taking up nitrogen.
23 MR. ZELINSKI: Right.
24 MR. YOUNG: And the only way you can get that
25 50 percent into it is with an over-application.
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1 MR. ZELINSKI: Yes, because the fate of nitrogen,
2 where it goes, it isn't always taken up by the plant. So
3 it volatilizes into the atmosphere of ammonia gas, or
4 other things, or urea. So there's a lot of other synchs,
5 or ways the nitrogen can leave the system.
6 And I say that it's complex. If you make the
7 nitrogen fertilizer requirement equal to the amount of
8 nitrogen removed, have you considered the amount of
9 nitrogen in the water that was being applied with the
10 irrigation.
11 Additionally, you can -- if you put on
12 50 pounds of nitrogen, you can pollute more with that 50
13 pound addition, than with a 200-pound addition depending
14 on the timing and the method of application.
15 So I think it's not as simple as you would
16 think of just putting on what the crop needs. There's
17 much more to nitrogen management than that.
18 MR. YOUNG: Okay. Thank you for your comments.
19 Nancy Isakson, and then Christine Khan.
20 MS. ISAKSON: I prepared a power point.
21 Nancy Isakson, I-S-A-K-S-O-N, and I'm here as
22 President of Salinas Valley Water Coalition.
23 And I had compared a power point for you. I
24 just want to summarize some things for you.
25 Salinas Valley Water Coalition is a not for
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1 profit organization comprised of agricultural landowners,
2 farmers, businesses within the Salinas Valley. Our
3 mission statement includes the statement, the management
4 of the Salinas River Basin should be based on a
5 scientific basis, comply with all laws and regulations
6 and promote the accountability of governing agencies.
7 And that's how we operated for 20 years and we continue
8 to operate.
9 Based on that we retain the services of a law
10 firm, Haram, Lloyd, Carpauli and we also retained the
11 services of a hydrologist who our Chair will speak to
12 later.
13 We -- I want to address the legal issues, and
14 again, I'm just going to summarize, but we believe that
15 the proposed order oversteps the boundaries of the
16 legislative authority granted to you and imposes a
17 duplicate set of regulations, violates the equal
18 protection clauses of the United States and California
19 Constitution and fails to protect farmers' proprietary
20 rights.
21 For these reasons and, really, it tracks with
22 what Mr. Hard said earlier, The Water Coalition requests
23 that the Board rejected the proposed order. We think you
24 need to step back and start over.
25 So, moving -- I apologize. Move through --
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1 we believe the Order oversteps the limited authority
2 granted to you through the California Water Code and that
3 jurisdiction to implement and enforce some of these
4 regulations have actually been granted to the Monterey
5 County Water Resource Agency.
6 I'm sorry, I see this is going through time.
7 I'm going to summarize this. That specific
8 to nitrate concerns the Monterey County Health Department
9 and Monterey County Resource Agency have programs in
10 place to address the nitrate in the groundwater. They've
11 done this for years. And we ask that you let the local
12 agencies work with the local solutions.
13 Again, we believe that the Order provides a
14 duplicative layer and oversteps your authority, and we
15 think we do need to step back, and I hate to say start
16 over, but we need to look at, as Mr. Hard said, what is
17 the problem and how do we best address the solutions.
18 Again, our Chair, Mr. Roberts, who will
19 address from a hydrologic point because we believe that
20 that's what you need to do.
21 Thank you.
22 MR. YOUNG: Thank you for your comments.
23 Miss Isakson, I have a few questions for you.
24 Does the Monterey County Water Agency have any program to
25 address nitrate in the groundwater?
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1 MS. ISAKSON: I believe they do. I thought I
2 heard Curtis Weekes address this Board, not in March, but
3 the time before in Watsonville, and I thought he had
4 discussed that specifically. I know they do -- they have
5 a committee, I'm not part of that water committee, but
6 there may be some people here in the room that are, but
7 Kathy Thomasberg was the water agency that oversees that
8 as a staff person.
9 MR. YOUNG: But other than what you heard
10 Mr. Weekes say I think it was up in Watsonville, and I
11 don't think it was this last March.
12 MS. ISAKSON: No. He was the time before.
13 MR. YOUNG: In July, probably, 2010. Are you
14 aware of anything other than his comments that he made?
15 MS. ISAKSON: Oh, I know that there have been
16 programs. I mean --
17 MR. YOUNG: The Monterey --
18 MS. ISAKSON: I couldn't tell you what the
19 specifics are, but I personally have monitored the water
20 agency, the Water Resource Agency activity. I know that
21 they do have programs. I couldn't tell you,
22 specifically, what they are.
23 MR. YOUNG: Okay. But these are programs for
24 nitrate?
25 MS. ISAKSON: Yes. And they have groundwater
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<p>1 monitoring system in place to monitor that nitrate. 2 MR. YOUNG: I'm aware of all the data they 3 produce, but I wasn't aware that they had a program to 4 address the nitrate. 5 MS. ISAKSON: It's my understanding that they do 6 have a program. They work with the growers, there's a 7 Adrain (phonetic) Committee. 8 MR. YOUNG: Do you know if the program has been 9 successful? 10 MS. ISAKSON: I believe that it has shown certain 11 trends to reducing nitrates, yes. 12 MR. YOUNG: Okay. 13 MS. ISAKSON: In the groundwater. 14 MR. YOUNG: All right. Thank you for your 15 comments. 16 MS. ISAKSON: Sorry. Thank you. 17 MR. YOUNG: Christine Kemp, followed by Kerry 18 Lobel, and then Marc Los Huertos. 19 MS. KEMP: Good afternoon members of the Board. 20 My name is Christine Kemp, K-E-M-P. I'm an attorney with 21 the law firm of Mullen, Hamily, Khan and Hoff in Salinas. 22 We represent several agricultural, many agricultural 23 clients and I'm here to speak on their behalf. 24 I wanted to address two specific issues, in 25 particular related to the one size fits all nature of the</p> <p style="text-align: right;">Page 475</p>	<p>1 are self-imposed regulations that the farmers are 2 attempting to deal with a problem which arose and are 3 regulating it. So if you require buffers and then they 4 can't have buffers because other folks don't want it, you 5 have a conflict. 6 And there are other ways, proven ways, to 7 reduce the run-off sediment and pesticide levels using 8 the folocating agents and the degraded enzymes, and those 9 alternatives ought to be put in place as well just 10 requiring standard buffers. 11 So we're asking that alternative methods that 12 are an important component with the irrigation methods, 13 and those alternative methods need to be permitted under 14 the waiver. 15 Thank you. 16 MR. YOUNG: Thank for your comments. 17 Kerry Lobel. 18 MS. BHATNAGAR: I'm here to read a statement on 19 her behalf. 20 MR. YOUNG: Your name. 21 MS. BHATNAGAR: My name is Christie Bhatnagar. 22 Last name is, B-H-A-T-N-A-G-A-R. 23 MR. YOUNG: And your reading this for which 24 organization? 25 MS. BHATNAGAR: For Puente De La Costa Sul. And</p> <p style="text-align: right;">Page 477</p>
<p>1 waiver. And with respect to the hundred -- within a 2 hundred feet of surface water and/or adjacent to surface 3 water that definition needs to be clarified because you 4 have agricultural fields that may be adjacent to 5 surface water within a hundred feet, a thousand feet, but 6 it doesn't account for levies, which we saw driving down 7 today, you have a levy, you have an agricultural field, 8 the water is not running into the water body, but they're 9 still subject to the tiering criteria. 10 You also have leveling of agricultural 11 fields, laser leveling where the drainage may be away 12 from the water body, but again, those requirements are 13 not being taken into consideration. 14 An adjunct to that is the requirement of 15 buffers. This is problematic for many reasons, and you 16 heard some of that today. It removes agricultural land 17 from production, and for some small farms that could be a 18 significant loss of their productivity in the ability to 19 farm their land. It does conflict with the safety 20 regulations -- not necessarily regulations, but the 21 agreement, the Leafy Green Ag Agreement that if it's been 22 put in place, and those are self-regulated agreements 23 amongst the farmers to address the problem that arose out 24 of the spinach and the Ecoli problem. And federal 25 legislation may be coming to implement those. So these</p> <p style="text-align: right;">Page 476</p>	<p>1 the person is Kerry Lobel. She's the Executive Director. 2 She submitted a letter for the members. 3 "Dear Members of the Central Coast Regional Water 4 Quality Control Board. 5 Thank you for the opportunity to present 6 written remarks. I regret that I'm unable to join you in 7 San Luis Obispo today. 8 I write today on behalf of Puente De La Costa 9 Sul. Puente is a ten-year old 501C3 non-profit 10 organization. It's mission is to provide vital services 11 for men and women and children and families living in 12 rural San Mateo South Coast communities of Pescadero, La 13 Honda, Lomamal and San Gregorio. 14 Puente region residents on the South Coast of 15 San Mateo County, the most rural areas in the greater Bay 16 Area or Puente service area, it covers about 160 mostly 17 undeveloped square miles, including the unincorporated 18 areas of Pescadero, San Gregorio, La Honda and Lomamal. 19 The four communities have no dental or medical providers 20 pharmacies, laundromats, department or hardware stores, 21 libraries or supermarkets. 22 Members of this Board are no strangers to the 23 challenges that nitrate in water have brought to our 24 communities. Last spring problems at Marche Farms came 25 to public attention when water tests revealed the</p> <p style="text-align: right;">Page 478</p>

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1 presence of nitrates at six times the federal limit.
2 Residents at the farm had been drinking
3 bottled water at their own cost for more than a decade.
4 And health inspection reports had cited problems dating
5 from at least 2004.
6 A likely source of the nitrate contamination
7 was fertilizer application adjacent to the well.
8 Many residents of our region live in shared
9 housing adjacent to fields that are in production for
10 food or flowers. Because our community has no health
11 care it is impossible for us to measure the health
12 burdens that may be placed on babies, infants and the
13 elderly from nitric contamination. However, we find the
14 health data troubling.
15 Nearly all of us in our community rely on
16 wells for water for our drinking, cooking and bathing.
17 We also rely on agriculture and flower culture to sustain
18 our rural community. Certainly clean water and
19 agriculture can live side by side.
20 Kerry Lobel, Executive Director."
21 MR. YOUNG: Thank very much for your comments.
22 Okay.
23 MR. LOS HUERTOS: Marc Los Huertos.
24 MR. YOUNG: Okay. Arriane Martin and then Mibs
25 McCarthy.

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1 MR. LOS HUERTOS: L-O-S H-U-E-R-T-O-S.
2 MR. YOUNG: Go ahead.
3 MR. LOS HUERTOS: I'm a faculty member at Cal
4 State Monterey Bay. I've been working on water quality
5 issues and farming for over 15 years, mostly on nitrogen
6 biochemistry issues, groundwater service, water
7 contamination as well as pest management practices.
8 And so there's a couple of comments I want to
9 make. Unfortunately, doesn't have time to boil all my
10 ideas down into something that lasts only three minutes,
11 but I'll do my best here.
12 One of the issues that I want to raise is
13 that, in general, I found that the tiering system does
14 not relate to water quality risks. And I thought this is
15 ironic because in Watsonville, both environmental and
16 farming communities felt that the tiering system wasn't
17 related to risk.
18 And let me just put it -- back up a little
19 bit. On a lot of what I've read in mostly national and
20 international papers on water quality resolution there's
21 generally a correlation between land use and management
22 practices and water quality. The problem is when you
23 apply it to a farming community the correlation then
24 turns into an assumed causation.
25 And just to highlight this in statistical

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1 terms. I don't want to belabor this, but the correlation
2 of .6, which is really good in sort of environmental
3 sciences, turns into a R square of .36, which translates
4 to 36 percent of the variant covered by that correlative
5 relationship, but that means 64 percent is not related.
6 And so, in theory with a very good R statistic of .6 you
7 could be misapplying the mechanisms of water quality
8 impairment up to 74 percent of the population.
9 I hope that makes sense.
10 So, I also did a lot of research on
11 vegetative buffer strips for my dissertation, and I found
12 that vegetative buffer strips actually are very
13 problematic in California because of the Mediterranean
14 climate. In particular, we don't have a good
15 biogeochemical contents to remove the nitrogen using
16 genetic rotation in the Mediterranean climate because of
17 the dry season from Marchish until November. So applying
18 the vegetative buffer strips, wholesale, as a potential
19 best management practice to remove nitrate, and I'm just
20 speaking for nitrate, is I would say a misapplication of
21 that best management practice.
22 And the last thing I just want to say is that
23 I, on some level, feel like the mechanism of pollution
24 generally takes place through a watershed or water
25 source. And I didn't see an explicit linkage to the

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1 mechanisms or water impairment through the Ag Waiver
2 through watershed processes. And that's the one thing I
3 have to admit I like about the Ag Proposal is that it
4 does address at least potential address of --
5 MR. YOUNG: Finish your sentence.
6 MR. LOS HUERTOS: So that the linkage in the Ag
7 Proposal to watersheds in allowing watersheds working
8 groups to be able to develop monitoring plans within the
9 watershed is very attractive because it allows watershed
10 groups to set standards and set targets and potentially
11 set targets in with response and with approval to the
12 Board so that the people on the ground can make
13 appropriate timelines and targets.
14 So I know in San Juan Valley Maryellen Dick
15 has worked very hard with those harvest growers; they
16 have a very good idea with -- oh, I'm sorry.
17 Thank you.
18 MR. YOUNG: That was a creative run-on sentence.
19 MR. JEFFRIES: I'd like -- you started addressing
20 San Juan Valley, I'd like to hear the rest of that.
21 There's some real critical issues in the San Juan Valley.
22 MR. LOS HUERTOS: It's hard to ignore the red
23 light on me.
24 But San Juan Valley is very problematic.
25 It's on the east side of the valley, relatively well

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<p>1 drained soils, on the west side, very poorly drained 2 soil. The poorly drained soils have a high percentage of 3 tile drains. Those tile drains and the relatively high 4 water table, an increasing water table, has very high 5 nitric concentrations, not just in the tiles, but in the 6 surface water.</p> <p>7 So I've been monitoring San Juan Creek for 8 almost ten years and the concentrations are generally in 9 the 40 to 50s, sometimes 60s, part per million. And to 10 address that and the nitrate issues on the San Juan 11 Valley are a little bit odd because you don't think of 12 that part of the county as a high Ag area. As it turns 13 out San Juan has the highest yields of the Central Coast 14 of Monterey for decades. So it's very interesting here, 15 it's a perfect microclimate. Unfortunately, they have 16 imported water. The imported water has raised the water 17 table. Raising the water table has forced growers to 18 increase the tile drainage. Their aquifer is relatively 19 salty, so they can't even use their aquifer water. So 20 they're creating a system where they've got too much 21 water, a lot of nitrate because of the high production 22 value crops that they're using.</p> <p>23 And to turn back to Maryellen Dick. 24 Maryellen Dick has been working with these growers very, 25 very successfully to start installing best management</p> <p style="text-align: right;">Page 483</p>	<p>1 the CMPs, I was not expecting to see changes in the CMP 2 site for at least five to ten years.</p> <p>3 MR. JEFFRIES: Thank you. 4 MR. YOUNG: Dr. Hunter. 5 DR. HUNTER: So, the work that you've been 6 involved with and in a lot of the cooperative work going 7 on between farm communities and scientists and some of 8 the technical assistance available, do you think that 9 under the Ag Order we would be able to see the continued 10 kind of collaboration on developing CMP, because the 11 programs are not intended to be prescriptive, so why 12 would we not see that continued level of effort and 13 support from the RCUs, funding from RCS, et cetera. I 14 just want to know where that linkage gets broken.</p> <p>15 MR. LOS HUERTOS: Yeah. I hope that I didn't say 16 that that linkage was automatically broken. I have seen 17 some breakdowns in the linkage. Not as part of this 18 Board at all, but the Department of Financial Assistance. 19 Is that what that was? Have come up with some fairly 20 strict rules on reporting requirements when we get state 21 funding from the Water Board which has made it very -- 22 what's a word for it? Hesitant for growers to 23 participate in at least state water funded cooperative 24 process. A lot of that money goes through the RCD or 25 Cal State Monterey or even UC, University of California,</p> <p style="text-align: right;">Page 485</p>
<p>1 practices.</p> <p>2 So, for example, I work with a grower testing 3 vegetative buffer zones -- not that -- treatment of 4 wetlands to remove the nitrate using basically plants and 5 microbial processes to remove the nitrate in pilot 6 projects right now, and to tell you the truth we haven't 7 gotten it figured out because we got so much water moving 8 through these systems that we can reduce the nitrate 1, 9 or 2 or 3 parts per million, but when you're starting the 10 40 or 50 parts per million, which aren't even that 11 growers -- nitrate, it's going to take a long time for us 12 to figure how to fix that issue.</p> <p>13 But the nice thing is that now we have on the 14 ground experience with those growers we have watershed 15 coordinators as well as depth in dealing with these 16 growers and we can come up with targets and say ends are 17 our monitoring stations and growers can up with a 18 watershed group to monitor a whole bunch of 19 sub-watersheds, substations for growers and then be able 20 to use that data to modify individual monitoring 21 practices that would show up on a CMP site probably in 22 two, three, five to ten years.</p> <p>23 I would say that CMP sites were designed to 24 see the long term trends. So I'm not surprised -- I 25 actually helped design this -- the monitoring plans for</p> <p style="text-align: right;">Page 484</p>	<p>1 So it's been very hard for us to get growers to cooperate 2 knowing that data is going to be reported into a public 3 entity. And then, potentially, in three to five years 4 someone turns around and starts suing them for water 5 quality impairment that they're actually trying to fix. 6 That's part of it.</p> <p>7 So that's part of it. The other part of it 8 is that it's not clear and I don't -- I think your staff 9 has done a very, a lot of effort and a very good job 10 trying to come up with approaches on -- on, frankly, 11 something that no state, no national agency, no water 12 protection agency has done.</p> <p>13 I actually co-wrote a paper for the Organic 14 Press along with a Board member, Brian Dodd, on the Ag 15 Waiver Program, so I'm fairly familiar with what else has 16 been done around the country.</p> <p>17 So, the way the Ag Waiver is written if 18 you're in a Tier 2 or Tier 3 or Tier 1, developing those 19 management practices has -- cooperating with funding that 20 might be linking your data to a state water database has 21 the potential of refining or changing those Tier 22 criteria, and growers I think would get really nervous if 23 they're bumped from one tier to another based on the data 24 that they are collecting based on their cooperation that 25 they're hoping to improve water quality.</p> <p style="text-align: right;">Page 486</p>

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1 So I think it's a -- I think it's a
2 frustration that potential cooperation will then come
3 back and haunt them in three to five or ten years in a
4 way that they didn't really anticipate. So I think
5 you're finding growers, at least in terms my case, I have
6 a Prop 84 Grant and I can't find growers to cooperate at
7 all because they are scared to death that somehow in
8 three to five years a new Ag Order will turn around and
9 that data will get used to -- I don't mean to hunt them
10 down, but to create a more difficult circumstance they're
11 already facing.
12 Does that make sense?
13 MR. YOUNG: I've got some questions for you.
14 With respect to the first part of what you
15 were telling us about, the risk factors in tiering.
16 You're familiar then with all the risk factors that staff
17 has used in creating tiers. Do you feel that any of
18 those risk factors are inappropriate?
19 MR. LOS HUERTOS: Yes.
20 MR. YOUNG: Which ones?
21 MR. LOS HUERTOS: Well, so, I'm not a risk
22 analyst, but I taught myself to do risk analysis about
23 three weeks ago after I started reading the reports.
24 Some of the things I found that was proximity to a 303
25 listed body is problematic just in terms landscape
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1 processes. So, two speakers ago brought this up, if
2 you're next to a levy, then you might be next to a 303
3 listed body, but your water doesn't go through the levy
4 into that water.
5 So, for example, the Poplar River is polluted
6 in above Chittenden in San Mateo -- or Santa Cruz, Santa
7 Clara, and San Mineo County, and meanwhile all the
8 growers in Poplar Valley that are adjacent to the Poplar
9 River contributing to the Poplar River, yet they may be
10 captured within that.
11 I monitor organic farms that are 500 acres
12 that have tons of nitrate coming off of them, and I
13 monitor huge farms with no nitrate coming off of them.
14 And so, again, the size criteria is a little weird for me
15 because it doesn't link to the impairment issue directly.
16 Does that make sense?
17 MR. YOUNG: Yes, it does.
18 MR. LOS HUERTOS: And then -- I don't know a lot
19 about pesticides, but let me finish this little train
20 about that.
21 The other issue is where when I speak to
22 people about those processes that drive, for example,
23 groundwater contamination, nitrate contamination, its
24 soils, it's the geologic formation is what I mean in how
25 you're connected with the aquifer and things like that,
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1 it's irrigation management versus fertility management.
2 When you -- you can't do anything about where you are,
3 you can't do anything about the aquifer, you can't do
4 anything about the aquacludes or the confining layers,
5 but you can do a lot with the management of the farm in
6 terms of irrigation and fertility.
7 And currently -- and I'm not going to be a
8 friend to anybody today -- currently you drive in the
9 Salinas Valley at night and there are people driving up
10 and down the valley turning on and off the sprinklers
11 probably at 10, 12, 14 bucks an hour. And if they can't
12 make it back in time, the obvious thing is to leave it on
13 because you don't want to under-irrigate because the
14 crop would look really bad and no one will do that in the
15 daytime.
16 So we did some monitoring for the followup
17 program for the CMP where we put automatic gauges so that
18 it would measure day and night for basically -- I think
19 we did like a week or something, I can't remember how
20 long, but a couple of weeks, and we saw a huge amount of
21 flow in some watersheds in the middle of the night. They
22 didn't want to capture the night, of course, so I sent my
23 staff out to sample it sample at 2 in the afternoon, so I
24 was missing all these big spikes.
25 So, linking the risk to the practices and
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1 behavior would be really appropriate.
2 And what I didn't see in the tier system was
3 a much more focused educational component. So, for
4 example, a much more restricted or stringent education
5 program on certified irrigation managers where we're not
6 paying someone 12 bucks an hour to drive up and down the
7 valley, but paying someone 25 bucks an hour to look at
8 stations to manage the irrigation effectively so that we
9 really have a well trained cadre of people that really
10 understand irrigation management in a more sophisticated
11 way.
12 If you can control irrigation management with
13 that kind of expertise, then the location kinds of things
14 become less and less important. And that -- in terms of
15 risk, that's where I would put my dollars into the
16 management of people.
17 MR. YOUNG: Well, we have the Irrigation Nutrient
18 Management Plan as part of Tier 3, are you suggesting
19 that something like that be put into Tier 2?
20 MR. LOS HUERTOS: I would say that, in general,
21 growers need to be investing more in having better and
22 more sophisticated irrigation fertility management, and
23 it's been something that has been -- what's a nice way of
24 saying it -- it's not been something high on the list
25 because there are so many other things that are pulling
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1 pesticides, nutrients, temperature, sediment. I'm
2 wondering, are water bodies in 303D listed for Ecoli and
3 other indicator bacteria not associated with irrigated
4 Ag, are they also a trigger for Tier 2 and Tier 3. If
5 that's the case, it seems like mixing apples and oranges
6 to me.

7 The criteria for irrigated Ag should be based
8 on discharges actually made by irrigated Ag.

9 Finally, agriculture is not responsible for
10 all the constituent pollutants found in local watersheds.
11 If agriculture is being ordered to clean up pollutants
12 without any delineation between Ag discharges and those
13 coming from other sources, particularly urban lawns,
14 landscape and gardens. Homeowners use many of the same
15 fertilizers, pesticides yet agriculture is being
16 targeted.

17 The goal is to improve water quality, but
18 fairness must be a part of the equation.

19 I support the farmers for water quality terms
20 and conditions for compliance through a third party group
21 as a way to accomplish both.

22 Thank you.

23 MR. YOUNG: Thank you for your comments.

24 And, by the way, Ecoli is not on the radar for
25 this.

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1 MS. McDONALD: It's not?

2 MR. YOUNG: It's not.

3 Kay Mercer.

4 MS. MERCER: Hello, I'm Kay Mercer. M-E-R-C-E-R.

5 Thank you for allowing me to come before you. I
6 want to talk about the draft Ag Waiver and the top three
7 issues that I see in the current draft that's before you.

8 The first is that it's really not solution
9 focused, it is a regulation, but there's not a lot of
10 solutions offered in the regulation. I think it is a big
11 improvement over what we had in 2010, however, it's over
12 complicated and it's doubtful whether it could be
13 administered or enforced by staff. And, in fact, I'm not
14 sure if it's implementable at all.

15 I do want to talk about anomalies. Robert
16 Doladall (phonetic) talked to you about groundwater and
17 nitrates in March. I'd like to talk about a couple of
18 other situations in the Draft Order where there's anomaly
19 omissions and some errors.

20 First, I'd like to talk about the list of
21 pesticides.

22 There's 84 pesticides that are listed,
23 finding 58 in the Draft Order.

24 First of all, staff, it's obvious they
25 haven't really consulted with EPA and DPR and Department

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1 of Fish and Game. They're not taking into account the
2 amount of environmental state work and toxicological work
3 that's done by the state agencies when these pesticides
4 are registered.

5 Second of all, in terms of the list itself, I
6 was kind of shocked when I first looked at it because
7 many of the pesticides that are on the list aren't Ag
8 chemicals. Some of them are termiticides, which means
9 they're used to control termites. They're roadside
10 herbicides, they're not used by Ag. Some are not
11 registered in California. Some are registered in
12 California, but aren't used on the Central Coast.

13 So, out of the 84 pesticides 13 of the active
14 ingredients are used on, approximately, 80 percent of the
15 crops. Only 13 of the 84 are used on 80 percent of the
16 crops on the Central Coast. 52 of those are included in
17 EPRs ongoing surface water monitoring program. 37 are
18 included in EPR pesticide management zones, which
19 includes a permit, and covers a specific geographical
20 area. 13 of those 84 percent are DPR restricted use
21 pesticides which require permits.

22 So what's the solution to this? Instead of
23 just saying you use this product, therefore, you're in a
24 certain tier. It really should have some risk assessment
25 involved with it.

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1 You know, I heard someone say use agronomy.
2 Agronomy applies here. How -- where is the product being
3 used? What crop is it being used on? When is it being
4 used? Why is it being used? How is it being used? How
5 much is being used? What's the soil type? What's the
6 hydromorthology? All of those things -- what's happening
7 in the watershed? All those things go into that.

8 MR. YOUNG: Can you wrap up?

9 MS. McDONALD: I can wrap up.

10 MR. YOUNG: One sentence.

11 MS. McDONALD: One sentence. Your list of
12 impaired water bodies is impaired itself.

13 MR. YOUNG: Okay. Thank you very much for your
14 comments.

15 MS. McDONALD: Do you want to hear about the
16 impairment just real quick?

17 MR. JEFFRIES: I want to hear it.

18 MS. McDONALD: Particularly as it applies to Santa
19 Cruz County.

20 The 29 impaired water bodies that are on the
21 list, I read the reports for the sediment and nutrients,
22 out of those 12 do not attribute sediment or attributing
23 or nutrients to irrigated Ag.

24 So you have 12 water bodies that don't even
25 have irrigated Ag on there, and there are no attribution

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1 to irrigated Ag.
2 I did a -- used ingrated report from the
3 State Water Regional Control Board and did a digital
4 inspection of the remaining, all 99 water bodies. The
5 other 17 in Santa Cruz County that remain on the list
6 only 15 of those had any measurable irrigated Ag. 15. I
7 mean -- I'm sorry 15 had no measurable irrigated Ag. The
8 two that remain that actually had any measurable
9 irrigated Ag, one had five percent, one had seven
10 percent.
11 So, you have -- so what happened is you have
12 growers, you might have some great grower up in the Santa
13 Cruz hills that is now on impaired water bodies that has
14 no appreciable irrigated Ag that's instantly in Tier 2.
15 And so -- or maybe even in Tier 3, depending on what
16 pesticides you guys decide to make a tiering criteria.
17 And so all of a sudden your own reports say
18 that irrigated Ag is not a source of impairment and then
19 you turn around and have -- list these water bodies as
20 impaired and make it a criteria in a regulation for
21 irrigated Ag.
22 Thank you.
23 MR. YOUNG: Thank you.
24 Larry Meyer, Kris O'Connor, Barbara Ann Ogle,
25 and then Dana Perls.

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1 MS. O'CONNOR: I'm Kris O'Connor, K-R-I-S,
2 apostrophe O-C-O-N-N-O-R, with the Central Coast Vineyard
3 Team.
4 I want to thank you for the latest Draft
5 including certified growers in the Tier 1 category. We
6 certainly appreciate this recognition, but in accordance
7 with our previous letters we still believe that there are
8 many operations that are not certified that do not pose
9 threats to water quality.
10 In the May Board Workshop here in San Luis
11 Obispo the direction was clear, create an Order that both
12 incentivizes practices and rewards growers. But,
13 nevertheless, the current framework still presumes that
14 Ag operators are polluters, that they're guilty until
15 they can prove they're innocent.
16 This Draft continues to apply a point source
17 regulatory model for a non-point source program. So,
18 really, if we were looking at an incentivizing approach
19 that actually protected water quality like some of the
20 previous speakers, we would be looking at actual risk.
21 We would have tiers that had triggers that actually
22 growers had control over and that related to a risk and
23 to help protect water quality. And that way you would
24 incentivize people to adopt things with clean water and
25 move into different tiers.

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1 In May the Board also provided direction to
2 not require more information that could be managed or
3 analyzed. I would really disagree with some of the
4 slides that say that the current draft is actually less
5 burdensome than the current waiver. It's just not true.
6 So, there is a lot of work required by this proposal and
7 people should be paying attention to that.
8 Again, in May one of the directions was to
9 not use the 303D list because -- I think I had in my
10 notes somebody said because it's too broad. Still this
11 hundred -- nearly hundred water bodies is still in there
12 as a trigger. You know, I don't really consider 100
13 water bodies as being sort of priority for the area if
14 we're really going to focus our attention.
15 So, despite the May direction to focus on
16 surface water and nitrate and organic phosphate, this
17 latest Draft continues to include riparian areas, storm
18 water and groundwater. It seems that although some
19 things get taken out in the new draft that more things
20 get included.
21 There was some language around storm water.
22 It was mentioned by a previous grower. That was actually
23 very contradictory between paragraphs and quite a bit
24 confusing.
25 We are also concerned about the tier trigger

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1 about the topic of even including more pesticides as this
2 tier trigger. Again, in March some of the language was
3 used interchangeably between towards detection and
4 toxicity. I would really encourage the Board to look at
5 Sara Green's memo that she provided from Preservation
6 Inc. and make sure that we're talking in the appropriate
7 language.
8 So, again, I would also like to remind you
9 that, you know, the material does not really equate, we
10 really have to be looking at transport, also.
11 So, the Vineyard Team has, obviously, done a
12 lot of work on this issue. We continue to work with the
13 staff and the Board to try to come up with a solution to
14 protect water quality.
15 We're happy to be a resource.
16 MR. YOUNG: Thank you for your comments.
17 Barbara Ann Ogle. Dana Perls.
18 MR. YOUNG: Hi, Dana.
19 MR. SHIMEK: Hi. Steve Shimek, S-H-I-M-E-K. I
20 have a letter from Pesticide Watch Environmental Fund.
21 Before I begin, though, I would like to mention the fact
22 that you asked the question about if anybody knows about
23 the buffers; it came up during the CDFA's presentation.
24 I actually met with LGMA about buffers and there is a
25 requirement about buffers. They asked the question and

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<p>1 they asked if anyone had any information. 2 MR. BRIGGS: He's here to read a statement. 3 MR. YOUNG: You're here speaking -- you're giving 4 someone else's comments, so if someone had asked for 5 specific questions it would be different. 6 MR. SHIMEK: So the only person -- 7 MR. YOUNG: You're here to speak -- to give 8 comments for Pesticide Watch, please give us those 9 comments. 10 MR. YOUNG: Yes, Mr. Jeffries. 11 MR. JEFFRIES: Does Mr. Shimek have a card? Or is 12 he speaking on behalf of someone else? 13 MR. SHIMEK: No, I do not have one. 14 MR. JEFFRIES: You spoke at one time. 15 MR. SHIMEK: I was just trying to answer the 16 question the panel had asked. 17 MR. YOUNG: Right, but it was asked of someone 18 else. So, I'm not -- it wasn't an open invitation for 19 everyone else. 20 MR. SHIMEK: Actually, it was when you asked it. 21 MR. YOUNG: All right. Steve, let's do this. I'm 22 setting this back to three minutes. Start over. Give me 23 Dana Perls' comments. 24 MR. SHIMEK: All right. My name is it Steve 25 Shimek, and I'm speaking on behalf of Dana Perls,</p> <p style="text-align: right;">Page 503</p>	<p>1 contamination as a factor. 2 We urge you to take timely action to put in 3 place strict requirements for irrigated agricultural 4 discharges so the California residents and water is truly 5 protected and restored. 6 Dana Perls." 7 MR. YOUNG: Thank you for your comments. 8 Susan Petrovich. I understand she's not here. Is 9 there anybody from the Santa Barbara County Cattlemen's 10 Association speaking on their behalf? 11 12 (No response.) 13 14 MR. YOUNG: Richard Quandt. Then Bill Ritz, Keith 15 Roberts. 16 MR. QUANDT: Thank you on behalf of Farmer's for 17 Water Quality. My name is Richard Quandt, Q-U-A-N-D-T. 18 I'm president of Grower-Shipper Association. 19 I have nine slides that I would like to 20 summarize in terms of estimated cost of meeting the 21 monitoring and the reporting requirements for Tier 3 22 farmers and their staff's March proposal. 23 Next slide, please. 24 This slide is -- we first reviewed DPR and Ag 25 Commission of Pesticide Use Report to determine the</p> <p style="text-align: right;">Page 505</p>
<p>1 Pesticide Watch Education Fund. 2 "The 2011 Draft Order is an improvement on 3 the 2004 Conditional Waiver which did not prioritize 4 water quality requirements and did not contain any 5 compliance or preservation of monitoring provisions. 6 However, PWEF is very disappointed that in spite of the 7 immense evidence in drinking water concerns from 8 contaminated groundwater the 2011 Draft Order remains 9 significantly weaker than it could be. 10 PWEF is concerned that the only types of 11 pesticides which are being considered are Diazinon and 12 Chlorpyrifos. While these two commonly used pesticides 13 which may affect groundwater contamination a number of 14 pesticides which severely contaminate is significant. 15 Rather than only considering two pesticides there needs 16 to be a more comprehensive list of pesticides which apply 17 to all areas. 18 Bullet point 2: And I'm summarizing, surface 19 water and Ag run-off should test for numerous pesticide 20 indicators what will likely end up in the groundwater. 21 Bullet point 3: Methylidyne is a registered 22 pesticide should be included in this list of run-off 23 contaminants. 24 Bullet Point 4: The criteria for tiering 25 must include groundwater nitrate and pesticide</p> <p style="text-align: right;">Page 504</p>	<p>1 number of farms that fell within Tier 3. The two 2 criterias we used was 1,000 acres of vegetables and 3 strawberries and we broke it down by county. 4 The second criteria was discharging to an 5 impaired water body and using the pesticide Chlorpyrifos 6 and Diazinon. You can see the results of the 7 calculations. We're calculating about 325 of the, 8 approximately, 1600 dischargers would fall within Tier 3 9 representing 218 -- 219,000, acres, which is about 10 53 percent of the total unirrigated acres in the region. 11 Next slide, please. 12 We did try to estimate the Tier 3 enrollment 13 cost. This was based on the summary of interviews with 14 Tier 3 growers. We developed a range, and you can see 15 the range is 25,000 to 30,000 per operation. 16 Next slide, please. 17 We also looked at the annual cost of meeting 18 the monitoring and reporting requirements in the Order. 19 You can see the main components of that deal with the 20 surface water, discharged monitoring requirements and the 21 reporting requirement under the Annual Compliance Plan. 22 Our data indicated there would be a range of between \$6- 23 and \$9,000 per year, per Tier 3 grower. 24 Next slide, please. 25 In terms of one expense not summarized, the</p> <p style="text-align: right;">Page 506</p>

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<p>1 previous slide is a 30-foot vegetative buffer that Tier 3 2 growers would have to install for operations located on 3 or adjacent to an impaired water body. 4 Next slide, please. 5 We determined there is, approximately, 6 68 -- 6,870 acres in crop production that would be lost. 7 In many cases the loss would be more than 30 feet because 8 many fields are narrow and irregular and they follow the 9 contours of the natural water body. In certain cases 10 25 percent of the field would be lost. This slide 11 attempts to show some examples of that. 12 Next slide, please. 13 There are also perennial crops that may have 14 to be moved from the vegetative buffers. We calculated a 15 lost for avocado growers of between 5,000 and 6,000 per 16 tree and for removal and relocation. Vineyards between 17 3700 and 1100 per acre. 18 Thank you. 19 Next slide, please. 20 I'm going pretty fast. 21 In terms of the conflicts with food safety in 22 light of what we have with these vegetative buffers most 23 of the leafy green growers would have to install buffers, 24 they would have to install fencing that we calculated at 25 82 million dollars.</p> <p style="text-align: right;">Page 507</p>	<p>1 requirement. 2 MR. YOUNG: Okay. Thank you very much, Mr. 3 Quandt. 4 MR. RITZ: Good afternoon, Chairman Young. My 5 name is Bill Ritz, R-I-T-Z, like a cracker. 6 I'm District Representative for State 7 Senator -- Anthony Canella, previously worked for Senator 8 Dow. 9 State Senator Canella is a Senator of 10 District 12. Part of the region falls within his 11 district, which would be part of Monterey County and San 12 Marino County. 13 The Senator is also the Senate Chairman of 14 Agricultural Committee. 15 I have a few comments from Senator Canella. 16 It would seem that all side of this issue 17 agree that clean water and healthy environment are in 18 everyone's best interests. It's essential that 19 collaborative efforts between the Board, staff, the Ag 20 community, appropriate agencies, all parties, must concur 21 to develop a reasonable long term solution. Long term 22 solutions. 23 Communities such as Monterey County are 24 extremely dependent on the agricultural industry to 25 maintain a vital economy, create jobs to grow healthy</p> <p style="text-align: right;">Page 509</p>
<p>1 And the last slide, please. 2 MR. YOUNG: Wait. Thank you for your comments, 3 Mr. Quandt. 4 I just have a question, though, it's my 5 understanding staff was not proposing that any trees get 6 removed if they're in the buffer. Is that correct or 7 not? 8 I'm asking staff. 9 MS. SCHROETER: Repeat the question. 10 MR. YOUNG: Mr. Quandt is concerned -- 11 MR. THOMAS: Yes, that is correct. 12 MR. YOUNG: That is correct. 13 Okay. What about with vineyards and, you 14 know, vines, would they have to be removed if they're in 15 a buffer? 16 MS. SCHROETER: The Water Quality Buffer Plan is 17 about addressing the discharge. There's no requirement 18 to remove anything within that area if they can address 19 the discharge. So, the trees don't need to be removed, 20 vineyards don't need to be removed, if they control the 21 discharge, that's the part of the plan. 22 MR. THOMAS: There's no requirement to removing 23 vineyards -- 24 MR. YOUNG: Speak into the mic. 25 MR. THOMAS: Vineyards or trees and orchards, no</p> <p style="text-align: right;">Page 508</p>	<p>1 produce that feeds not only California, the United 2 States, but is shipped around the world. 3 Increasing levels of regulation and 4 mitigation will threaten very important industry in our 5 area. Senator Canella has previously submitted written 6 comments to you urging the Board to cooperate in all 7 alternatives, such as the Agricultural Alternative 8 Conditional Waiver. 9 And finally, a regulation of this magnitude 10 deserves that negotiations include all stakeholders to 11 create a plan of sound science in achievable goals. 12 On behalf of Senator Canella, I thank you for 13 your consideration. 14 Thank you. 15 MR. YOUNG: A few questions for you, Mr. Ritz. If 16 you don't have a position on this, that's fine, I'm just 17 kind of curious. With respect to the groundwater 18 monitoring component, does your office have any? 19 MR. RITZ: I couldn't answer that. I have to get 20 information on that. 21 MR. YOUNG: Right. How about for any of the other 22 specific components, you know, part of the Order, has 23 your office looked at -- 24 MR. RITZ: I can't answer that. I have to go and 25 ask the Senator directly.</p> <p style="text-align: right;">Page 510</p>

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<p>1 MR. HUNTER: Okay. I understand. I just wanted 2 to be clear.</p> <p>3 MR. ROBERTS: Those are correct numbers.</p> <p>4 MR. YOUNG: Thank you for your comments.</p> <p>5 MR. JEFFRIES: Mr. Roberts, you took that slide 6 down, but you talked about poultry.</p> <p>7 MR. ROBERTS: Well, poultry is -- on that specific 8 area, poultry is manure. The byproduct of poultry is 9 manure. If you're asking how that came about it was 10 because it was a given area that was suggested that it 11 was carbon nitrate solution.</p> <p>12 MR. JEFFRIES: Well, I wasn't really focusing on 13 poultry, but it just triggered that -- and I'm not 14 familiar with the whole region -- but in Salinas Valley, 15 Castorville, Moss Landing, parts of Santa Cruz County had 16 approximately 400 diaries from the late 1800s until 17 probably 19 -- late '60s. And I think I've asked this 18 question before. I know in different soil types water 19 travels through those at a different rate. And so, 20 consequently, I'm wondering -- and I'm not a scientist, 21 but I'm wondering with all -- you're talking about 22 poultry manure, I'm talking about cows, dairy cows 23 manure, which don't exist except for maybe one or two 24 moonglows is the only one -- and shocks, dairy, is the 25 only two active ones that I believe in the Salinas Valley</p> <p style="text-align: right;">Page 515</p>	<p>1 destroy farms, devalue land, put many people out of work.</p> <p>2 And the evidence is there are other items 3 that could take care of specific -- algae bloom, there's 4 enzymes, there's dilution. You can add water, you can 5 add enzymes, you can do things to lower the specific 6 thing. And anybody that has waste charge into ponds has 7 that ability to do it. So why not think in a bigger box 8 and work on the specific areas of input.</p> <p>9 MR. YOUNG: Thank you for your comments.</p> <p>10 Kirk Schmidt.</p> <p>11 MR. SCHMIDT: Chairman Young, Members of the 12 Board. Kirk Schmidt, Executive Director of Preservation, 13 Inc. S-C-H-M-I-D-T.</p> <p>14 I'm, as you're aware, Preservation, Inc., the 15 Cooperative Monitoring Program and the existing waiver. 16 I'm going to restrict my comments to the Cooperative 17 Monitoring Program as proposed in the current Draft.</p> <p>18 Dealing with surface water quality the proposal in 19 the current Draft is very similar to the existing 20 Cooperative Monitoring Program. There appears to be some 21 changes in sites, and in addition of extensive pesticide 22 monitoring, four times in the second year, as well as 23 metals, monitoring four times in second year.</p> <p>24 We've done, with exception of metals, we've 25 done those type of sampling in the past for the</p> <p style="text-align: right;">Page 517</p>
<p>1 from different times. How long does that take, those 2 nitrates to travel through the ground to get to 3 groundwater? And one of the things I'm grappling with is 4 why do we hold hostage all these farmers today for the 5 issue of collective nitrate for the last 150 years?</p> <p>6 MR. ROBERTS: That's a point well taken. I 7 totally agree with you. That's -- this is the 8 fundamental reason why you have to tie hydrology, 9 agronomy and scientific basis to encounter all the data 10 before you can make an assumption that one individual 11 person, thing, activity. It could be as simply as 12 dinosaurs, it can be as simply as cows, 50 years ago, it 13 could be things that we don't have a clue.</p> <p>14 And you're exactly right, the capacity of the 15 soil, it's cow, it's exchange capacity, it's electric 16 conductivity, it's organic matter. And there's a lot of 17 areas that if you bring in agronomy into play, that will 18 hold materials into place.</p> <p>19 What I'm saying is you can make improvements 20 but you can't go back and change it unless -- the only 21 way you're going to make improvements is to do cause and 22 effect and determine what specific item you need to work 23 on at a time. It has to be parallel hypothesis to prove 24 or disprove to do cause and effect before you can make 25 any kind of regulatory suggestion that would economically</p> <p style="text-align: right;">Page 516</p>	<p>1 Cooperative Monitoring Program. However, we continue to 2 have a problem with our inability to conduct method and 3 physical habitat assessment because it requires 4 trespassing on Ag properties. The current protocol used 5 requires measuring the habitat for 100 meters to 250 6 meters upstream from the cooperative monitoring site. We 7 do not have access to those properties. Our legal 8 counsel advised us that trespassing is a strict liability 9 and we can no longer ask our contractors to conduct that 10 type of monitoring.</p> <p>11 However, it seems that because of the 12 protracted length of time the adoption of this waiver 13 will take it may be appropriate to adopt a surface water 14 quality cooperative monitoring program now so that we can 15 have assurances going out into the future what the costs 16 will be so that we can determine what the assessments to 17 farmers will be for next year.</p> <p>18 In order to do that we have to meet with 19 farmers this summer. We can not meet with farmers unless 20 we know what the program will be next year. The MRP, 21 unlike the Order itself, is -- it can be changed by your 22 Executive Officer. And we believe that it is time to 23 start the discussions of what the MRP for the Cooperative 24 Monitoring Program for surface water quality will be for 25 next year so that there can be a continuity between this</p> <p style="text-align: right;">Page 518</p>

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1 year and next year given the fact of -- due to a lack of
2 quorum you have an inability to adopt a waiver at this
3 point.
4 The second thing is there are some items in
5 the MRP that could be simplified. There's reasons to
6 support accuracy, but there's no reason to call for
7 additional costs to achieve that accuracy.
8 One of the examples, which will come out on
9 the presentation, is a change in the groundwater proposal
10 that they have from requiring a professional engineer or
11 a hydrologist to conduct the sampling at what will be
12 over 3,000 wells to someone who is a trained person.
13 Indeed, this is the procedure that's used for food safety
14 now where you just have to have someone adequately
15 certified and trained to conduct the sample and not
16 require someone at an additional cost to come do the
17 sampling.
18 Thank you.
19 MR. YOUNG: Thank you for your comments.
20 Stuart Styles.
21 Stuart Styles. Okay
22 (No response.)
23 MR. YOUNG: Michael Taloff, T-A-L-O-F-F.
24 (No response.)
25

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1 Wilton Webster.
2
3 (No response.)
4 MR. YOUNG: C.Z. Whitney.
5 MR. WHITNEY: I'm Howard Whitney.
6 MR. YOUNG: There are two Whitneys.
7 MR. WHITNEY: C.Z. Whitney. C.Z. W-H-I-T-N-E-Y.
8 Chairman Young, Board Members, about eight years
9 ago under pressure from environmental and political
10 activists Central Coast Water Board undertook an
11 enforcement action against two north San Luis Obispo
12 County landowners who cleared some brush from the
13 property. Yes, there was some saltation due to an above
14 average rainy season which followed several months later.
15 However, most of the saltation was more likely due to a
16 large wild land fire that occurred in the same area just
17 a month or so after the brush was removed.
18 To the ensuing administrative adjudication
19 process each landowner agreed to staff recommended
20 mitigation and a \$24,000 fine. Your Board, however,
21 pressed once again by activists, withdrew the agreement
22 and subsequently fined the landowners \$125,000 apiece.
23 What concerns me is the proportionality
24 between clearing some brush and allegations of
25 responsibility for nitrate and pesticide levels.

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1 According to your web site fines issued by
2 your Board at the administrative level are huge. What
3 concerns me more is that there is ample credible
4 testimony that the science on the proposed Order is at
5 best incomplete. If the Order is adopted as proposed,
6 farmers, operators, landowners, fractional interest
7 owners and anyone else who might be subject to this Order
8 will likely be forced to spend inordinate amounts of
9 money on mitigation, fines, legal fees, and other
10 associated costs.
11 Can the regulation withstand the financial
12 strain imposed on them or will loss of land, equipment
13 income and other assets simply become a path to
14 insolvency. And if that becomes the case, in 2, 3, maybe
15 5 years down the road, it becomes evident that the Order
16 is based on inadequate, incomplete, defective, and/or
17 otherwise flawed science. What happens to those who have
18 faltered under an unjust and unfounded regulatory yoke,
19 and who will make them whole?
20 Thank you.
21 MR. YOUNG: Thank you for your comments.
22 Now, your other half, Howard Whitney.
23 MR. WHITNEY: Chairman, Board Members, thank you.
24 My name is Howard Whitney, W-H-I-T-N-E-Y. I'm a
25 professional geologist, certified hydrogeologist, and I

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1 have over 25 years of experience.
2 I worked on numerous agricultural
3 contamination assessments, conducted field
4 investigations, and numerical modeling of chemical based
5 transport.
6 I've also personally witnessed the
7 devastating effects of the blue baby syndrome at an Ag
8 site that I sampled when I was a young guy. And it
9 sticks with me to this day.
10 I fully support the staff recommendations for
11 the water quality monitoring. I applaud the wisdom,
12 courage and professionalism of the Board, staff to
13 develop these ground breaking and critically necessary
14 water quality rules. The Draft Waiver is the most
15 professional technical regulatory document that I've ever
16 seen and I've seen a lot. And there's a lot of wiggle
17 room in this document. There's some comparisons with
18 point source contamination, completely different.
19 My clients would crawl over broken glass to
20 get this type of regulatory environment in their fields.
21 However, the current draft represents the minimum level
22 of monitoring to provide any meaningful water quality
23 improvements. So I implore the Board, don't water this
24 down.
25 Why? You know the reasons. Ag everywhere

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<p>1 produces the greatest environmental impacts of water 2 quality resulting in countless exposure pathways that 3 degrade human health and aquatic life. No other industry 4 or pollution source is even on the same environmental 5 radar screen.</p> <p>6 The Central Coast has some of the most 7 degraded water quality in the nation. And it's also not 8 surprising that our region has the most productive Ag 9 life.</p> <p>10 Let's see. This is going to be very 11 expensive to clean up. I believe that in order for this 12 to be successful we need a cleanup fund to do this. And 13 I think that the farmers have been misled by their 14 consultants in this regard. This is a very serious 15 problem that requires a lot of very serious work and none 16 of their consultants has the proper qualifications 17 required under the Water Code to address water quality 18 investigation and cleanup.</p> <p>19 The professionals that they do have that have 20 presented information that's been useful, but it doesn't 21 address the entire problem.</p> <p>22 25 years ago when I parachuted over a 23 superfund sites, we didn't know what was going on. There 24 was no science at that time. We invented it. There's a 25 whole industry of environmental professionals that are</p> <p style="text-align: right;">Page 523</p>	<p>1 what this really means to you as a farmer.</p> <p>2 MR. COSTA: I could go up and pick up and grab the 3 list of things included in Tier 3 that weren't on the 4 slides to start the meeting. There's about eight reports 5 and monitoring plans and analysis that are components of 6 the Nutrient Management Plan. You see the Irrigation 7 Management Plan up there, two extra things that Tier 3 8 has to do that Tier 2 doesn't. Okay. But when I say the 9 devil is in the details, it's in everything that's a part 10 of that plan. And it's extensive.</p> <p>11 And as I said, it's exponential, it's not 12 just twice, or three times of somebody else doing it, 13 it's an enormously different work load and task load, and 14 monitoring and reporting load expected of Tier 3 that's 15 not of the others.</p> <p>16 And there is a scenario, and it wasn't hard 17 to figure out where a vegetable grower that wasn't using 18 Chlorpyrifos and Diazinon, and it wasn't adjacent to the 19 impaired water bodies would fall all the way to adjacent 20 Tier 1, yet the acreage situation being a 1,000 acres 21 would throw the other into Tier 3. That's why I 22 commented how it could not even be adjacent tiers.</p> <p>23 But my comment about the exponentiality of 24 that load was in great part, most part related to the 25 Irrigation Management Plan. I want to make sure that</p> <p style="text-align: right;">Page 525</p>
<p>1 currently working and wasting their time on underground 2 source tank work that results in almost no exposure 3 pathways, and they can get to work on this. But the 4 farmers need the funding.</p> <p>5 And, Mr. Ritz, please, have your boss working 6 on getting a cleanup fund established to address this 7 issue. This is critically important and the farmers need 8 the money to do it. They can't do it all on their own.</p> <p>9 Thank you.</p> <p>10 MR. YOUNG: Thank you for your comments. 11 Joel Weiley.</p> <p>12 UNANNOUNCED SPEAKER: He got detained at a 13 business conference up in Sacramento. 14 Taxpayer and voter USA.</p> <p>15 MR. YOUNG: Salvador does not wish to testify. 16 Okay.</p> <p>17 All right. That concludes the list of public 18 speakers. Now, do we go back to --</p> <p>19 MR. JEFFRIES: Before that, Mr. Chairman, I would 20 ask, if I can have Mr. Costa come back, if I may.</p> <p>21 MR. YOUNG: Sure.</p> <p>22 MR. JEFFRIES: He addressed, slightly, the Tier 3 23 issue and other people have spoken on this, but I think 24 Mr. Costa has spoken on that more extensively, and I'd 25 like to hear what your real concerns are about Tier 3 and</p> <p style="text-align: right;">Page 524</p>	<p>1 everybody sitting behind the table understands all the 2 details, not just the executive summary portion that, you 3 know, Tier 3 is going to have to do, you know, some 4 additional plan, extra work, because there's a lot of 5 little subpieces on every bit of that.</p> <p>6 And, I mean, in my opinion, I probably looked 7 at three or four additional people in my operation, and I 8 fully expect to not be in compliance at some point 9 because there's so much that's due, so much 10 documentation, so much reporting, I feel like we're going 11 to be reporting on the reporting by the time it's over. 12 And I expect to miss a deadline, have my employees miss a 13 deadline and be out of compliance somewhere.</p> <p>14 And my concern would be that when I talk 15 about being set up to fail, it's for reasons like that, 16 and I would be concerned about the Board setting 17 themselves up to have something that's not enforceable. 18 What I am fearful of is not being able to comply. Then 19 my next question is, okay, what are you going to do when 20 that happens? Because I think we kind of need to know 21 that. I think a lot of people would want to know that, 22 up front. What is that plan? I mean, it's not a simply 23 thing we're looking at.</p> <p>24 MR. JEFFRIES: Mr. Costa, can I ask you, I assume 25 that you qualify in Tier 3 what you know is Tier 3.</p> <p style="text-align: right;">Page 526</p>

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1 had good water because they have not had good water, but
2 it stems for a lot of years and a lot of uses and not
3 proper uses of that particular land.
4 So I just wanted to clarify that.
5 MR. YOUNG: Ms. Dunham.
6 MS. DUNHAM: We have a couple of comments.
7 MR. YOUNG: Okay.
8 MS. DUNHAM: I think there's three of us.
9 MR. YOUNG: Remember to say your names before you
10 speak. Okay. Go ahead.
11 MR. MERKLEY: Thank you again, for this -- whoa,
12 is that loud?
13 MR. YOUNG: That's fine.
14 MR. MERKLEY: It's echoing through my mustache.
15
16 (Interruption by the court reporter.)
17
18 MR. MERKLEY: Danny Merkley, M-E-R-K-L-E-Y.
19 We listened carefully to the March 17th
20 meeting. We heard comments made about the groundwater of
21 our proposal, and we have developed language to address
22 those comments.
23 Tess Dunham and Rick Tomlinson will present
24 that additional information. I'm the window dressing.
25 MS. DUNHAM: Thank you. You did a fine job.

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1 So, again, as Danny said --
2 MR. YOUNG: Can you spell your name.
3 MS. DUNHAM: Yes. I'm sorry. Tess, T-E-S-S,
4 Dunham, D-U-N-H-A-M, Somach, Simmons & Dunn, here
5 representing a number of agricultural groups and the
6 farmers for the water quality.
7 So the two key takeaway points that we took
8 based upon what appeared to be comments from all of you,
9 were that the need to be a better understanding of the
10 audit process. And there was some concerns that our
11 original proposal in March did not necessarily address
12 groundwater and groundwater monitoring maybe to what this
13 Board what like to see.
14 Due to the circumstances that we have, we
15 took that to heart. We went back and we have some
16 suggested changes to our alternative proposal in
17 response.
18 First, the audit process. We have a goal
19 that we really wanted to make sure that the audits
20 themselves were objective and based on sound technical
21 information. So to achieve that we have created some
22 additions to what was our attachment B from last time to
23 try to create some more objectivity and transparency in
24 the audit process.
25 So we have added some key components that the

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1 third party coalition group would need to establish a
2 technical advisory committee in order to help them
3 establish what is the appropriate audit process. That
4 technical advisory committee would consist of people like
5 Professor Marc Los Huertos, who testified here earlier
6 today. The technical experts who have some in depth
7 knowledge about agriculture, agronomy and the disciplines
8 that we deal with on a daily basis. And there would
9 normally be grower representation on the technical
10 advisory committee and their specialities would be
11 limited and could not be more than 50 percent of their
12 committee because it needs to be objective and it needs
13 to be technically based.
14 We would also then suggest that there needed
15 to be another component that would make sure that as the
16 auditors conduct their work that there's a way to review
17 the audits as done by the auditors. And so the work plan
18 as developed by the third party coalition group would
19 have to have some type of a check balance on that audit
20 review process.
21 Third, we think it is important that a third
22 party coalition alternative have some input from the
23 public. And in order to address that we would require
24 all the third party coalition groups that would go into
25 the alternative would need to establish a public advisory

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1 committee so they have that interaction with the public
2 to talk with the local department of health or the county
3 Ag commissioners, and the different other people in their
4 local area in order to help advise them, advise them
5 along the way.
6 And, specifically, one of the components of
7 our proposal was an aggregate audit report annually and
8 this group would be tasked with reviewing that annual
9 report before it was ever submitted to the Regional Board
10 to make recommendations back so we have stakeholder and
11 public input into our process.
12 Now, going on to groundwater, which is
13 probably a bigger issue. So we went back, based upon the
14 comments received by all of you, and we have developed a
15 draft groundwater assessment monitoring and reporting
16 program for your consideration that would go along either
17 as a stand alone for all the groundwater monitoring
18 requirements currently within the Order, or also in
19 conjunction with the coalition alternative.
20 And the goal here is to set up a process to
21 assess groundwater quality and to provide feedback for
22 growers based upon the assessment and the identification
23 of areas of concern.
24 MR. YOUNG: 30 seconds.
25 MS. DUNHAM: Okay. So, to -- additions to

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<p>1 MR. BRIGGS: Okay. I think we can clarify that. 2 Okay. 3 DR. HUNTER: Thank you very much. I have one 4 question on the audit. Just so that I'm clear on the 5 time frame. 6 The audit first remains an aggregate 7 assessment, but there would be a review by the technical 8 committee, or technical assessment committee. And what 9 kind of timeline would that involve? 10 MS. DUNHAM: Okay. So the -- how the audit 11 process would work on a timing is first the third party 12 group would submit, I think it's within six months, a 13 work plan to Mr. Briggs, the Executive Officer, outlining 14 how they would conduct all the audits within the term of 15 the Order. That's one of the big requirement is that 16 every grower participating in that group would be subject 17 to an audit. And so that work plan has to be submitted 18 within six months. Once that work plan is approved then, 19 of course, you go forward and you start conducting your 20 audits. 21 The technical advisory committee would 22 probably be established somewhat in parallel pending EO 23 approval of the work plan. And the technical advisory 24 committee's role would be very up front work as we 25 currently can see to help develop what is the process?</p> <p style="text-align: right;">Page 539</p>	<p>1 between the participant and, perhaps, the results that 2 the auditor came up with, we are suggesting within our 3 revised attachment "P" that there has to be some process 4 for that individual participant, whether you want to call 5 it an appeal, or something to go back to the third party 6 group to say, "I disagree with these audit results," and 7 it's developing a process to address that. And so that 8 individual's audit, basically, wouldn't be finalized 9 until that appeal had been satisfied, and whether it may 10 be, sorry, the auditors claims are absolutely correct, 11 and you weren't doing what you were supposed to be doing, 12 and, therefore, you need to be subject to make some 13 improvements. Or it may be, okay, yeah, we see that 14 there's some gray, and perhaps, you were doing it and the 15 auditor didn't interpret it. 16 So it has to resolve that before that 17 person's audit is considered to be finalized. 18 DR. HUNTER: And is there a timeline for that 19 process? 20 MS. DUNHAM: There is. In the revised attachment 21 B, I think that the individual auditor, basically, or the 22 individual participant has to make a challenge to their 23 audit within, let's see, kind of have -- a lot of that 24 would be developed in the work plan, but -- oh, where did 25 it go? 30 days. Or that's when the group would have to</p> <p style="text-align: right;">Page 541</p>
<p>1 What is the auditor going to look for? You know, it's 2 kind of like to have the professional say, okay, when you 3 go out on a farm what are you going to actually look for? 4 How are you going to rate it? How are you going to 5 determine if that grower is implementing an appropriate 6 management practice for the crop that he's growing. So 7 the technical advisory committee would be designed to 8 help set all of that up in a very objective, scientific 9 technical fashion so it's clear as to what the auditors 10 would do when they are actually auditing the individual 11 participants. 12 DR. HUNTER: Then, I also note in the original 13 document of December on page 17 it says that the 14 aggregate report could be subject to appeal and that no 15 reports will be submitted to the Water Board until that 16 appeal is resolved. 17 MS. DUNHAM: I think the version in March changed 18 it a little bit. And I think what we're talking about 19 there is, first of all, the third party group would have 20 to submit an annual report to the Regional Board 21 summarizing all the results of the audit that was done 22 within that year, aggregate reports. 23 What we're talking about there is an 24 individual independent audit that has been done on an 25 individual participant. If there's some disagreement</p> <p style="text-align: right;">Page 540</p>	<p>1 terminate the participation if they didn't respond after 2 that review process has been set. But I believe we have 3 it set up that the third party group would develop as 4 part of the work plan, the details of what the 5 termination and the appeal process would be. So it would 6 probably be like a 30 to 60 day time frame, but I don't 7 see it specified here and it would be developed in the 8 details of the work plan that would go to the Executive 9 Officer for approval. 10 MS. HUNTER: Okay. Thank you. 11 MR. TOMLINSON: If there is specific timelines 12 that you would suggest we would welcome. That the key 13 here is that we just simply want to due process, but 14 certainly if someone was to be terminated, that would 15 definitely be reported. 16 MR. YOUNG: Okay. Thank you. 17 MR. JEFFRIES: Mr. Chairman. 18 MR. YOUNG: Yes. 19 MR. JEFFRIES: I have a couple questions. 20 Some of this goes back to the presentation, 21 and some of the information they have submitted -- I hope 22 I can put it in some -- I'm trying to remember. I wrote 23 these down what it really means today. But I know you 24 addressed the confidential proprietary information. Are 25 these farm plans considered part of that? And are the</p> <p style="text-align: right;">Page 542</p>

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1 audits considered part of that confidential proprietary
2 information?
3 MS. DUNHAM: So that the farm plans under your
4 current program and even as I believe as have staff has
5 proposed, continue to remain on the farm in order to
6 protect the confidentiality of the farm plan. It would
7 not go into the Regional Board's offices. They currently
8 are and would be under all proposals available for
9 inspection by Regional Board staff upon arrival,
10 basically, on the farm for another inspection.
11 So, while they are -- don't go into the
12 Regional Board's office because that would then make them
13 a subject to public exposure, they are available to
14 Regional Board staff for review to determine their
15 accuracy.
16 MR. JEFFRIES: I know that's been a real concern
17 for the farming community that some information should
18 not be released to the public.
19 I'm not sure how you're going to put all
20 these people together. I'm seeing all the signatures
21 that were submitted with your letter and your proposal.
22 What percentage do you think that in our region that you
23 would have enrolled in this program that you're
24 proposing?
25 MS. DUNHAM: Boy, you know, I honestly,

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1 Mr. Jeffries, I don't know, but if I -- I would imagine
2 people that would follow in their Tier 2 and Tier 3 would
3 take a very close look at participating. And based upon
4 the numbers that Mr. Quandt put forward, that would be
5 more than at least half of the acreage within the region,
6 if not the actual number of growers.
7 So you would capture in a fair amount of
8 actual acreage.
9 MR. JEFFRIES: Then if we don't have a hundred
10 percent enrollment, then are you going to submit -- with
11 your plan would your organization submit that information
12 to the regional staff?
13 MS. DUNHAM: Submit what information?
14 MR. JEFFRIES: Well, the remainder of the farmers
15 that did enroll in this program.
16 MS. DUNHAM: Well, the way the program would work
17 is that the farmers would elect to participate into the
18 third party group and they would notify the Regional
19 Board of their elections. You will know which ones want
20 to participate in this program versus those who have
21 decided to remain under other components of your Waiver.
22 MR. JEFFRIES: Well, what brings my question is
23 because Preservation, Inc., has about 93 percent
24 enrollment, according to my notes --
25 MR. YOUNG: Acreage.

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1 MR. BRIGGS: Okay, 93 percent of acreage. I
2 assume that there's going to be lack of either acreage or
3 farms or ranches that will participate in this. Are
4 we -- are you going to know? And are we going to know?
5 MS. DUNHAM: You will know.
6 MR. JEFFRIES: We will know?
7 MS. DUNHAM: You will know. This is not an
8 umbrella. The way it has been set up in a strike out on
9 an underline version that was we presented to you in
10 March is people would make -- it's a voluntary decision
11 to use the coalition alternative as their choice for
12 compliance with the Order. And they could say, yep, I
13 want to go with the Coalition Alternative approach to
14 comply with the provisions of the Order. Or I'm going to
15 stay with whatever you end up adopting, ultimately, and
16 whether that maintains the current requirements for Tier
17 2 and Tier 3 or not, then comply with the waiver as you
18 end up adopting it for other people. It's a voluntary
19 selection that I want to take this path versus the other
20 path that has been set forward. So you would know who is
21 under what program.
22 MR. JEFFRIES: Have you taken analysis of the
23 costs between the staff's proposal and your proposal? I
24 know that the gentleman gave a presentation on behalf of
25 the grower/shipper, and there was some numbers that were

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1 pretty outstanding in that presentation.
2 MS. DUNHAM: I don't know that we have -- have a
3 cost comparison between what it would cost for our
4 alternative compared to yours.
5 Do we? No, we do not.
6 MR. JEFFRIES: The opinion, and I asked Mr. Costa
7 to come back up to clarify some of his concerns on the
8 Tier 3, and I didn't see anything really in your proposal
9 that addressed the tiers per se. The 1,000 acres
10 criteria compared from farms to ranch because I looked at
11 a farm that could be many ranches where a ranch would be
12 a singular facility.
13 MS. DUNHAM: So, how -- basically what our
14 proposal would do is you would know -- you would make the
15 selection into the Alternative Coalition Third Party
16 Group and the current requirements as they are proposed
17 under the staff's Order for Tier 2 and Tier 3 would
18 basically go away as they exist now and instead you would
19 be subject to participating in the coalition group and
20 the audit provisions that we are proposing.
21 And in the audit criteria that we have
22 established it's actually looking at different risks for
23 different parts of your operation, would be kind of part
24 of what the audit criteria would need to include and
25 would be risked based.

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<p>1 auditing someone's operation to evaluate, you know, are 2 they, you know, what they are doing to address the issue 3 of potential nutrients within a tile drain, we would be 4 looking to the technical advisory committee to advise us 5 as to what should we do? What should growers be doing in 6 those circumstances where we do have tile drains. 7 So we don't have the answer here, but it is 8 one of those complex issues where the professionals and 9 the experts that we would look towards from the technical 10 advisory committee, which is why it's so important. 11 MR. JEFFRIES: I think that relates to some of the 12 comments we heard earlier that the scientific analysis 13 for this hasn't caught up with today's world and needs 14 more investigation. 15 I that's my last question -- 16 MS. DUNHAM: And, actually, and just one other 17 thing real quick on that. The other thing that we have 18 alluded to in here is that there may be some 19 circumstances where growers and, you know, common 20 drainages or common watersheds, or sub-watersheds might 21 want to implement some type of an electric water 22 treatment system in an area where there are tile drains 23 and the third party group would look for to help 24 facilitate those types of opportunities where it may be 25 necessary and that may be exactly the type of situation <p style="text-align: right;">Page 551</p></p>	<p>1 back to consideration of what is the appropriate 2 management practice, and, you know, again, this program 3 just like yours can't -- would not be able to specify 4 specific management practices. 5 Now, I would, you know, obviously, take issue 6 with the staff's proposal. I think it does try to 7 specify a 30-foot buffer, riparian buffer corridor in the 8 MRP, which is a management practice, and I think that 9 crosses the line, so we have to avoid doing that. 10 And so it goes back to what are the 11 management practices that individual grower has employed 12 to deal with sediment. And, perhaps, it would -- maybe 13 they're using riparian, if they're able to, but if 14 they're not because of food safety, then they're going to 15 have to look at other alternatives. And we believe that 16 there other alternatives out there that people are using. 17 MR. TOMLINSON: The only thing I would add to that 18 is, at the federal level the Food and Drug Administration 19 is required now by new federal legislation to implement a 20 new regulation for individual farms next year. A draft 21 of that is expected at the end of this year. And in 22 anticipation of that a lot of the retailers and some of 23 the trade associations have been working on a harmonized 24 metric. 25 So I'm not familiar with what is in the leafy <p style="text-align: right;">Page 553</p></p>
<p>1 which something like that might work. 2 MR. JEFFRIES: I'm just thinking how many acres of 3 land you have to take out of production to do something 4 like that. 5 But the ultimate goal is that we have to 6 clean up the water. That's the ultimate goal. That's 7 what I'm here for. 8 My last question is to deal with the food 9 safety, the corridors which I talked to earlier, the 10 other agency that was here. I didn't see you address 11 that totally. 12 MS. DUNHAM: As far as, well, with our proposal 13 you wouldn't be subject to -- if you went with the Third 14 Party Coalition Alternative you wouldn't be subject to 15 the water quality buffer plan requirements that were 16 within the staff's proposal. So, it would still, 17 obviously, you still need to address sediment run-off, 18 you still need to look to appropriate management 19 practices, but there's no specific riparian buffer 20 requirements or vegetative riparian buffer plan 21 requirement -- 22 MR. JEFFRIES: Was it considered? 23 MS. DUNHAM: What? 24 MR. JEFFRIES: Was it considered? 25 MR. DUNHAM: You know, we did, but, again, going <p style="text-align: right;">Page 552</p></p>	<p>1 green metric, but the harmonized metric calls for 2 individual risk assessments, individual farms to make 3 that decision about how to handle buffers and habitants 4 and so forth. 5 But all of that will be part of a different 6 regulatory process, but it will start at the end this 7 year and will be governed through the Food and Drug 8 Administration. 9 MR. JEFFRIES: Thank you very much. 10 MR. YOUNG: Thank you. 11 Okay. Well, we're going to take a break, 12 actually, the reporter would like to rest her hands and 13 fingers. And 3:30 we'll come back. 14 15 (Break taken at 3:12 P.M. to 3:30 P.M.) 16 17 MR. YOUNG: Okay, Mr. Briggs, so, we're ready for 18 staff to give us their comments and response to what they 19 heard. 20 MR. BRIGGS: We had a speed meeting and so we have 21 Monica Barricarte who we introduced to you earlier at the 22 table. 23 Matthew Keeling, and Lisa McCann. Angela 24 will be joining us in a few minutes. I think we will 25 hear a little bit from Jill North, who is sitting <p style="text-align: right;">Page 554</p></p>

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<p>1 directly behind Ms. McCann. 2 So we've taken notes of things you might want 3 more clarification on, responses and that sort of thing. 4 Certain things -- everything that would take a long time, 5 considering the testimony and all the responses we have 6 received. So we will try to get the important points. 7 So are you leading off, Angela? 8 MS. SCHROETER: I am Angela Schroeter. I am 9 Senior Engineer, Engineering Geologist and Program 10 Manager for the Agricultural Regulatory Program. 11 Before I begin, I just want to thank you all 12 for taking the time. It's been one long day. One long 13 process. Your contribution is appreciated. 14 So as Roger mentioned we're going to provide 15 you with a brief summary of key public comment areas. 16 Staff's response to the issues brought up. Some changes 17 to the Draft Order that staff is recommending based upon 18 testimony heard on March 17th as well as testimony heard 19 to the continuation today. 20 You'll also hear from individual staff who 21 worked on specific areas of the Draft Order. And I'll 22 respond to some technical issues. 23 Michael Thomas will speak to make the staff's 24 final recommendations. 25 So the Board provided a significant</p> <p style="text-align: right;">Page 555</p>	<p>1 business industry. And that data should be made 2 available to the public about the impairment caused by 3 agricultural discharges. 4 MR. YOUNG: Slow down a little bit, Angie. 5 MS. SCHROETER: You also heard the Board should 6 not be one-size fits all and that not all farms cause the 7 same level of water quality impairment. 8 One example of that is testimony heard from a 9 Strawberry Commission on March 17th, that strawberries 10 should be considered low risk to water quality. 11 We also heard about cost and economic 12 issues, both from the perspective of the farmer as well 13 as costs effected by the pollution agricultural areas. 14 In addition, the Farm Bureau has presented an 15 agricultural industry proposal to regulate agricultural 16 discharges, which is based upon third-party coalitions. 17 Throughout the process all day we've also 18 have heard some specific comments on the Draft Order. 19 For example, there's been comments that the Order should 20 tier based upon individual farms instead of operations. 21 We've heard that acreage is an inappropriate tiering 22 criteria. We've also heard that the Order should include 23 additional pesticide, like Pyrethroids and others rather 24 than just Chlorpyrifos and Diazinon. 25 We've also heard that the Order shall allow</p> <p style="text-align: right;">Page 557</p>
<p>1 opportunity for public input to the Draft Order. Staff 2 has publicly released three versions and continues to 3 recommend changes that are responsive to many of the 4 issues raised. 5 At the March 17th Board Meeting, and again 6 today you heard additional testimony that was reflective 7 of the major public comment areas the Board has heard 8 throughout the process. 9 10 (Interruption by the court reporter.) 11 12 MR. SCHROETER: Sorry. 13 The Board has heard from individuals about 14 the significant impacts from nitrate loading to 15 groundwater in our agricultural wells, as well as impacts 16 to public drinking water that supplies private domestic 17 wells. 18 The Board has heard from individuals, 19 communities, schools and environmental justice 20 organizations who are impacted by agricultural discharges 21 that protecting drinking water should be among our 22 highest priorities. 23 The Board has also heard comments that 24 agriculture must be accountable for the associated 25 impacts to water quality, similar to any other individual</p> <p style="text-align: right;">Page 556</p>	<p>1 the use of the University of California Nitrate Hazard 2 Index including soil type. 3 And finally, we've also heard that the 4 Executive Officer should not have the authority to modify 5 the tiering criteria. 6 Now, to address the public comment areas 7 individual technical staff who work on specific areas of 8 the Draft order will respond to some of the technical 9 issues. 10 Before we do that, I wanted to just clarify 11 some issues we just heard on -- from some of the speakers 12 today, quickly. For example, the issue of pond and 13 lining came up. I just want to clarify there's no 14 requirement in the Draft Order to line ponds. There is a 15 requirement that any pond retention basin must be 16 monitored as part of the MRP, but there's no requirement 17 that ponds must be lined. 18 I also wanted to clarify part of the criteria 19 and issues brought up about whether or not a farm 20 actually drains to a water body how someone ends up in 21 Tier 3 and not even discharge to a surface water body. 22 And that change was made in the March 2011 Draft, and 23 that criteria is now clarified to say drain 2. And I'll 24 show that in the slides. So that should take care of 25 that comment too.</p> <p style="text-align: right;">Page 558</p>

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1 Tile drains, I wanted to bring that up,
2 briefly, because Mr. Jeffries asked a question. Tile
3 drains don't have any other additional requirements than
4 the rest of those types of discharges in the Order.
5 So, Jill North is going to present a response
6 based upon the food safety issues.
7 MS. NORTH: Jill North, I'm the Environmental
8 Scientist here at the Regional Water Control Board.
9 I just want to mention a couple of the
10 speakers that addressed -- mentioned that we had
11 conflicts to the LGMA metrics. And I just wanted to
12 mention I've been working with food safety and water
13 quality and promoting co-management before the 2006
14 outbreak and working with the LGMA providing comments,
15 and they have been very responsive to our comments and
16 they are not in conflict with any of our buffer
17 requirements that we have. They do not state anywhere to
18 remove vegetation in the LGMA metrics. I just wanted to
19 say for the record.
20 MR. YOUNG: What do they require?
21 MS. NORTH: Excuse me?
22 MR. YOUNG: What do they require?
23 MS. NORTH: They have buffers that are set, so
24 they have sets for, say, confined animal units, or for
25 cattle operations, so there may be some 30 foot buffers

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1 for the -- I know that's the one cattle, but they don't
2 require vegetation removal at all. And they also have a
3 specific statement within the metrics that you need to
4 adhere to with the state and federal environmental
5 regulations. I think they specifically call out any
6 regulations for riparian protection and habitat
7 protection.
8 That's in the -- and then also --
9 MR. THOMAS: Before you go on. Does that make
10 sense to the Board that the requirements are that they
11 comply with state and federal regulations to protect
12 habitats?
13 MR. YOUNG: Well, I understand that, yeah.
14 How many pages -- this is the -- you call it
15 the Green Levy Marketing Unit?
16 MS. NORTH: Leafy Green Marketing Agreement.
17 MR. YOUNG: Okay. How many pages does that make
18 up?
19 MS. NORTH: It's about that thick, (indicating).
20 About 80. I'm guessing.
21 MR. YOUNG: That much?
22 MS. NORTH: They have a lot of different --
23 they're looking at flooding and water and farm practices,
24 and --
25 MR. YOUNG: Okay.

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1 MS. NORTH: And animal entry.
2 MR. YOUNG: Is that in a finalized form?
3 MS. NORTH: Yeah. They continually edit it and
4 will update it based on public comment, yeah. The most
5 final form is available online.
6 MR. YOUNG: Okay.
7 DR. HUNTER: Jill, one question. LGMA, can you
8 say what that is for people who don't know.
9 MS. NORTH: Leafy Green Marketing Agreement. And
10 then there's also been comments about the FDA. And I
11 just want to say the FDA, that's the Federal
12 Modernization Act that was passed in January of 2011 that
13 has written into the law that would take into
14 consideration environmental practices and also wild life
15 habitat written into that law.
16 And the FDA is also working -- they have a
17 special panel convened with -- that EPA and SRCS is
18 working with. And I participated in the farm safety
19 coalition network that has also worked with FDA and
20 agriculture to address the food safety and water quality
21 issues promoting co-management and we support. NRCF has
22 a document and our Order refers to it as well. It has a
23 document that looks at water quality and food safety
24 practices on how you can bring environmental conservation
25 practices into practice along with the food safety

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1 practices. So, we also work with them to help develop
2 that.
3 So the group that panels with the EPA and
4 NRCF is working with FDA because they also want to
5 promote environmental practices and environmental safety
6 in addition to the food safety. So that is coming down
7 the line. I heard one gentleman talk about it coming up
8 pretty soon here.
9 The other thing I'd like to address is
10 Mr. Quandt had some acreages, estimated acreages lost to
11 the 30-foot buffers of almost 7,000 acres. If -- I just
12 want to explain that that only applies to a subset of
13 Tier 3. And if they did chose to go with the 30 foot
14 buffer, it would only affect 83 acres total. So, all of
15 his calculations and finances that went along with the
16 7,000 acres are not correct.
17 That's all I can say.
18 MR. YOUNG: Folks, please don't comment by
19 mumbling and whatever you're doing. This isn't an event.
20 Listen, you know, the issue I raised about
21 what Mr. Quandt had put up there I'll just say this is
22 that he was making an assumption that, you know,
23 everything was going to be removed from the buffer. He
24 had numbers attached to it. And my questions, you know,
25 show that that wasn't true. So, I mean, to what extent

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<p>1 then do you accept everything that's in his presentation 2 on those tables. I mean it just leaves some doubt as to 3 what is good and what isn't. 4 And, you know, if you want to just take, you 5 know, the worst case scenario that all of these 6 situations and proposals and events, it's going to skew 7 things such that it does not help us. So, I'm not 8 surprised that there might be something else in there 9 that's a little bit inaccurate. I wish it would have 10 been looked at a little more carefully before he 11 presented it to us. 12 Continue. 13 MS. NORTH: That's all I have to say. 14 MS. McCANN: I just wanted to clarify one other 15 item about -- on top of what Jill said about the buffer 16 requirement. 17 My name is Lisa McCann, 18 M-C-C-A-N-N, Environmental Program Manager. 19 That also that the water quality buffer plan 20 requirement is for the purpose of controlling sediment 21 discharges, and the Order provides an alternative. The 22 discharges can be controlled by protecting the soil and 23 other notable areas that are impacting the adjacent water 24 bodies that are impaired sediment through temperature. 25 MS. SCHROETER: So that brings us to Matt Keeling. Page 563</p>	<p>1 drinking water supply wells than any other contaminate, 2 or group of contaminants in our region and within the 3 state. 4 Now, although there are other sources of 5 nitrate in the groundwater that are relevant, like septic 6 systems, waste water treatment plants, dairies. A 7 gentleman brought up poultry facilities, irrigated 8 agriculture is by far the primary source of loading in 9 our watershed on a regional basis. 10 Now, land use, water use, nitrogen isotope 11 studies, fertilizer sale data all point to this fact 12 along with water quality data documenting that there are 13 severe nitrate impacts within our rural areas subject to 14 intensive irrigated agricultural land use. 15 We've also heard testimony claiming that the 16 impact results of Ladasyn nitrate and that the current 17 loading is either inconsequential or not occurring. 18 Ladasyn nitrate is real and it's significant. We 19 acknowledge that. In many ways the nitrate that can be 20 detected in wells today is clearly from nitrate loading 21 that occurred decades ago. However, relatively recent 22 groundwater studies, fertilizer and irrigation efficiency 23 studies, nitrogen balance and update ratios, I mean we do 24 have some of that data available to us. And shallow 25 groundwater indicate nitrate loading is ongoing and is Page 565</p>
<p>1 MR. KEELING: Matt Keeling, K-E-E-L-I-N-G. I'm a 2 Water Resource Control Engineer on staff here. I was 3 brought into the process as a groundwater quality expert. 4 I'm the primary author of the Environmental Groundwater 5 Quality Condition found in Appendix G of the proposed 6 Order. 7 I'm just going to speak briefly to you 8 regarding some of the comments that we've heard back in 9 March today regarding our assessment of the nitrate 10 loading and the water quality impacts that we used as the 11 basis for our findings for this Order. 12 We've heard public testimony indicating 13 nitrate impacts may be more severe in some areas than we 14 previously thought. We've also heard testimony claiming 15 regarding the inflated significance of a nitrate loading 16 that's associated with irrigated agriculture and 17 resulting water quality impacts, or otherwise been wrong 18 in our interpretation of the available information. 19 I can't emphasize enough how widespread and 20 severe the nitrate impacts are to groundwater and 21 drinking water supplies are in our region. There's 22 really nothing else in our region to compare it. Not 23 even sea water intrusion in Los Osos, the oil field, all 24 combined. 25 Simply put, nitrate contamination is in our Page 564</p>	<p>1 significant from irrigated agriculture. 2 Now, nitrate loading as it occurs today will 3 be the legacy nitrate that shows up in our drinking water 4 supplies in years and decades to come. 5 I also want to speak to -- there was a 6 comment made by a woman, I think Jeff Young, Chairman, 7 you questioned it regarding the Monterey County water 8 resource agencies nitrate programs. Now, back in 1997 9 the Monterey County water resource agency they put 10 together a -- let me look at my notes here real quick, 11 there was a Nitrate Technical Advisory Committee and they 12 basically produced a draft document. It was their 13 nitrate management plan, program document. It had a 14 bunch of elements in it. It was a five-year plan. And 15 they haven't completed all the elements of the plan. 16 Most of the elements of the plan were primarily focused 17 on water quality monitoring, source reduction outreach, 18 educational research, and then they also had elements of 19 the groundwater protection program where they went out 20 and they tried to do outreach with domestic well owners 21 and individual well owners in trying to alert them to the 22 risks of having wells in agricultural areas and what they 23 could do to, you know, be educated about the risk. 24 The effectiveness of the programs we really 25 have no idea because they have not been tracking them. Page 566</p>

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1 They have all been voluntary.
2 If we look at what the water resource agency
3 has done with regard to irrigation efficiency I think
4 they deserve significant credit. They've done a lot of
5 work in working with the growers in Monterey County who
6 approve irrigation efficiency. I think we can't set that
7 aside from nitrogen loading because the loading is
8 primarily affected by irrigation efficiency as well as
9 fertilizer application efficiency. So there is the
10 likelihood that their irrigation efficiency programs have
11 resulted in, you know, potential improvements in reducing
12 nitrate loading in groundwater. But we do not have any
13 information or data that's been contracted that shows
14 that that's the case.
15 MR. YOUNG: They did submit data to us.
16 MR. KEELING: They submitted data to us that is
17 somewhat censured. They were in a bit of a difficult
18 position. They've gone out and they've had something
19 about 390 agricultural wells that were available to them
20 to sample. They've got voluntary agreements to access
21 and sample those wells. As part of the agreements
22 they've agreed to keep the well information, the location
23 information confidential.
24 So, the data that we get is a 30,000 foot
25 elevation view of what the groundwater conditions look
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1 like on a map. We can't pinpoint where the wells are,
2 where the hot spots are, you know, within township.
3 We're not even within township range section basis at
4 this point. We could probably work that out from them,
5 but what we really want to get is the individual well
6 data. The problem was they gave that to us, their
7 monitoring program, basically dissolved overnight.
8 Nobody would let them on site if they shared the well
9 information with us.
10 MR. YOUNG: Is there a trend that can be picked up
11 from the data that was reported that way?
12 MR. KEELING: Well, in the two most recent
13 sampling events that they conducted, there's one in
14 1993, and the most recent was 2007. Overall it looks
15 like there's an increase.
16 MR. YOUNG: An increase?
17 MR. KEELING: An increase. The problem with that
18 is it needs to be qualified because the wells that they
19 sampled in 1993, the location and the number of wells is
20 not the same as the number and location of the wells that
21 was sampled in 2007. So you can't really make a
22 comparison.
23 What they have done is they have taken
24 individual wells that they have sampled several times
25 over the last 15, 20 years and they have done trend
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1 analyses on those. Some of those wells show decreases,
2 some show increases.
3 Overall, if you compare the 1993 and the 2007
4 the average concentrations have increased and the number
5 of wells had that exceed the drinking water standards has
6 increased. But, again, it's difficult to make that
7 comparison definitively to say that there's been
8 increases because it's not --
9 MR. YOUNG: It's a gross comparison?
10 MR. KEELING: Yes.
11 MR. YOUNG: Okay.
12 MR. KEELING: We've also heard testimony regarding
13 whether quality monitoring for agricultural supply wells
14 is appropriate. You very pointedly, Mr. Chairman, asked
15 questions about that trying to get feedback from some of
16 the people giving testimony. In case we have any doubts
17 regarding this issue, there's essentially three reasons
18 why water quality monitoring for agricultural supply
19 wells is important.
20 First, growers should be sampling irrigation
21 water for nitrate accounting during irrigation to reduce
22 the amount of additional fertilizer that they're applying
23 to their crops. Available water quality data that we
24 have indicate there are agricultural supply wells in our
25 region that contain nitrate concentration up to 15 times
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1 drinking water standard. This nitrogen is available for
2 crop uptake.
3 Accountability for the available nitrate in
4 irrigation water may be one of the most effective ways
5 and immediate ways that we have in reducing nitrogen
6 loading to our groundwater basins in our region. Just
7 think about if they eliminate applying a certain amount
8 of fertilizer and using what's already in the
9 groundwater. That's an off the top reduction in the
10 amount of the amount of applied nitrogen.
11 Secondly, we really need to begin to start
12 collecting water data in these ways now so that we have a
13 baseline that we can use in the future to compare to and
14 we can do trending analyzes so we can see whether we
15 actually made improvements through the Ag Order or other
16 methods that we've implemented over time that have been
17 effective.
18 This also speaks to the problem that we have
19 with getting the Monterey County Water Resources Agency
20 data. We need to start collecting our own data because
21 we cannot get the well data from the agencies that have
22 them.
23 And lastly, we need these data to help us
24 prioritize implementation of Ag Order and to protect our
25 drinking water supplies. I think data are necessary to
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<p>1 going to run wild. You are the ones who would be making 2 those decisions.</p> <p>3 And the case of the gentleman mentioned from 4 the north county, that was a decision the Board made 5 based on the facts. Actually, the staff had recommended 6 a much lower penalty. Came to the Board. That's your 7 decision. So, it's not something where you're abdicating 8 authority and it's going to throw people to some, you 9 know, wolf in the closet. Those are things that come 10 back to you.</p> <p>11 We would follow up with escalated enforcement 12 actions of an administrative nature, but when you're 13 talking about penalties, that's something that would come 14 back to you.</p> <p>15 MR. KEELING: I'm sorry, you got us off topic 16 there.</p> <p>17 MR. THOMAS: I was just going to add what Roger's 18 talking about the process that we go through, two level 19 process; staff level process, then the Board's process 20 and everyday staff is dealing with enforcement issues or 21 potential enforcement issues. We're doing that right now 22 with the Ag Program where we have individuals where we 23 have sent out notices of violations. They then contact 24 us, and talk to us about the situation, their particular 25 situation, and we work with them on that. And we decide</p> <p style="text-align: right;">Page 575</p>	<p>1 response, the staff's response to the issues raised by 2 the Strawberry Commission during the last meeting we had 3 at Watsonville, March 17th.</p> <p>4 I am the person bringing the response today 5 because I was the staff assigned to prepare all the 6 requirements of the Nutrient Management Plan, that we 7 talk about today many times, along with my colleagues and 8 Mr. Thomas that is a hydrologist.</p> <p>9 Both of us gathered a small group of experts, 10 a technical advisory committee that provided us equal on 11 the miles factor on the nitrogen ratios that was raised 12 today.</p> <p>13 The staff was formed by experts from the 14 University of California Cooperative Extension. They 15 have experience with the fertility and the first layer 16 application of the crops raised in the Central Coast. We 17 also have a certified crop advisor that has experience in 18 limitation of the Nutrient Management Plan for vineyards 19 and a certified crop advisor with experience in Nutrient 20 Management Plan with vegetables. And we also have a 21 colleague from the Central Valley who has experience in 22 the development of a nutrient management plan for the 23 dairy program. And he also worked for the Ag Program in 24 the Central Valley. And he's the one who actually 25 provided input on how much reporting can staff handle,</p> <p style="text-align: right;">Page 577</p>
<p>1 in some cases in the more egregious cases where a person 2 just ignores or refuses to do it, those are the kinds of 3 cases we relegate to the Board, the others go away or 4 settle. And then when those cases go to the Board then 5 the Board decides whether they're going to take an 6 action.</p> <p>7 It would be the same thing in this case. The 8 same thing that's going on with the existing Ag Order 9 that was adopted in 2004 is going on with the new Order, 10 that same two level process. And the staff level would 11 be prioritizing and considering the circumstances of each 12 case and those that warrant actual enforcement action or 13 actual recommendation to the Board for enforcement.</p> <p>14 As Roger pointed out, there is no mandatory 15 minimum type of situation in this case. It doesn't 16 exist.</p> <p>17 MR. YOUNG: Okay. Continue.</p> <p>18 MR. KEELING: They took me off.</p> <p>19 MR. YOUNG: They took you off?</p> <p>20 MS. SCHROETER: Next we'll hear from Monica 21 Barricarte.</p> <p>22 MS. BARRICARTE: Good afternoon. My name is 23 Monica Barricarte. B-A-R-R-I-C-A-R-T-E. I've been here 24 with the Water Board for about three years now. And I am 25 the person that is going to provide -- or present our</p> <p style="text-align: right;">Page 576</p>	<p>1 and how much we can actually evaluate. That's why you 2 see there are parts of the Nutrient Management Plan we 3 only require two elements to be reported to us.</p> <p>4 I also worked on the section of an order on 5 the best management practices because I have experience 6 when I worked with the different conservation in the 7 Santa Maria area. I was one of the two people running 8 what is called the irrigation lab. I had a chance to 9 work with growers. And I also am a certified crop 10 advisor. I was certified for about two years.</p> <p>11 So, if you remember, during the March 17 12 meeting, the Strawberry Commission was presenting 13 preliminary information of a study that was suggesting 14 that strawberries should be consider low risk, a crop 15 with low risk for the potential of nitrogen leaching to 16 groundwater. And they concluded that based on that 17 saying that the majority of the acreage we're managing in 18 a manner that the nitrogen was in the groundwater. We, 19 staff, here, it was our response we actually do not agree 20 with that. We disagree with those conclusions for two 21 reasons for that.</p> <p>22 First of all, the strawberries have been one 23 of the high risk with a potential of nitrogen leaching to 24 the groundwater by the University of California and the 25 Division of Agriculture of Natural Resources. They</p> <p style="text-align: right;">Page 578</p>

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<p>1 evaluate many crops and they concluded that strawberries 2 was a high risk. We did didn't do that. 3 They made the criteria and they made the 4 assessment and those -- the criteria is based on 5 intrinsic characteristics of the crop. One example would 6 be the pruning. Like strawberries are considered higher 7 risk for potential of leaching of nitrate on liquid on 8 the crops. So, they, basically, the University of 9 California Agricultural Natural Resource Division says 10 strawberries are high risk. The Strawberry Coalition 11 said they are low risk. 12 And secondly, what, we the staff, took a 13 closer look at is the data they had presented, and we 14 actually don't think that the results that were presented 15 prove or can show that strawberries are low risk. And 16 I'm going to go through a few reasons why. 17 First of all, the study was based on a small 18 subset of growers, about 10 percent for the whole region. 19 We don't consider that to be a significant number. 20 Then the Santa Maria areas were 21 unrepresented on many levels, but mainly because none of 22 the participant growers applied compost. So, in other 23 words, compost application was not evaluated as part of 24 the studies that was presented. We seen that as a 25 shortcoming.</p> <p style="text-align: right;">Page 579</p>	<p>1 Also, it shows that at least some growers are 2 already implementing efficient irrigation of the nutrient 3 management of the crops, and they could minimize the 4 nitrogen loading to the water even when they are growing 5 high risk crops. 6 So, we also wanted to bring this up that we 7 also provided -- we have included incentives for those 8 growers who if, in fact, they are already meeting the 9 targets that we proposed, they could apply to be 10 considered as the low tier. So the growers would have to 11 show the -- actually, show that they are low rate to the 12 quantity. And in this case, an example would be like 13 they would show recordkeeping of the total amount of 14 nitrogen applied. They have to calculate the target they 15 are already meeting, and that actually compared with the 16 targets that we are proposing, they would be consider as 17 a low for -- qualified low tier. 18 So, as a conclusion staff recommends that 19 nutrient management plant requirement and the least of 20 the crops that are considered to be high risk for 21 potential of nitrogen leaching to groundwater to be 22 adopted as the most reason conditional without any 23 changes. 24 I would also like to take the opportunity to 25 respond to a few comments, questions there were raised by</p> <p style="text-align: right;">Page 581</p>
<p>1 Also, the resource person they were from half 2 of the growing season, of the strawberry growing season, 3 they presented data from what they call the production 4 season, which was March on. So they said the window time 5 that is missing that is when the crops are established. 6 And we believe -- suspected that during that time a 7 significant amount, a high amount of leaching of nitrate 8 due to the first application, the compost application. 9 None of that was part of the evaluation. We re-evaluate 10 it as a gradual study, but the data has not been 11 presented yet. 12 So, basically, we disagree. We don't think 13 that the results prove the strawberries are low risk, and 14 actually, we thought that the data was insufficient 15 mainly because it boils down that the point of the 16 studies was not to show the level of risk on the 17 strawberries in the region. 18 We think this data project is the greatest 19 project and is going to actually provide extremely 20 valuable information, especially on the amounts of 21 nitrogen that the strawberries need to grow in the 22 region. We -- I mean a few presenters, people today made 23 that comment that several of the growers have an unknown 24 amount of nitrogen to grow, and so this project is going 25 to provide that information for the strawberries.</p> <p style="text-align: right;">Page 580</p>	<p>1 you before regarding nitrate ratios. 2 Mr. Borel, Mr. Costa were concerned that 3 ratios that we were proposing are based on how much is 4 removed at harvest, the nitrogen amount removed at 5 harvest. And they said that they don't think they can 6 meet those ratios. We want to clarify to them that the 7 ratios 1.0 and 1.2 is based on what the crops need or 8 what they call the crop uptake. It's actually the total 9 amount of nitrogen applied compared to what the crop 10 needs or uptake, not the amount of nitrogen that is 11 removed at harvest. That's a big difference. 12 I don't understand why that confusion came 13 along. It was when we were preparing these requirements 14 with the technical advisory committee we did studies that 15 is a tentative ratio target. We actually decided to step 16 down and actually started with a -- with the first step 17 that would be a target based on what the crop needs. 18 We actually don't think at this point the 19 developed target based on what is removed at harvest like 20 Mr. Borel said we need more data and more technology to 21 actually be able to develop targets for them. We 22 actually do have that. That would be the next step. 23 Another question that was raised, I guess 24 this would be a good time to answer. We do know that the 25 nitrogen, typical nitrogen update like many crops in the</p> <p style="text-align: right;">Page 582</p>

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<p>1 Central Coast for the one -- the crops called high risk 2 crops there are about five crops that we'd like to get 3 data that could be used as a target as a value that would 4 be considered as a typical nitrogen crop. We do need the 5 numbers for broccoli. We have broccoli, celery and a 6 significant amount of lettuce and now strawberries. 7 Thank you. 8 MS. SCHROETER: We do have several other comments 9 on recommended changes. 10 MS. McCANN: Lisa McCann, M-C-C-A-N-N. 11 I just wanted to go back around to a couple 12 of issues in response to the Farm Bureau's proposal based 13 on what we heard and what we spoke to you about on March 14 as well as listening to some of the additional aspects of 15 the proposal today. 16 In general, the Draft Order does support 17 industry use of coalitions and audits. It's Condition 10 18 on page 12. We do support and encourage industry in 19 their efforts to assist farmers to improve water quality 20 and to work to comply with the Order. And we see this as 21 a continuation of improvements that were initiated and 22 had been in progress in a collaborate way among industry 23 for the existing Order. 24 In addition, we think industry should be 25 helping farmers to specifically measure, account for and</p> <p style="text-align: right;">Page 583</p>	<p>1 proposal from the Farm Bureau, then it was not included 2 in the March proposal and then we heard today that it is 3 in some capacity included in the proposal as currently 4 presented. 5 And the proposal doesn't protect drinking 6 water, Agriculture Proposal does not protect drinking 7 water. We have several requirements including, for 8 example, the requirement to backflow prevention devices 9 on the irrigation systems, and chemicals are applied 10 through the irrigation lines to prevent drinking water 11 from being polluted. 12 And the last comment is that the Agriculture 13 Proposal as proposed still does not appear to be 14 enforceable. When I say still does not appear, even with 15 the changes that we heard today. Briefly, for example, 16 there's no reporting on any individual discharge on the 17 conditions of that any individual discharge on what 18 management practices would be implemented on whether 19 they're effective, whether loading is being reduced from 20 any particular farm. 21 And, also, there are no requirements in their 22 proposal to have to comply with water quality standards. 23 Angela is now going to talk, specifically, about 24 comments that we heard on changes to requirements in the 25 Order and staff's response to those.</p> <p style="text-align: right;">Page 585</p>
<p>1 report individual and specific effectiveness at 2 controlling their individual discharges and reducing 3 pollution loading. 4 The proposal even with the additional 5 comments made today still in staff minds does not include 6 adequate monitoring, reporting, time schedules or 7 milestones. 8 The Draft Order does allow cooperative 9 monitoring, as you know, similar to the current 10 cooperative monitoring program for surface water 11 monitoring and also completely provided for the 12 opportunity for growers to join together for cooperative 13 groundwater monitoring as well, but the staff still 14 recommends that that monitoring include individual 15 drinking water wells and irrigation production wells at 16 the various farms. That's two times that those wells 17 would have to be sampled in the entire five year period 18 of the Order. 19 And, also, wanted to mention that the 20 opportunity for a trained professional to collect that 21 data is also available in the RPS currently. That's the 22 Monitoring and Reporting Program. 23 Just the issue of groundwater sampling; we've 24 seen some changes and heard some different ideas about 25 how hard sampling was originally proposed in the December</p> <p style="text-align: right;">Page 584</p>	<p>1 MS. SCHROETER: Okay. So one of the things that 2 we have heard consistently and again today was that 3 tiering criteria is not based on actual impact to water 4 quality. One of the challenges with the tiering criteria 5 is that the only effective way to tier based upon impact 6 to water quality is to require individual discharge 7 hydrozation for purposes of tiering. 8 The staff actually evaluated that as an 9 option back in November 2010 and the conclusion at that 10 time was it wasn't reasonable to ask every discharger to 11 characterize their discharge for the purposes of putting 12 it in a particular tier. 13 So the challenge then is you have to select 14 indicators or processes of other items that are more 15 reasonable to collect that would still help establish 16 acceptable water quality. 17 So one of the specific comments that we have 18 heard is that the office should not use acreage -- I'm 19 sorry, this one draft order action should use individual 20 farms not operations. Staff agrees and is recommending 21 changes to the draft order to reflect this. 22 So, you might recall the slides I showed in 23 March of the three various individual farms that belong 24 to an operation. So staff's recommending that we change 25 the draft order to tier based upon the individual farms</p> <p style="text-align: right;">Page 586</p>

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1 and not the operations. So this focuses the
2 characteristics of individual farms and is responsive to
3 the concerns that individual farms be pulled into a tier
4 despite their association of a particular operation.
5 The Board has also heard comments that the
6 use of acreage in a tiering criteria is inappropriate.
7 Staff evaluated fresh water quality specifically relative
8 to nitrate loading risk based upon individual farm
9 acreage and still concluded that farm size is a
10 meaningful tiering criteria for this purpose.
11 The next few slides will provide details
12 about staff's evaluation. So the purpose of this slide
13 is to show you the range and farm size for those farms
14 that grow crops identified by University of California as
15 having a high potential for nitrogen to groundwater. So
16 of those -- of a total of 3,000 farms that have submitted
17 updated notice of intent about 13072 farms that grow crop
18 types for a high potential for nitrogen to groundwater.
19 It's important to note that that represents,
20 approximately, 189,000 acres or more than 40% of the
21 totally area in the entire region.
22 To be clear, again, this is not a graph of
23 all of the farms in the region. It's just the subset
24 growing those crop types.
25 On the x axis here we have farm acreage

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1 categories. So, for example, here, we have farms that
2 are less than 10 acres, and the second farm we have farms
3 that are between 10 and 49 acres. And then the far right
4 you have farms that are greater than 1,000 acres.
5 On the y axis we have a number of farms
6 within that acreage category. So, you'll notice that for
7 this first one, for example, we have 91 farms that are
8 less than 10 acres. The second farm you have 331 farms
9 that are between 10 and 49 acres, and then here at the
10 very far end, for example, we have 11 farms that are
11 greater than 1,000 acres.
12 So what that points out to you here is that
13 the average farm size for those farms for a high
14 potential for nitrate to groundwater is off 50 acres.
15 MR. YOUNG: Slow down.
16 MS. SCHROETER: What's interesting about that 50
17 acres is that it's also the average farm size just
18 overall. So keep that number in mind because it's going
19 to play into how we evaluated the relative risk to
20 groundwater.
21 So, remember I showed you this slide on March
22 17th and this is a slide that was used as part of a
23 training irrigation management plan for the University of
24 California Extension. It represents data from more than
25 100 fields and it shows the seasonal nitrate

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1 applications.
2 Before I explain this slide, I should point
3 out this is another example where we have data on crop
4 uptake value for nitrate. So here, remember, we have
5 seasonal and fecal applications for lettuce. The high is
6 92 and the lettuce is 17. Average is about 215.
7 So, we have data from lettuce that the
8 average crop uptake for nitrogen is 140 pounds per acre.
9 So if you take this average pound per acre for the spring
10 planting season, you subtract it -- you subtract the crop
11 uptake, you get an excess nitrate on average of about
12 75 pounds per acre. This is not to say that all
13 vegetable growers apply. I'm just using the example here
14 of what's being presented by the Poly Extension of the
15 average seasonal application.
16 So, again, let's remember that the sort of
17 average excess nitrogen to lettuce is off 75 pounds per
18 acres.
19 So, this is an evaluation that staff did to
20 look at relative nitrate loading. If we compare farms
21 using acreage, we can evaluate that relative loading
22 starting with the average farm size of 50 acres. So
23 50 acres was at 75 pounds per acre of potential excess
24 nitrogen. You get about 37, 50 pounds of nitrogen, that
25 is excess on a farm size of about 50 acres. So that's

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1 excess nitrogen for that particular farm, which is the
2 average farm size.
3 If you then look at a 100-acre farm, you'll
4 notice that if you take the 75 pounds per acre, you get
5 7500 pounds of excess nitrogen.
6 So in comparison to the average farm in the
7 50s we have about twice as much nitrogen loading
8 potential. And you can continue to go down on the list.
9 So 500 acres you get 37,500 pounds of nitrogen -- pounds
10 of nitrogen excess, potentially, which is about 10 times
11 relative nitrogen loading.
12 So you can sort of return to this analysis to
13 do a relative nitrogen loading risk. It's not to say
14 that all farms are loading this amount of nitrogen. My
15 example here is to show that there is some relative risk
16 to farm size if you take the average values. In the
17 actual -- the actual amount of nitrogen applied is going
18 -- can vary by crop. So this is just an example of how
19 we evaluated that data. This is just to show that a
20 smaller -- even smaller farm size you can get a fraction
21 of what you get if you had a 50-acre farm.
22 So staff evaluated sort of relative nitrate
23 loading and tried to create some scenarios on how we can
24 assess relativeness about it. And what we started
25 looking at was magnitude. So if you're between 50 and

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<p>1 500 acres you're within the average. Once you're in the 2 larger than 500 acres you start getting more of a 3 magnitude higher of potential nitrate loading. 4 So staff's recommendation is that for this 5 particular criteria that we use this breakdown for 6 tiering criteria. So that would be less than 50 acres 7 for Tier 1, between 50 and 500 for Tier 2, and greater 8 than 500 for Tier 3. 9 And what I want to point out here is that 10 that results -- now in looking -- remember that we're 11 looking at individual farms, not operations, so that 12 would result in about 69 individual farms or 56,000 acres 13 in Tier 3 for those criteria. 14 The majority of farms would be -- acres would 15 be in Tier 2, and then a lesser amount would be in Tier 16 1. 17 So this is how the recommended change would 18 look in the Tier 3 criteria. So assessing operations 19 with 1,000 acres it would say farms greater or equal to 20 500 acres in growing crop types for the potential of 21 nitrate to groundwater. 22 So the next change that we elect to recommend 23 in response to the comments that the Draft Order 24 shouldn't allow the use of a nitrate hazard index 25 including soil types. Staff agrees and recommends Page 591</p>	<p>1 protective of water quality and addressed the concerns 2 that I just mentioned. 3 Specifically, the Draft Order includes 4 toxicity monitoring of surface receiving water. 5 Monitoring for toxicity just like it is currently, 6 generally shows impacts caused by multiple individual 7 pesticides. 8 In addition, the Draft Order, MRP, also adds 9 individual pesticide monitoring different from the 10 existing monitoring program of, approximately, 50 of the 11 most common agricultural pesticides in surface receiving 12 water. 13 This is a new Draft Order, again, different 14 from the existing monitoring program. This will provide 15 a data to identify the detection of and any change in the 16 current receiving water related to the specific 17 individual pesticides. 18 In addition, the Draft Order also requires 19 Toxicity Identification Evaluation Studies or TIE to be 20 conducted where there's persistent unresolved toxicity. 21 This is another improved aspect in the Draft Order, MRP, 22 which is different from the existing program. 23 Then, finally, in terms of the Tier 3 24 individual discharge monitoring requirements include both 25 toxicity and Chlorphyrifos and Diazinon. The Tier 3 MRP Page 593</p>
<p>1 changes to the Draft Order to allow the use of nitrate 2 hazard index to them. 3 A little bit of background on that is that we 4 considered using that originally but opted not to use the 5 soil aspect nitrate hazard index because we thought it 6 would be too burdensome to growers to have to evaluate 7 the soil types in the Central Coast region. 8 I have since March 17th talked to Dr. Levy 9 who came and spoke to us on March 17th with the Farm 10 Bureau team and he assured me that farmers could evaluate 11 soil types usually and that the nitrate hazard index 12 available to them can accommodate the soil types on the 13 Central Coast. 14 The Board also heard comments that the 15 tiering criteria should include additional pesticides 16 rather just Chlorphyrifos and Diazinon. The concerns 17 related to this comment are that the toxicity inherent to 18 agricultural areas are due to more than just Chlorphrifos 19 and Diazinon. That lots of pesticides cause toxicity, 20 not just those two. And that by focusing on these two 21 chemicals you can encourage some growers to switch. 22 Staff evaluated the possibility of including 23 additional pesticides material in the criteria and 24 concludes that changes are not warranted at this time and 25 that the related requirements in the Draft Order are Page 592</p>	<p>1 also provides the EO with the authority to add additional 2 pesticides to the individual monitoring based upon 3 pesticides use. So if a grower was to switch from, say, 4 Chlorphyrifos and Diazinon, for example, and there's 5 still persistent toxicity, the EO could change to adapt 6 the monitoring program for that grower. 7 It's also important to point out that the 8 Draft Order included explicit findings which would allow 9 the Board to modify the pesticide criteria in a program. 10 This is the beginning, not the end. The Draft Order 11 provides the opportunity for staff to recommend for the 12 Board to consider additional pesticides in the future. 13 Finally, a less significant issue, but 14 important nonetheless, is that there would be conflict 15 consequences to adding new pesticides to the tiering 16 criteria at this time. Staff was attempting to be 17 reasonable in the tiering approach by starting with the 18 chemicals and not a wide variety or amount of them. The 19 specific chemicals that we included are the known sources 20 of severe toxicity on the Central Coast. 21 Including additional pesticides would elevate 22 in those unknown number of growers to the higher tiers. 23 Tier 3 potentially. This would give staff additional 24 time to evaluate impact to these changes. This would 25 result in an unnecessary delay and order adoptions and Page 594</p>

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<p>1 ultimately delays in the water quality program. 2 The staff concluded that it's not necessary 3 at this time to add additional pesticides to tiering 4 criteria in that the Draft Order and MRP are an 5 improvement on the existing Order and are protective of 6 water quality. 7 MR. YOUNG: What about we heard testimony that 8 they are in use and they are being picked up in receiving 9 waters. 10 MS. SCHROETER: And the Draft Order includes 11 adding those individual pesticides to MRP and, also, if a 12 grower was to use that pesticide, an individual grower in 13 Tier 3 the EO could adopt their monitoring requirements 14 to include those chemicals. 15 MR. YOUNG: Well, what would be the significance 16 of adding that now, one additional chemical? 17 MS. SCHROETER: It's actually a group of 18 chemicals, so it's not just one chemical. So, 19 potentially, what we have to do is to go through the 20 database just like we did in the program to evaluate 21 where that's been used and how that would impact the 22 tiering criteria. 23 MR. YOUNG: The staff doesn't have the data on how 24 many farmers are using pyrethroids in the Central Coast 25 region?</p> <p style="text-align: right;">Page 595</p>	<p>1 that question to Karen. 2 MS. WORCESTER: Karen Worcester, 3 W-O-R-C-E-S-T-E-R. 4 In the second year of the program, receiving 5 water monitoring program has enhanced components that 6 include pesticide monitoring along with the toxicity 7 monitoring. So when they do, for example, the sediment 8 toxicity monitoring, they will also do monitoring to 9 anything that's attached to the sediment. It will 10 ultimately be maybe 10 or 12 that may be requiring 11 monitoring. 12 MS. HUNTER: Two or three -- 13 MS. WORCESTER: No, this is the receiving water. 14 Now, the individual monitoring for Tier 3 what we're 15 discussing now, staff is recommending not adding 16 additional pesticides, but what we did do is we changed 17 the required toxicity monitoring. It originally included 18 two tests in water; one that's for invertebrates and one 19 for an algae. The invertebrate is sensitive, more 20 sensitive to OP pesticide. So we substituted the algae 21 test for another type of invertebrate test that is 22 subjective to pyrethroids. 23 MS. HUNTER: So over the five years you can start 24 to see some characterization of the pyrethroids problem? 25 MS. WORCESTER: Yes.</p> <p style="text-align: right;">Page 597</p>
<p>1 MS. SCHROETER: It's a little bit complex for that 2 because we don't have at the regional board the data for 3 each individual farm. What we have to do is look at the 4 pesticide use data as reported by permits. 5 MR. YOUNG: By who? 6 MS. SCHROETER: By the permit. DPR permit. And 7 we have learned that data and figured out who is using it 8 based upon that analysis. 9 However, our preliminary analysis shows that 10 it would be a significant increase likely. 11 So, finally, an easy -- an additional change 12 that we're recommending based upon the comments that the 13 Board should have exclusive authority to modify the 14 tiering criteria not the Executive Officer. Staff agrees 15 recommending changes to the Draft Order to reflect that. 16 And we agree that making this change provides more 17 stability and certainty in the tiering criteria so that 18 growers can plan and implement based upon sort of a more 19 predictive tiering criteria. 20 MS. HUNTER: While we're waiting for the 21 monitoring program to be structured now for receiving 22 water quality, will we see or pick up any problems 23 associated with growers or is that data going to somehow 24 get implemented? 25 MS. SCHROETER: I believe, yes, but I'll defer</p> <p style="text-align: right;">Page 596</p>	<p>1 MS. McCANN: Let me clarify something, Karen, so 2 that it's clear. We're not recommending adding to every 3 tiering criteria, but as an individual discharger in 2,3 4 is using a pyrethroid the Executive Officer requires them 5 to monitor for that individual discharger. 6 MS. HUNTER: And then that could develop from the 7 receiving water data? 8 MS. McCANN: It could develop from the receiving 9 water data and it could also develop directly from their 10 pesticide use through our knowledge from the regulation 11 use, pesticide use information that is linked to the 12 individual farms. 13 MS. HUNTER: And would it also come through in the 14 annual compliance report? Are they required to apply -- 15 MS. McCANN: Yes, yes, they are. 16 MS. SCHROETER: So this is the summary of the 17 recommended changes to the Draft Order; tiering 18 individual farms instead of operations. Modifying the 19 tiering criteria to look at acreage relative to nitrate 20 loading. Allow the use of nitrate hazard index. 21 Removing the Executive Officer's authority to modify the 22 tiering criteria. And finally just sort of more 23 administrative, we would need to adjust the dates in the 24 Order and MRP to reflect Board adoption because those 25 dates are getting old at this point.</p> <p style="text-align: right;">Page 598</p>

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<p>1 So we feel like these changes will improve 2 the Draft Order focusing efforts on the emphasis of the 3 characteristics of individual farms, and prioritizing 4 dischargers opposed to higher water quality. 5 These changes do result in some changes 6 that -- in numbers in farmers and tiers. Most 7 substantively the change from operations to farms and in 8 the acreage. So, we went down from operation of 1,000 9 acres to a farm of 500 acres or more. 10 So, this is sort of a summary of how, 11 overall, the numbers of growers and acreage would fill 12 the tiers. Again, this is just an estimate and it's 13 based upon the data that we have received from the 14 updated notice of intent. 15 So, for Tier 3 we estimate, approximately, 16 100 farms, individual farms, and this represents about 17 20 percent of the acreage. So this is a pretty 18 significant reduction from the November Draft. If you 19 remember, we were at about 230,000 acres before. 20 However, what we do think is that at this reduced acreage 21 the requirements for Tier 3 will be more focused on those 22 that would be implementing the necessary requirements. 23 So, for example, before it was subset, we 24 would have to implement the irrigation management plan. 25 So we captured the subset more here versus the entire <p style="text-align: right;">Page 599</p></p>	<p>1 see an improvement in surface receiving water over a 2 2,3,4 year period and all we have is the collective 3 monitoring stations out there in the watersheds. What's 4 the next step? What mechanism is in this program for 5 trying to further delineate who might be contributing to 6 a problem? 7 MS. SCHROETER: Well, there are some mechanisms, 8 but let me first describe that we would conduct 9 implementation of the Order somewhat to what we do now. 10 So we wouldn't just be looking at the receiving water, we 11 would be looking at what the Tier 2 growers were 12 reporting according to the annual compliance report in 13 terms of the practices they're implementing, if 14 necessary, the total acreage apply if they're are higher 15 risks in terms nitrate loading. So we would be able to 16 sort of discern within that data the potential water 17 quality. 18 The Annual Compliance Report also asks for 19 characteristics of discharge. We would be able to sample 20 the volume of receiving water. Things like that. If 21 receiving water didn't improve, we have -- there are some 22 options. One, we could adapt the MRP, for example, to 23 get more explicit information about that. We can also 24 look at, basically, the information that we do have 25 potentially elevating some growers if necessary to a <p style="text-align: right;">Page 601</p></p>
<p>1 operations. 2 However, it's still consistent that for Tier 3 2, which is those requirements that are most similar to 4 the existing Order, they still have a majority of OP 5 farms and the majority of acreage in that Tier 2. The 6 smaller amount of farms, 630 acreage representing what we 7 would identify as very low threat. 8 So, again, our recommendation is those 9 changes we feel is reasonable and responsible given the 10 severity of the water quality conditions. 11 We feel that the requirements for Tier 3 are 12 reasonable given the severity and magnitude of the 13 potential threat to our water quality. And that a 14 majority of the farmers would have similar requirements 15 as they currently do. 16 MR. YOUNG: Couple of questions for you. 17 Let's say we have a small watershed which has 18 just Tier 2, is there no individual monitoring for -- 19 MS. SCHROETER: That's correct. 20 MR. YOUNG: Is there going to be individual 21 groundwater for Tier 2? 22 MS. SCHROETER: That's correct. So -- 23 MR. YOUNG: For riparian? 24 MS. SCHROETER: Yes. 25 MR. YOUNG: For surface water, what if you don't <p style="text-align: right;">Page 600</p></p>	<p>1 higher reporting level in Tier 3 -- 2 MR. YOUNG: Based on what? The Board would have 3 to do that, I assume, or are you saying that EEO could 4 elevate people? 5 MS. SCHROETER: The current Draft Order gives the 6 Executive Officer the authority to elevate growers to a 7 higher level. 8 MR. YOUNG: And vice-versa. 9 MS. SCHROETER: And vice-versa. The discharger 10 can provide information if they belong to a lower tier. 11 MR. BRIGGS: What we're recommending as far as 12 maintaining the Board authority is on the tiering 13 criteria itself. 14 MR. YOUNG: Now, going back, Angela, to your 15 slides with the breakdown of the high nitrate use crops, 16 the nitrate. When I look at that I come up with a 17 similar reaction as I had when I looked at the slides 18 based on the aggregate coming up to 1,000 acres. I just 19 want to throw it out to get your reaction. 20 The real issue here is just the fact of the 21 amount of per acre potential excess fertilization, that's 22 really what the standard that you're using through all of 23 this. And you could have 10 farms side by side, on one 24 side of a river all in Tier 2. On the other side is the 25 same amount of acreage combined with one farm is 1,000 <p style="text-align: right;">Page 602</p></p>

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<p>1 acres and you have two different tiers, but the risk to 2 water quality would be the same.</p> <p>3 MS. SCHROETER: So, you're talking about the 4 collective impact of the discharge. That's true. If you 5 look at, for example, we grouped the acreage, so in terms 6 of these categories, these bars, we know how much acreage 7 is within each category, and it's not in significant. 8 So, a large number of smaller acre ranches do contribute 9 to nitrate loading.</p> <p>10 And, in fact, it was a difficult evaluation 11 for staff in terms of trying to assign tiers using this 12 data. If you look at even a 10-acre farm, or a 50-acre 13 farm, 750 pounds of excess nitrogen for a single cropping 14 season that may occur multiple times over the year is not 15 insignificant alone. And so how do you justify putting 16 that particular farm in a lower tier?</p> <p>17 But, again, you recognize that we're trying 18 to prioritize and start somewhere and so we made judgment 19 calls, essentially, you know, evaluating the various 20 options. One is what if everybody goes to Tier 3 and/or 21 drawing these different lines.</p> <p>22 So, what we -- one reason why staff is 23 comfortable with this recommendation is because each of 24 the tiers includes a level of nutrient management 25 requirements. Tier 3 you have an increase in nutrient</p> <p style="text-align: right;">Page 603</p>	<p>1 thing. It's not like we have a little bit of data that 2 indicates that we may have a problem or that we have a 3 competing body of literature. The overwhelming majority 4 of the literature describes severe water quality problems 5 in our irrigated agriculture.</p> <p>6 This Order addresses those water quality 7 problems. When we started this process two-and-a-half 8 years ago the Board made it clear and the Executive 9 Officer made it clear that we have to draft an order that 10 addressed the water quality problems. Our legal counsel 11 also made that clear to us. Otherwise the Order isn't 12 valid. We have to address those problems. We have to 13 address them directly, and we have to achieve water 14 quality standards over time. Also, we need an Order that 15 is enforceable with respect to those water quality 16 samples, otherwise it's not a valid Order.</p> <p>17 The tiering approach we think is reasonable. 18 No matter what tiering approach we come up with you 19 criticize it. We have to start someplace.</p> <p>20 It's important to remember that in starting 21 someplace we are undoubtedly going to revise that 22 criteria over time. The more we learn, the more 23 information that's submitted to the Board, the more the 24 Board learns about the problems, the more likely it is 25 that we will modify and improve that criteria.</p> <p style="text-align: right;">Page 605</p>
<p>1 management plan. At Tier 2, you have a basic farm plan, 2 plus total nitrogen applied reporting for a subset of 3 those. And then for Tier 1 you have the farm plan 4 without reporting. So we thought that that was a 5 reasonable sort of scale requirement.</p> <p>6 THE COURT: Okay. Michael.</p> <p>7 MR. THOMAS: Couple of things. Just a couple of 8 things that I wanted to reiterate, but not spend very 9 much time on.</p> <p>10 One of them is something we presented to the 11 Board over and over again. And it's established in our 12 staff report and in the Order that the water quality 13 problems in our region are severe, both the 14 groundwater and surface water problems are severe. The 15 water quality conditions report that we submitted to the 16 Board relies heavily on literature and empirical data. 17 It's probably one of the most referenced reports that we 18 have ever written. And we have slides that we can show 19 you if you're interested, that summarizes the number of 20 references and the timeline for those references.</p> <p>21 These problems that exist in our region are 22 well known throughout the state, throughout the country. 23 And the studies that have been done on these problems 24 have been done by a multitude of people, a multitude of 25 organizations. And the studies all indicate the same</p> <p style="text-align: right;">Page 604</p>	<p>1 The way this Order is set up, the Board has 2 the authority to change that criteria, not the Executive 3 Officers. So we will be bringing that issue back to the 4 Board. So this isn't the end result. It's not intended 5 to be the end result or to be perfect, it's a starting 6 point. We can modify it as we go.</p> <p>7 The Order is flexible. It allows growers to 8 implement various management practices to use their own 9 skills, their own expertise to work with professionals 10 that are out there to apply unique approaches on their 11 own properties, but to achieve water quality standards. 12 That is the purpose of this agency to achieve those water 13 quality standards to require achieving those standards 14 over a reasonable amount of time. Growers have 15 flexibility to implement different practices to do that. 16 This order allows that.</p> <p>17 Finally, there have been many changes in 18 response to comments. We hear both sides, all side of 19 this issue. We hear that staff is completely 20 unresponsive on one end of the scale. On the other end 21 of scale we hear that staff is bending over 22 backwards to accommodate the Ag industry. That we have 23 changed our draft over the past year and a half, our 24 drafts, multiple drafts to the point where they no longer 25 have any meaning.</p> <p style="text-align: right;">Page 606</p>

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<p>1 looking at today. And I'm not saying that we're talking 2 about solvents spill cases or underground tank cases 3 here, but we are talking about groundwater contamination, 4 it's more widespread than those types of cases. 5 A couple of you Board members who have more 6 tenure will probably recall some groundwater 7 contamination cases with MTBE or benzene where we 8 actually had buses of people who showed up at our Board 9 meetings. And, Mr. JEFFRIES, I think you might recall 10 you had to tell people they couldn't shake their signs in 11 the back of the room. It was kind of like a 12 demonstration. 13 These people were pretty excited because they 14 relied on wells that were in the area of these 15 contaminations, and were coming to the Board meeting 16 demanding severe and swift action. And the Board agreed 17 with swift and -- actions and that they adopted 18 aggressive demanding orders with frequent updates on 19 cleanup projects in nearly every meeting for years until 20 the threats were resolved. 21 The reason I'm pointing this out is for some 22 perspective. Those were cases where the wells were not 23 contaminated. They were not even tainted. There were no 24 detections at all, they were merely threatened by a 25 nearby release. And yet we have stringent Board orders.</p> <p style="text-align: right;">Page 611</p>	<p>1 Taking the time to chase an unattainable goal 2 of perfection delays what we must do. Such delays would 3 mean that we're ignoring the urgency of the situation, 4 the urgency is the high percentage of surface waters that 5 are toxic and our are groundwater that's polluted. 6 Now, toxicity is more short term. We should 7 be able to see more short term improvements with that 8 problem. Groundwater is long term, and yes, it will take 9 a lot of years to solve that problem, but as one of our 10 Board members said almost a year ago in response to that 11 notion, well, we better get started. So, I recommend 12 that it's time we adopt the Order. 13 And the last slide that we have here is just 14 a reminder of the fact that since we have a panel, how 15 does the Board take action? So I recommend that you 16 deliberate as you would as if you were a full Board 17 making a decision today, the only difference is that your 18 vote today is translated into a recommendation to the 19 next quorum of the Board. 20 And if you want changes, I ask that you 21 please make them specific just as you would if you were 22 adopting an order as a full Board in the form of a motion 23 and a vote, and that way, we, the staff will know without 24 guesswork exactly what it is to bring back to the full 25 quorum of the Board.</p> <p style="text-align: right;">Page 613</p>
<p>1 So contrast that regulatory action for merely 2 threatened wells with the issue that we have today. We 3 have wells all over the region in the heavy duty 4 irrigated Ag areas that are not only threatened or merely 5 tainted, but we have sole source drinking water wells 6 that are degraded, contaminated beyond maximum 7 contaminate levels with many of them two times, five 8 times, 10 times up to 16 times the maximum contaminate 9 level. 10 And we have on top of that, is if that 11 weren't urgent enough, we have areas that are nutrient 12 ladened, and we have toxic surface waters in a large 13 percentage of the waters in our agricultural areas. 14 The situation is dire. I've worked on 15 pollution issues in the region for 37 years, and never 16 have we had an issue before us that is as severe, as 17 broad in terms of types of problems, both surface and 18 groundwater and yet the proposed Order is not draconian. 19 It is measured with tiers. It's reasonable, it allows 20 time for improvements. 21 And while it's not Draconian, another thing 22 that it's not is perfect. We've worked on it for 23 two-and-a-half years. We could continue to debate and 24 revise the Order for two-and-a-half more years and we'd 25 end up with a draft that's, guess what, not perfect.</p> <p style="text-align: right;">Page 612</p>	<p>1 Thank you. 2 MR. YOUNG: Okay. Who would like to go first? I 3 have my own thoughts on what I would like to see happen, 4 but I don't know if you want me to be the first one to 5 speak. I will if you want me to. 6 MR. HODGIN: I think it's more in terms of a 7 question for staff. Every workshop -- 8 Let's try this one now. Is that okay? 9 It's interesting. Okay. 10 Anyway, in every workshop we heard concern 11 about what's the proprietary nature of any kind of well 12 test and what is found in individual wells. I think 13 that's a clear difference. Staff very clearly wants to 14 know the condition in specific wells so that they can 15 begin to map the problem and understand it better. 16 The data available now is pretty much under 17 regional basis, according to what's been said here. The 18 Ag folks really are very nervous about reporting 19 individual ranch well conditions. And I've heard some 20 people suggest that maybe there would be future problems 21 if their information was reported now. 22 So, I'd like a comment from staff about is 23 there a middle ground? Is there some way that we can 24 honor the concerns of the Ag industry and still 25 accomplish the Water Board goals?</p> <p style="text-align: right;">Page 614</p>

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<p>1 MS. McCHESNEY: Can I just say something first?</p> <p>2 The Water Code -- when the Board issues a waiver of</p> <p>3 distributing pilot, the Water Code requires that you have</p> <p>4 monitoring unless you have some reason of monitoring that</p> <p>5 it's not necessary because it's not a high risk problem</p> <p>6 or not a significant water quality problem. If you</p> <p>7 require monitoring, the monitoring is required by the law</p> <p>8 to be recorded publicly. So, if your Order requires</p> <p>9 monitoring, it has to be recorded.</p> <p>10 Now, given that there could be some</p> <p>11 information about the wells that would not be publicly</p> <p>12 recorded, but the data is needed to be available.</p> <p>13 Your second question about the proprietary</p> <p>14 information. And there is a section in the Water Code</p> <p>15 that requires that the Board requires protect the</p> <p>16 proprietary information, trade secrets, that kind of</p> <p>17 thing. So it is required to be protected and the</p> <p>18 Board -- staff feels that they can regularly in making</p> <p>19 sure that water proprietary information, trade secrets</p> <p>20 are protected from public disclosure.</p> <p>21 So they can still answer the question,</p> <p>22 there's some middle ground, but I just wanted to let you</p> <p>23 know if you require monitoring, it needs to be required</p> <p>24 to be recorded.</p> <p>25 MR. HODGIN: Just to go back to your first point,</p> <p style="text-align: right;">Page 615</p>	<p>1 say.</p> <p>2 MS. McCHESNEY: I'm just --</p> <p>3 MR. THOMAS: Perhaps the other option is, Francis,</p> <p>4 we could make it clear what our enforcement priorities or</p> <p>5 enforcement and approach would be so that if the concern</p> <p>6 is that information submitted to the Board that we take</p> <p>7 enforcement action on. We can do a better job of</p> <p>8 explaining what our enforcement priorities are and when</p> <p>9 and in what condition we would propose enforcement</p> <p>10 actions.</p> <p>11 From staff's prospective, as I was mentioning</p> <p>12 earlier, there's this process that we go through and the</p> <p>13 vast majority of enforcement cases or potential</p> <p>14 enforcement cases never come to the Board and never even</p> <p>15 result in issuing the fine. They resolve at a staff</p> <p>16 level. And we work with the dischargers. If we think</p> <p>17 there's a problem or a violation we always work with the</p> <p>18 dischargers. They often explain to us what the situation</p> <p>19 is in their case and then we make a decision on whether</p> <p>20 we move forward. And often it is resolved at that level.</p> <p>21 I understand the fear because this is a</p> <p>22 regulatory enforcement agency. But the reality of it is</p> <p>23 that most of these cases are resolved without moving the</p> <p>24 Board, without resulting in --</p> <p>25 MR. HODGIN: What I'm hearing you saying is we</p> <p style="text-align: right;">Page 617</p>
<p>1 you're saying that the suggestion that the Farm Bureau,</p> <p>2 for example, could get together and obtain information on</p> <p>3 a kind of a group basis and they might know the</p> <p>4 individual ranches, but we won't know here? That's not</p> <p>5 going to be possible.</p> <p>6 MS. McCHESNEY: If you require monitoring by</p> <p>7 individuals, that monitoring data has to be recorded</p> <p>8 publicly, or cooperatively, or however you require</p> <p>9 monitoring to be developed and submitted. It's required</p> <p>10 by law to be reported publicly.</p> <p>11 MR. YOUNG: What if there's group monitoring?</p> <p>12 MS. McCHESNEY: The group monitoring has to be</p> <p>13 recorded publicly, yes.</p> <p>14 MR. YOUNG: Whatever wells they're using?</p> <p>15 MS. McCHESNEY: Right. I mean, I'd have to look</p> <p>16 up the specific section of the law, but there is some</p> <p>17 information about individual drinking water wells that</p> <p>18 doesn't require to be recorded publicly, but the data has</p> <p>19 to be recorded.</p> <p>20 MR. HODGIN: I want to make sure I understand</p> <p>21 this. A coalition of some sort could not do the</p> <p>22 monitoring, perhaps, number the wells or something, but a</p> <p>23 number would -- you would not necessarily know which</p> <p>24 specific ranch it was on? There's some possible way to</p> <p>25 honor both things. It's not a choice, I'm hearing you</p> <p style="text-align: right;">Page 616</p>	<p>1 cooperate now not necessarily be --</p> <p>2</p> <p>3 (Interruption by the court reporter.)</p> <p>4</p> <p>5 MS. McCHESNEY: The law requires issuing a waiver</p> <p>6 the waiver. The waiver shall include, but need not be</p> <p>7 limited to the performance of individual groups of</p> <p>8 watershed basin monitoring and that the purpose f the</p> <p>9 monitoring is to be designed to support the development</p> <p>10 and implementation of the waiver program including but</p> <p>11 not limited to verifying the adequacy and effectiveness</p> <p>12 of the waiver's conditions.</p> <p>13 And you can consider values, duration,</p> <p>14 frequency and consistency of the discharge, the extent</p> <p>15 and type of existing monitoring activities, et cetera.</p> <p>16 Monitoring results shall be made available to</p> <p>17 the public.</p> <p>18 So that's, basically, those are the kinds of</p> <p>19 things that monitoring is supposed to evaluate. And,</p> <p>20 yes, monitoring information can be used for enforcement.</p> <p>21 It's required by law to have monitoring and that the</p> <p>22 purpose is to evaluate whether, in fact, your conditions</p> <p>23 are working and that water quality protection is being</p> <p>24 achieved.</p> <p>25 MS. SCHROETER: Just to follow up on that, just to</p> <p style="text-align: right;">Page 618</p>

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<p>1 changed the way things were done. We changed business as 2 usual.</p> <p>3 So, what I have to say to staff at this point 4 is, you know, I like the changes that have been proposed. 5 I think the effort to be responsive to finding some 6 middle ground, not middle ground in the sense of 7 compromise for the sake of compromise, but some 8 considered evaluation of where our program can be more 9 effective in terms of considering the criteria that we're 10 all trying to keep our eye on.</p> <p>11 The farmers have come forward and pointed out 12 that, you know, they don't think the tiering structures 13 is really meeting the need. I'm not sure that that's the 14 case. I think there are some good efforts here to 15 identify some criteria that could start us off, as 16 Michael said, this is a starting point. I certainly 17 regard it as that.</p> <p>18 I do have some questions about the individual 19 monitoring, which I think is really at the heart of 20 beginning to characterize what -- where the problems are 21 and what practices need to be innovated in order to 22 address them. And I use that word very carefully. 23 Innovative meaning we need solutions to individual farm 24 operations.</p> <p>25 I'm interested in the regional concept in</p> <p style="text-align: right;">Page 623</p>	<p>1 with the conditions of the waiver and the conditions are 2 the way it's proposed now, is to do these plans, farm 3 plans of monitoring and evaluate, and meet the standards. 4 And if they're not working, if they don't do them, that 5 would be the first level.</p> <p>6 Then the second level is if that's not 7 effective, have them submit new plans so the enforcement 8 may issue an order to submit additional plans about what 9 they would do. And issue -- make an order to require 10 people to clean up. The water plan provided for that. 11 We would need to evaluate the information of who among 12 the ten in your example would be responsible for that. 13 Possibly it would be all ten. I have to look. There 14 might be evidence that only some of them are responsible. 15 Just look at the evidence you have about whether you 16 would order all of them to address the problem. You'd 17 have the authority to do that. You'd have the authority 18 to require alternate water supply to be provided which 19 would be more effective.</p> <p>20 DR. HUNTER: So there is where I think the 21 alternative farm plan leaves us with a gap in terms of 22 certainty of where the source is and who -- which of the 23 operations we should take action against.</p> <p>24 And, you know, it just seems to me to be 25 creating a situation where we have that for a tool other</p> <p style="text-align: right;">Page 625</p>
<p>1 terms of the small scale sub-watershed, subset of -- the 2 subset of the monitoring data that could, perhaps, give 3 us the same kind of characterization. And my question 4 would be to Francis. I'm thinking of the alternative 5 farm plan where the coalition is looking at the regional 6 scale. I don't know how small that scale is, so I have 7 questions about that.</p> <p>8 Let's say that we have a sub-watershed and we 9 have ten operations going on in that -- or ten farms, in 10 that sub-watershed, and if that sub-watershed was found 11 in five years not to be meeting the criteria, what action 12 would we be able to take? What enforcement could we look 13 at in terms of enforcing the regulations? Would we be 14 able to take action against all ten, or how could we use 15 that farm alternative plan for cooperative development of 16 the MPs and cooperative monitoring and so forth, and 17 still have some way to be able to address 18 non-compliance?</p> <p>19 MS. McCHESNEY: Well, the way that the Order is 20 set up, and that's typical of this kind of waiver for 21 non-point sources is that if you find that after 22 some period of time that the conditions of the waiver are 23 not being effective, then the first step is to look at 24 the dischargers to see if we could make it more 25 effective. But in terms of enforcement, if they comply</p> <p style="text-align: right;">Page 624</p>	<p>1 than the continuing modification of the farm plan.</p> <p>2 So that -- I'm talking about surface water 3 monitoring. Groundwater monitoring I think I've heard 4 everybody today, and I agree, we cannot wait. We need to 5 develop our own data. We need to take the lead, I think, 6 in creating a process in a timeline for aggressive 7 groundwater issues. It is a long term problem. But, 8 apparently, the work that's gone on through the other 9 agencies has had very little effect, so, I think this is 10 our time to take this issue up and develop regulation and 11 get that part of the program going.</p> <p>12 I think I'll stop there.</p> <p>13 MR. JEFFRIES: I guess I'm next, Mr. Chair.</p> <p>14 MR. YOUNG: You are, Mr. Vice Chair.</p> <p>15 MR. JEFFRIES: I'm not going to be redundant. My 16 two colleagues who have already spoke. I hope I won't be 17 anyway.</p> <p>18 I was really impressed with the Ag proposal. 19 I really thought that they did an outstanding job and 20 they came a long ways. The only thing that was lacking 21 in the proposal today was the groundwater monitoring, 22 which I thought was really critical for this plan to 23 work.</p> <p>24 Now, also, I think the staff has made some 25 adjustments in -- and come away, as well. But I think</p> <p style="text-align: right;">Page 626</p>

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1 that for us to proceed we need to instruct the staff to
2 reanalyze the Ag proposal in depth and come back to us.
3 I'm concerned with proprietary information.
4 I think that's critical for Ag. I'm concerned about the
5 cost, because all those folks work on small margins to
6 make their farms and ranches work.
7 The small farmer that has 50 acres or 100
8 acres, he doesn't have the availability or resources to
9 go out and hire a lot of professional people to do all
10 these specialized work that needs to be done. That's why
11 I think with the joint efforts of putting a group
12 together in watersheds is an important thing for all of
13 us to look at.
14 I think all the testimony that we heard for
15 the last year or two years has been very important to all
16 of us to come to some conclusion that's going to be
17 beneficial for everybody.
18 I think you've heard me say over and over
19 again I'm concerned about the economy. Agriculture is
20 one of the biggest economy engines we have in the state
21 of California, as far as that goes, in the world. And
22 especially in our region we're fortunate that we do have
23 this type of Ag business in our area. I'm concerned
24 about jobs. I'm concerned about the land that would have
25 to be put out of production.

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1 So all those things that we're all concerned
2 about I think that the staff has addressed a lot of
3 those. The Ag proposal has addressed it I think a little
4 bit further because they're used to dealing with those
5 things on a daily basis.
6 So with that, Mr. Chair, I would recommend
7 that we -- I would propose that we send this back to the
8 staff and take an in-depth analysis of the Ag Waiver
9 compared to what the staff has proposed. I'm not saying
10 compromise.
11 There's, you know, our job -- and I took an
12 oath to do a certain job is to protect the water quality
13 of the state of California. And I think the ultimate
14 thing is that's what we have to do, but how we get there
15 is another way of handling it. And I surely don't want
16 to put people out of business by implementing some type
17 of a program or an Ag Waiver that would do so.
18 So that's what I'm looking forward do. And
19 that would be my proposal. I would support the Ag Waiver
20 that was proposed by the Ag Coalition.
21 MR. HODGIN: Would you be willing to put some kind
22 of a time limit? I think we're all aware that at some
23 point we have to get started trying to clean up and do
24 that as soon as possible. I hate to see it drag on.
25 MR. JEFFRIES: No, it can't drag on, and I think

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1 Roger pointed that out that, you know, it's been two and
2 half years, and it could be another two-and-a-half years,
3 and another five years. And, you know, I'm here -- my
4 term is up next year, and I would hope and I would think
5 that we can have this done somewhere in the next few
6 months. I don't think we're that far apart. And I think
7 there's a lot of cool heads in this room that could make
8 this happen.
9 And I've heard a lot of compromise, if you
10 want to call it compromise, but I think they've listened
11 to this Board and the Ag has come back and reasonably
12 said we realize that these are some of the concerns, this
13 is what we're willing to do. And I think the staff has
14 done the same thing.
15 So, I think, yeah, maybe I don't really want
16 to put a timeline on it, but I would like to see it
17 done -- I'd like to have it done today, or last year, but
18 we're talking about, you know, this isn't an easy issue,
19 this is a gigantic issue. Not only for us but for the
20 whole state of California.
21 So, Mr. Chair, the hour's getting late, but
22 that would be my recommendation.
23 MR. YOUNG: Okay. And I have some shared thoughts
24 with what everyone has said.
25 It's difficult for me to sit here and listen

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1 to new information, you know, what the California Farm
2 Bureau Group put up for consideration, I would like to
3 have staff take a look at because I can't sit here and do
4 everything that I've got to do and know exactly what
5 they're proposing and give it fair consideration.
6 Can staff take -- I know Miss Dunham,
7 submitted some written material that was in strikeout
8 format and I gave it to Francis. Is that correct?
9 MS. McCHESNEY: That's correct.
10 MR. YOUNG: Does that have -- does that
11 incorporate the material that you presented today?
12 MS. DUNHAM: There are two different sets of
13 documents. There's the set that we presented --
14 MR. YOUNG: Please talk into the mic.
15 MS. DUNHAM: There are two different sets of
16 documents, there's the set that was presented at the
17 March hearing and then two documents today that build on
18 what was submitted previously. So they would go
19 collectively together.
20 MR. YOUNG: Okay. So what I would propose is that
21 we direct staff to take that material and analyze it and
22 compare it to what staff is proposing in their Order so
23 we can see, you know, what the differences are. Where
24 there's common ground, what can be used, how similar they
25 are. Because I can't get a clear enough handle from the

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<p>1 presentation that I have down on that. 2 Now, could staff do that and come back to us 3 in July? 4 MS. McCHESENEY: I won't be available in July to be 5 here. 6 MR. YOUNG: Well, there is another lawyer who is 7 available; is that correct? 8 MS. McCHESENEY: But I did want to comment on your 9 proposal that those documents were submitted after 10 January. 11 MR. YOUNG: I understand that. 12 MS. McCHESENEY: And the comments came in -- 13 MR. YOUNG: I understand that, but -- you're 14 right. They are. But I think in my sense in how to 15 approach this whole thing it's not an easy thing for us 16 to get our hands around and try to make sure that we 17 considered everything, because we're going to vote at 18 some point, and it's going to happen soon, and that's 19 going to start a five-year period. 20 I would like to give the Farm Bureau 21 Proposal, you know, as much consideration as possible. 22 And let's face it, the collaborative approach that we 23 were hoping was going to work, you know, so over the 24 years, it hasn't really worked that well. This is 25 something we talked about at the big workshop we had in Page 631</p>	<p>1 criteria, some of the factors that go in, but I'll tell 2 you something, I'm sure each of us up here and many of 3 you would all come up with kind of different variations 4 of this, and none of them would be perfect. Some would 5 be better than others, but this is what's being 6 developed. And I think it's very reasonable. 7 And I think that this is going to be a 8 flexible enough approach that in the end it's going -- it 9 should achieve what it does achieve. It should achieve 10 what we want it to achieve. 11 I want to say one thing about the size of Ag 12 as an industry. I continually hear how many billions of 13 dollars it generates for the economy. And I think that 14 is a great testament to its success. The flip side of 15 that is it would appear to me that there's got to be some 16 way to get the funds from this income stream. Instead of 17 right at the farm level there should be some other effort 18 employed to tap into that to make this work, and lighten 19 the financial burden where it exists. And by that I 20 mean, whether collectively people look at this in terms 21 of assessing their cost contribution at the wholesale 22 level or some other level, that's something for everybody 23 to work out. And maybe that would be a response to what 24 the Board ultimately adopts as an Order. 25 I can see that for an individual there's Page 633</p>
<p>1 Salinas in that big hall, essentially, this is the 2 collaborative approach. 3 And so, the Board has had a couple of 4 workshops, we have had this meeting, maybe four or five 5 times that we've actually had a shot at hearing and 6 commenting, and it just -- if you lined up all the days 7 maybe it's been about five days for us to get our hands 8 on this and comment on it. It just takes a long time 9 when you stretch it out for us to get to the end result 10 here. 11 But, the collaborative approach wasn't really 12 working for whatever reasons, whether it was personality 13 or what have you. But that's just the reality of where 14 we're at. This is the approach that is the fall-back 15 approach, it's the Board itself hearing information and 16 getting feedback from staff and continuing this process 17 until we kind of distill it down. 18 I will say this, I think we are getting 19 closer, if not right there to where, you know, it's going 20 to be. I mean, I'm in favor of the components of staff's 21 proposal at this point. I think we have to get to the 22 water quality issues, you know, sooner than later. I'm 23 not very moved by any voluntary aspects of anybody's 24 plan. I think this has to be a plan, an Order, that 25 affects not everybody. I am concerned about some of the Page 632</p>	<p>1 going to be a cost that that individual has to bear and 2 it doesn't seem to get reflected of the cost structure 3 because of competition. Somehow with that much money 4 flowing through this industry there's got to be a way for 5 that creativity to be applied to get the funds to make 6 this work. 7 We have to apply standards regardless of who 8 the source of the pollutants are. We're not authorized 9 to start making distinctions between one industry, one 10 type of discharger and another kind of pollutant. It's 11 just -- I don't see how we can do that under the law 12 without violating it. What I do see, though, is that we 13 have great discretion in timeframes for compliance. And 14 it's always been my feeling that that's where we will 15 exercise our discretion. Certainly, I hope as a Board, 16 and I would hope the staff would do the same in terms of 17 how his order eventually gets implemented and enforced. 18 But the time is here for us to start to do 19 something and to get moving forward so we can see how it 20 gets implemented and how it may need to be changed. So, 21 I don't look at this as anything static whatsoever. I 22 look at this as something of a starting point or actually 23 the next starting point from where we were. We're now at 24 the second base. We're currently at first base, we're 25 trying to get to second base. And it's going to change Page 634</p>

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1 and modify as we move on with this.
2 But what I would propose, it depends on what
3 the rest -- the three of you would like to do, this has
4 to come back in anyway, what we need is another Board
5 member. So, I would like to give the Farm Bureau's
6 proposal staff's analysis and review.
7 MR. BRIGGS: Okay. That's what I was going to
8 say.
9 MR. YOUNG: By doing that what it would mean is
10 people would be able to comment again because that would
11 be a change in -- potential change in what goes into
12 staff's proposed Order. So --
13 MR. JEFFRIES: Can I ask a question before you go?
14 MR. YOUNG: Yes.
15 MR. JEFFRIES: You started out saying that we had
16 several workshops, you mentioned we had one in Salinas,
17 but I think you meant to say in San Luis Obispo at the
18 Elks Club; is that correct?
19 MR. YOUNG: You're right.
20 MR. JEFFRIES: I thought maybe I missed one.
21 MR. YOUNG: Anything north of Santa Barbara I kind
22 of lose a little perspective.
23 MR. JEFFRIES: I understand.
24 MR. YOUNG: You're right, Elks Club.
25 MR. JEFFRIES: I didn't want these folks to think

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1 that we had a secret workshop and they weren't involved
2 in it.
3 MR. YOUNG: You're right, San Luis Obispo.
4 MR. JEFFRIES: I didn't mean to interrupt your
5 thought.
6 MR. YOUNG: That's okay.
7 MR. HODGIN: Okay. I can also support
8 Mr. JEFFRIES with recommendations. I just want to make
9 sure that everybody -- I think everybody already accepts
10 the idea that we really have a serious problem and we got
11 to start doing something about it. We're not going to
12 put this thing, the solution off to our grand children or
13 our great grand children or whatever it is. We got to
14 get going.
15 I think maybe with this little bit of delay
16 staff could look at the privacy issue and see if there's
17 some way we can accommodate some of those concerns out
18 there. And I think it might help if it's stated pretty
19 clearly in the public meeting like this that if there are
20 violations, then staff's response is to work with that
21 discharger and resolve the issue. And as long as the
22 discharger is, correct me if that's in not staff's view,
23 but I think your view is that as long as that discharger
24 is cooperative in trying to resolve the issue, that there
25 is no enforcement action. Enforcement comes when

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1 somebody is non-responsive, or there are repetitive
2 problems, and there don't seem to be any other solutions
3 and then it has to come back to this Board before there
4 is any fine. Is that correct? I think, you know, that
5 needs to be very clear to the Ag industry is that it's
6 quite a process before there would be anything but
7 positive reaction to a problem.
8 DR. HUNTER: Yeah, I can go along with respect to
9 your views, Mr. Jeffries. So, I would ask staff in
10 looking at that alternative Ag Program that you look
11 carefully at the "may require", "may end up in", you
12 know, the voluntary level of it versus "shall require"
13 which comes with regulation and, like, see if the
14 voluntary aspect of this rises to the level of what
15 we're -- what we need -- what we think we need to see in
16 a regulated program and then what the consequences are of
17 noncompliance within that program structure.
18 Some of that concerns the way that they're
19 going to work with a collaborative or cooperative kind of
20 regional scale. If you could kind of characterize that
21 for us so that we understand how small a scale is that.
22 And I'm also, again, concerned about
23 aggregate data and not getting the characterization to
24 the level that we really need it. So if you could help
25 us to understand how that collaboration working within

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1 the farm community, how we can begin to see if we could
2 see, you know, similar level of data coming out of their
3 process or designing or reporting program, then that's
4 something to consider. But, you know, as Jeff said, I
5 don't, I can't see it the little time that we have with
6 the previous amount of information. So that's what I
7 would be looking from staff.
8 MR. YOUNG: Staff did present a metrics at one
9 point. In March, I don't know, but you've done that, so
10 what we're looking at here is additional information that
11 was presented to take that and to compare it and contrast
12 it.
13 MR. JEFFRIES: Well, not only that, but also what
14 they presented today.
15 MR. YOUNG: That's what I meant, March and today
16 and to compare and contrast that to what you're proposing
17 because what you proposed, also, there were some
18 modifications that were put up in the end. So --
19 MR. BRIGGS: Are talking about the fact that
20 the Ag folks made changes today and we made changes
21 today, so the comparison -- how those end up.
22 MR. YOUNG: Right. Is staff able to do this so
23 that we could take care of this in Watsonville in July?
24 Is there enough time for that or not?
25 MR. BRIGGS: You may chime in. One of the things

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<p>1 I want to clarify getting to answer your question is that 2 to just make a comparison of what we heard today in terms 3 of their changes and the changes we made is not that big 4 a deal because as you said, we have compared the 5 alternatives before. What threw me for a loop is you 6 said another round of comments. So, first of all, I 7 don't really see why comparing the two sets of changes 8 triggers another round of comments, so that's the one 9 thing; why is that the case? 10 And secondly, if that is legitimate in a 11 certain view, then of course, that takes a lot more time. 12 But I don't see why comparing what we've heard today as 13 far as changes triggers another round of comments. 14 MS. McCHESNEY: Well, here's the concern. My 15 concern is that the Board set a January cutoff date to 16 make comments. Now you propose to have staff review new 17 information so that after the cutoff date it's not going 18 to be available to all of the rest of the interested 19 parties in this matter to -- they could have in their 20 three minutes or their longer time grant them comment on 21 these other proposals that they have not had that 22 opportunity. 23 The staff reviewed what proposal was 24 submitted by June 3rd and gave you comments and some of 25 those were the proposal was not, some parts of the</p> <p style="text-align: right;">Page 639</p>	<p>1 several page analysis with seeing these additional 2 comments, you know, documents you're proposing to make to 3 put into the record. 4 Now, it just depends, it's a little 5 uncertain, unclear to me what you're asking the staff to 6 do, but if what you're asking is to say evaluate this new 7 information and give us a report about what aspects of it 8 the staff would recommend incorporating into the Order or 9 changes, that could be a subject to cover on and that 10 would be okay. 11 MR. YOUNG: All right. And those parts of their 12 submission which staff doesn't agree with and why. 13 MS. McCHESNEY: So, if that's what you're 14 essentially asking for by July, some small report, or by 15 whatever, of what -- of a further analysis of the 16 proposal, and then people can comment on -- sort of an 17 addendum to the staff report or something like that. Is 18 that what you're asking for? 19 MR. YOUNG: Yes. Okay. That's what we're asking 20 for. 21 MS. McCHESNEY: So the public process would then 22 likely be an addendum to the staff report and these 23 additional comments with the public comments. 24 MR. YOUNG: Would these additional comments then 25 be limited to --</p> <p style="text-align: right;">Page 641</p>
<p>1 information they made recommendations, they made changes 2 based on the recommendations, but if you're proposing to 3 allow additional comments, significant documents into the 4 record, then I don't know if I could advise you at this 5 point what public process should occur, but, it would 6 require some additional public process because it hasn't 7 been available to all the different wide range of 8 interests in this matter, and it has not been made 9 available to them. 10 And I know for now that some of their 11 proposals are not legal. I mean not comply with the 12 Water Code and the staff has already made those clear and 13 I recommend that you not have a staff re-evaluate what's 14 legal or not, but they look at the parts that would 15 potentially comply with the law and could be 16 incorporated. 17 MR. YOUNG: Are you saying you can't advise us 18 right now what type of public process -- 19 MS. McCHESNEY: I need to look at, for example, if 20 you want the staff to come back with just comparing, 21 okay, they submit these new documents, and it could be -- 22 the public process could just be a lot of people come and 23 make oral comments, or it could be that the staff makes a 24 written, you know, several page analysis and that goes 25 out to the public and then people can respond to that</p> <p style="text-align: right;">Page 640</p>	<p>1 MS. McCHESNEY: Yes, to that. 2 MR. YOUNG: To the staff -- addendum to the staff 3 report? 4 MS. McCHESNEY: Right. 5 MR. YOUNG: Okay. Any idea, Lisa, a how much time 6 staff needs to really do this? 7 MS. McCANN: I agree with what Roger said to be 8 able to do the analysis in writing and report it in an 9 addendum to the staff report to meet the key dates in 10 getting the staff report out to the public for the July 11 Board Meeting is doable. The question I have is how long 12 for public comments, because if it's more than the ten 13 days between when we post our staff reports and when the 14 Board meeting happens, then I'm not sure we can achieve 15 July. 16 MS. McCHESNEY: Legally it will only be 10 days, 17 but -- 18 MS. McCANN: That was my assumption -- 19 MS. McCHESNEY: More than ten days, it won't hurt 20 for July, but I need to confirm that. 21 MR. BRIGGS: And the form of that public comment, 22 I mean, that would not be an opportunity for any written 23 comments, that would be just an opportunity to review it 24 and then talk with the Board. 25 MR. THOMAS: That's my question. My concern is</p> <p style="text-align: right;">Page 642</p>

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1 what are we going to do with the comments that we get
2 because you received how many hundreds of pages of
3 comments in response from us that we responded to all the
4 comments that were submitted by November 3rd, hundreds of
5 pages.
6 MR. YOUNG: Is the staff required to comment on
7 comments? To respond?
8 MS. McCHESNEY: Not on comments --
9 THE COURT: No?
10 MS. McCHESNEY: No.
11 MR. YOUNG: So people could just submit their
12 comments and the Board will just read the comments.
13 MS. McCHESNEY: It's just that it doesn't make a
14 good record if you don't have a response, but we're not
15 legally obligated to have written responses to comments.
16 MR. BRIGGS: A big difference between getting
17 something out to the public and enough time for them to
18 review and then coming and commenting to the Board as
19 opposed to enough time to review, write comments to us,
20 for us to compile them and submit them to the Board, it's
21 a whole different time period.
22 MR. THOMAS: I hate to complicate this, but I'm
23 going to. What about the other folks that we're going to
24 hear from who are going to say what about us and our view
25 or our proposal?

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1 MR. YOUNG: You mean the other proposals?
2 MR. THOMAS: The other proposals or other counties
3 from the other side of the --
4 MR. YOUNG: Let me just throw this out here. This
5 is my take on what we're doing. And, Francis, if it's
6 wrong, let me know, of course.
7 But the Board is deciding what information it
8 feels is important right now for consideration that want
9 staff to comment on. I don't think that opens this up
10 that now everyone gets to submit new information to us.
11 Or that there may be other proposals out there that we
12 kind of decided, okay, we've heard them, we're just not
13 interested in having any further comments on them. This
14 is what we've heard, we would like to hear more about it.
15 And we're trying to narrow this down, and the Board's
16 making the decision to do that. Is that okay?
17 MS. McCHESNEY: Yes, as long as there's a public
18 comment period on the staff's response to your question.
19 MR. YOUNG: Okay.
20 MS. McCHESNEY: Which would include commenting on
21 the agricultural proposal that has not been made
22 available publicly.
23 MR. YOUNG: Okay. But I think what Michael was
24 referring to is other proposals, other interested persons
25 that have had proposals.

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1 MS. McCHESNEY: You're not obligated to accept
2 more proposals.
3 MR. YOUNG: Okay.
4 MR. THOMAS: And what Roger just said that is real
5 important, Francis, you said as long as there's an
6 opportunity to comment. Roger said that would be at the
7 Board meeting.
8 MS. McCHESNEY: Right. And that's where I want to
9 look. I can't say absolutely for sure that that's an
10 appropriate process that may be making comments is
11 appropriate. But I will need to --
12 MR. YOUNG: You mean staff's written comments?
13 MS. McCHESNEY: No. You're proposing to accept
14 comments that were submitted after January 3rd, and all
15 the other comments there were set for -- submitted in a
16 timely manner, everybody got to come here and comment on
17 everything. Now you're proposing to accept more written
18 comments and have staff prepare the addendum to the staff
19 report. So the question is should the rest of the public
20 be allowed to have -- to submit written comments on this
21 additional staff report and documents should be accepted
22 in the record, or will oral comments be sufficient? And
23 what I can't say for sure that if oral comments are
24 sufficient, which is what Roger is trying to confirm.
25 MR. YOUNG: What if we allow the cutoff to be

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1 period to be the Board meeting itself?
2 MS. McCHESNEY: Well, if you get 2,000 pages of
3 written comments it's going to be difficult to read and
4 evaluate those comments.
5 MR. BRIGGS: Mr. Chair, it seems like it would
6 make sense to have an easier course here, and it's
7 dependent on our counsel determining which procedure will
8 work.
9 MR. YOUNG: Right.
10 MR. BRIGGS: So, if it's legal, and it's
11 satisfactory for the Board to hear comments at the
12 meeting as opposed to receiving written comments, I think
13 that's doable for July.
14 MS. McCANN: Schedule-wise it's doable. I'm not
15 sure what people's availability is.
16 MR. BRIGGS: Okay. But if our counsel determines
17 that we have to have another round of written comments,
18 then it's not doable.
19 MS. McCANN: Right.
20 MR. BRIGGS: So I think we may just have to leave
21 it at that.
22 MR. YOUNG: What about then the September Board
23 Meeting?
24 MR. BRIGGS: We can go to the next available --
25 MR. YOUNG: Which is down here in San Luis Obispo

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1 county.
2 MR. JEFFRIES: Can I ask our counsel a question?
3 What's the difference between oral comments and written
4 comments?
5 MS. McCHESNEY: If you -- if there's a limited
6 time period and people are submitting written comments to
7 do the last minute, it's not possible for you and the
8 staff and everybody to read those comments in a timely
9 manner.
10 MR. JEFFRIES: I understand that, but --
11 MS. McCHESNEY: There's a time issue.
12 MR. JEFFRIES: There was oral comments made by a
13 whole lot of people. There was oral comments made by the
14 Ag Coalition, so, why is it different than submitting
15 written comments?
16 MS. McCHESNEY: Because you're asking staff to
17 prepare a new staff report, addendum to the staff report
18 commenting on new information in the record, and I just
19 can't tell you right now without researching the law
20 whether there are obligations for you to provide an
21 opportunity for written comments. And I'll have to let
22 the staff know to schedule a meeting.
23 MR. BRIGGS: So the time would be dependent on
24 results of that research?
25 MR. JEFFRIES: I will bow to that decision.

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1 MR. YOUNG: If we put this off to September does
2 that supply -- offer enough time for written comments to
3 come in and staff to reply on the written comments?
4 MS. McCANN: I don't think time is the issue, I
5 think clarity about the process is what we need to
6 resolve for sure.
7 MR. YOUNG: Well, the clarity would be that the
8 people submit written comments, if they want to, and do
9 this the normal way, which is staff comes out with a
10 staff -- an addendum to the staff report, these items
11 that we've identified dealing with the California Farm
12 Bureau proposal, and the people have an opportunity to
13 submit written comments by a certain date, and staff
14 provides a reply.
15 MR. JEFFRIES: On that addendum.
16 MR. YOUNG: On that addendum.
17 MR. JEFFRIES: Only.
18 MR. YOUNG: Only. Yeah.
19 MR. BRIGGS: I think it would be September.
20 MR. YOUNG: Is there an objection with the rest of
21 you?
22 MR. HODGIN: Are we giving up on July?
23 MR. YOUNG: It looks like July we're forcing
24 something that we may cut some things off that we should
25 not be cutting off. We don't know yet. Francis has to

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1 look at that.
2 I mean, does July versus September make that
3 much difference in the long run? Because I think what
4 we're going to have once this comes back we're going to
5 be ready to vote. We're probably going to have a fifth
6 board member.
7 MR. JEFFRIES: I would hope by September we would.
8 MR. YOUNG: Yeah.
9 MR. JEFFRIES: Would cancelling the June meeting
10 and putting that information on the July meeting would we
11 have adequate time even if staff could get it ready?
12 MR. BRIGGS: I don't think that's a factor.
13 MR. JEFFRIES: Okay. That's not a factor. All
14 right.
15 MR. YOUNG: So that's our direction.
16 MR. BRIGGS: Yes.
17 MR. YOUNG: Is everyone kind of clear with what we
18 want to do?
19 MR. SHIMEK: I just need you to restate what it is
20 that you're doing.
21 MR. YOUNG: What we are directing staff to do is
22 to take the California Farm Bureau written submission
23 that was from March 17th and their submission today
24 directing staff to compare and contrast and comment on
25 what parts of that submission are doable, for what

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1 reasons, which parts are not doable for what other
2 reasons. So that we can get some further analysis of
3 that.
4 And to have that done -- we would like the
5 Board meeting to be in September where we can get an
6 addendum to the staff report limited to those items for
7 our consideration.
8 MR. BRIGGS: And compare it with the changes that
9 we recommended today.
10 MR. YOUNG: Yes. It's essentially taking the
11 matrix that staff put together a couple of board meetings
12 ago, whenever it was, and to just update that. That
13 approach is fine.
14 So is that clear, Mr. Shimek?
15 All right, folks, I think that that brings this
16 meeting to a close.
17 Any further comments from the Board?
18
19 (No response.)
20
21 MR. YOUNG: We're done.
22 Thank you very much
23
24 (The meeting was concluded at 6:25 P.M.)
25 --oo0oo--

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