

**Attachments to Letter BN: Abby Taylor-Silva et al, Grower-Shipper Association of Central California et al (June 22, 2020) (continued)**

**Exhibit 8**

**Attachment A**

SACRAMENTO WORKSHOP REVIEW OF  
EASTERN SAN JOAQUIN  
AGRICULTURAL GENERAL WDRs  
TRANSCRIPT OF PROCEEDINGS  
VIDEOCONFERENCED OPEN MEETING  
TUESDAY, MAY 17, 2016  
9:15 A.M.  
CALIFORNIA ENVIRONMENTAL  
PROTECTION AGENCY  
1001 I STREET,  
SACRAMENTO, CALIFORNIA 95812

The Board: FELICIA MARCUS, Chairman  
FRANCES SPIVY-WEBER, Vice-Chairman  
TAM M. DODUC, Member  
DORENE D'ADAMO, Member  
STEVEN MOORE, Member

For the Board: MICHAEL A.M. LAUFFER, Chief Counsel  
PHIL WYELS, Assistant Chief Counsel  
EMEL WADHWANI, Staff Counsel

For Staff: DARRIN POLHEMUS, Chief of the  
Division of Financial Assistance  
ASHLEY ZELLMER, Division of Water Quality  
THOMAS HOWARD, Executive Director  
JONATHAN BISHOP, Chief Deputy Director

Job Number 306607  
REPORTED BY:  
BREE MERVIN, CSR NO. 13057, RPR, CRR

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1 CHAIR MARCUS: Good morning. Sorry for  
2 the slightly late start. We very much appreciate you  
3 coming to join us. We had to wait and just make sure  
4 everything was aligned and set up for this morning.

5 It's 9:15 on May 17th, and I'm going to call  
6 this workshop open. My name is Felicia Marcus. I'm the  
7 chair of the State Water Board. To my left is Frances  
8 Spivy-Weber. To her left, Board Member Dorene D'Adamo  
9 and Tam Doduc and Stephen Moore. With that, we'll just  
10 get started.

11 A little first on what we're doing today. As  
12 you all presumably know, in December of 2012, the  
13 Central Valley Water Board adopted a general order  
14 regulating agricultural discharges in the Eastern San  
15 Joaquin watershed. Three parties, agricultural  
16 interests, environmental interests, and environmental  
17 justice interests, petitioned the State Water Board to  
18 review the order. These proceedings today are part of  
19 the legal proceedings resulting from those requests for  
20 review.

21 The purpose of the petition process is to allow  
22 people effected by a permit issued by a Regional Board  
23 to bring to the State Water Board issues they believe  
24 require further consideration or reconsideration. The  
25 purpose is to provide them an opportunity to have a body

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1 other than the Regional Board take another look at the  
2 issues. The State Board's obligation, therefore, is to  
3 ensure a fair and thoughtful process by providing an  
4 independent review in consideration of the issues that  
5 are raised in the petitions.

6 Here, three parties brought us issues that they  
7 believed required further consideration. As board  
8 members, we have an obligation to really think about  
9 those issues and determine if there are problems that  
10 should be fixed. We understand the frustration of  
11 having the State Board review take place over a couple  
12 of years while permittees in the coalitions have  
13 proceeded in good faith as the permit is written.

14 We understand our actions now are an  
15 interruption of an implementation process that is well  
16 under way, but for us to do our job right, we have to  
17 consider the issues that were brought to our attention  
18 and make informed and careful determinations on those  
19 issues, even if inconvenient.

20 The State Water Board staff released a proposed  
21 draft order in February that proposed certain revisions  
22 to the Central Valley Water Board order as a result of  
23 their review. We're now considering the petitions and  
24 our staff's draft order.

25 Today is the second opportunity for the Water

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1 Board members to hear from interested people on various  
2 sides of the proposed order in a public forum. It's  
3 also an opportunity for the various sides to hear from  
4 each other. It's also an opportunity for the board  
5 members to discuss the issues with fellow board members.  
6 We're not allowed to speak as a group, except in an open  
7 session like this. We can only speak with one on a  
8 given issue, not in a public forum. So please forgive  
9 us as we ask questions of panelists and listen to each  
10 other as well. This is the only chance we have to do  
11 that.

12 The purpose of the workshop is for board  
13 members to listen to your comments and to ask questions  
14 to help illuminate the issues for them. As the board  
15 made clear in its transmittal letter that accompanied  
16 the proposed order, the State Water Board is open to  
17 consideration of alternatives to the direction laid out  
18 in the proposed order. We're not going to take any  
19 action today and will consider all comments before  
20 making any future determination. If you have worked  
21 with this board already, you know we take our  
22 responsibility seriously, and that we do listen to and  
23 work with the public before reaching final decisions.

24 We held our first workshop in Sacramento on May  
25 4th. It was very helpful, as well as challenging.

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1 We're all looking forward to hearing more from you  
2 today. We know this is a big deal and that there are  
3 strong feelings on all sides. This is, frankly, among  
4 one of the most complex issues that we deal with. So  
5 please help us by acknowledging and listening to the  
6 legitimate interests on all sides and make suggestions  
7 as to how we can navigate the complexity of it.

8 I can assure you we have not made up our minds.  
9 At least I haven't. I would be very surprised if my  
10 colleagues had it all figured out already as well.

11 The State Water Board will accept written  
12 comments through June 1st to give you all time to  
13 incorporate what you have heard at the workshops before  
14 submitting your suggestions. It's an extension from  
15 tomorrow, until May 1st. After that, the Water Board  
16 will consider all written and oral comments and will  
17 likely release proposed order for further comment before  
18 we consider adoption of the order. We frequently do --  
19 it seems like a big group over time to do an iterative  
20 process with, but we do.

21 Agricultural is a crucial part of our state's  
22 economy. California farmers supply much of the nation's  
23 food. We're committed to maintaining the economic  
24 viability of agricultural in our state; however, the  
25 very same activities that are essential to producing

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1 food, such as pesticide use to control pests and  
2 nitrogen to fertilize crops, also have the potential to  
3 lead to critical water quality impacts.

4 In particular, some of our drinking water  
5 supplies become contaminated by sources that include  
6 agriculture over the years. Over the last couple of  
7 decades, California growers, including growers in the  
8 Central Valley, have shown leadership in protecting our  
9 natural resources in monitoring water quality conditions  
10 and implementation of improved management practices.

11 Also through cooperative and proactive  
12 measures, such as CV-SALTS, growers are committing to  
13 significant efforts to tackle some very difficult water  
14 quality issues. There's a lot more that needs to be  
15 done, and we need to pool the expertise and resources of  
16 all concerned parties, including growers, regulatory  
17 agencies, and the environmental and environmental  
18 justice communities, to find shared solutions. Those  
19 come far too quickly for some and far too slowly for  
20 others.

21 The challenge we face as Californians is to  
22 maintain the economic viability of farming, while not  
23 jeopardizing the availability of clean drinking water  
24 for the people who live and work in agriculture. While  
25 we may take multiple approaches to dealing with the very

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1 real issues of communities and individuals relying on  
2 contaminated drinking water, it's also our charge to  
3 prevent water quality degradation in the first place.  
4 My hope through this process is that you will all step  
5 up to help us navigate this path.

6 I'm going to turn to staff today first to set  
7 the stage. Then we have a few panels, including a  
8 series of experts. Who I'm sure don't all agree either  
9 and some commentators from both the NGO and coalition  
10 side of things. Those should be done sometime this  
11 morning. We had most of a day of panels in Sacramento.  
12 So I asked folks keep their remarks here brief so we can  
13 get to hearing from those of you we came to Fresno to  
14 hear from.

15 We may, however, ask a fair amount of questions  
16 because, as I said, these workshops and hearings are the  
17 only chance we get to hear -- to speak with each other,  
18 but to hear things together. I know we have a number of  
19 folks. I know, for example, Jenny Moffett, deputy  
20 secretary at the California Department of Food and  
21 Agriculture is here to listen, and Alicia Gallen from  
22 Assemblyman Patterson's office is here to listen. If  
23 there are elected or agency representatives who wish to  
24 speak or have already spoke at our workshop on May 4th,  
25 please be sure to fill out a blue card.

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1 For all of you in the back, there are blue  
2 cards. If you would like to speak, please fill it out  
3 and give to the clerk, Jeanine Townsend or Courtney  
4 Tyler, by the end of the morning, preferably, so we can  
5 assess how many minutes we can give each speaker as we  
6 move into public comment. Generally, brevity is more  
7 effective in highlighting what we should be considering,  
8 with detail more effective in written comments.

9 With a group this big, my guess is, depending  
10 how many cards we get, it will be two or three minutes  
11 each, but it will all depend. We would like to hear  
12 from each of you. It's always exceedingly helpful.

13 We also need to take some breaks. We'll take a  
14 break some point midmorning. We'll take a break for  
15 lunch, and we'll take a break in the afternoon. To be  
16 sure, we may need to take a few more because we have  
17 court reporter, Bree, is taking down stuff -- she's  
18 taking down what you're saying for part of the record  
19 because this is a legal proceeding, but it allows us to  
20 go back quickly and look at the transcript of what's  
21 been said as we consider all of the comments in addition  
22 to listening to you today.

23 I want to try and be aware of how she's doing.  
24 If she starts waiving her hands frantically needing a  
25 break, I need help out there, I need to look that way.

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1 Similarly, we have interpreters. I want to be courteous  
2 of the two -- of all of them. As a result, also,  
3 judging from the sound system, it's probably more wise  
4 to try and speak slowly and deliberately so that she  
5 doesn't burn out her fingers and they -- they're able to  
6 do justice to what it is that you have to say. We want  
7 everyone to hear each other.

8 With that, I think we're ready to begin. Did I  
9 forget anything? I think I'll turn to the staff and  
10 take it away.

11 MS. WADHWANI: Good morning. This is Emel  
12 Wadhwani with the Office of Chief Counsel, present with  
13 me are Darrin Polhemus, Deputy Director of the Division  
14 of Financial Assistance. To my right, Phil Wyels,  
15 Assistant Chief Counsel, and to my left, Ashley Zellmer  
16 with the Division of Water Quality. I guess I'll  
17 introduce that table, also.

18 Michael Lauffer, Chief Counsel. Jeanine  
19 Townsend, clerk to the Board, and Courtney Tyler.

20 CHAIR MARCUS: Can you all hear in the back?  
21 Okay.

22 MS. WADHWANI: We're from the State Water Board  
23 staff. All of us sitting up here are with the State  
24 Water Board.

25 The purpose of the workshop is for the Board to

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1 hear oral comment on a staff-proposed order released  
2 February 8th as Chair Marcus already indicated. I have  
3 slides. They're not up.

4 . . . . The staff proposed an order that was issued  
5 reviews and proposing revisions to the Central Valley  
6 Water Board's general waste discharge requirements for  
7 growers within the Eastern San Joaquin River Watershed.  
8 Here, I am briefly going to talk about the procedural  
9 background for these proceedings. Much of that has  
10 already been covered by Chair Marcus, but I'll elaborate  
11 a little bit. Discuss the significant revisions  
12 proposed in the staff-proposed order and also talk about  
13 the anticipated next steps for these proceedings.

14 The Central Valley Water Board issued the  
15 Eastern San Joaquin agricultural general WDRs, which are  
16 the subject of these proceedings in December of 2012.  
17 The general WDRs were thereafter petitioned by three  
18 sets of parties, as we have already mentioned. The  
19 State Water Board notified the parties it would take up  
20 review of the petitions in November of 2013.

21 Subsequently, in August of 2014, anticipating  
22 the need for additional review time, the State Water  
23 Board adopted what we term an own motion order. The own  
24 motion order allows the State Water Board to continue  
25 its review past what is normally a 270-day regulatory

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1 deadline, but it does not change the State Water Board's  
2 role and responsibility in considering and responding to  
3 the issues that are brought through the petitions.

4         The own motion order was adopted in part to  
5 allow for completion of the final of three sets of  
6 proceedings, related proceedings, that helped inform the  
7 issues raised in the petitions. The first of these was  
8 another petition proceeding before the Board, this one  
9 on the Irrigated Lands Program in the central coast  
10 region.

11         The State Water Board made several presidential  
12 determinations in those proceedings with an order issued  
13 in September of 2013, but the State Water Board  
14 additionally indicated that some of its determination  
15 represented interim conclusions requiring further  
16 consideration and referred those to the agricultural  
17 expert panel that was separately being convened.

18         The second set of proceedings the State Water  
19 Board expected to inform its determinations in these  
20 petitions was the proceedings of the Nitrogen Tracking  
21 Task Force. That task force was convened by CDFA in  
22 coordination with the Water Boards and with extensive  
23 participation from stakeholders, experts representing  
24 the agricultural organizations, academia, and the  
25 environmental community.

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1           The Nitrogen Tracking Task Force issued a final  
2   report in December of 2013. The third set of  
3   proceedings was of the agricultural expert panel I  
4   mentioned earlier. The panel was convened by the State  
5   Water Board in coordination with CDFA and considerable  
6   existing studies, programs, and efforts for agricultural  
7   nitrate control. As I already noted the agricultural  
8   expert panel also considered and made recommendations  
9   with regard to several of the issues that were referred  
10   to from the central coast proceedings.

11           Next slide. On February 8th of this year,  
12   following completion of the proceedings I discussed on  
13   the previous slide and after further review, the State  
14   Water Board staff released the proposed order that's the  
15   subject of today's workshop. The staff-proposed order  
16   responded to issues raised in the petitions, and in  
17   doing so, incorporated many of the conclusions of both  
18   the central coast presidential determinations and  
19   recommendations of the Nitrogen Tracking Task Force and  
20   the agricultural expert panel.

21           In order to receive comment on the  
22   staff-proposed order and to foster further discussion,  
23   the State Water Board scheduled two workshops. The  
24   first was held on May 4th in Sacramento. There is a  
25   recording of that workshop available on the State Water

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1 Board's website. We have also posted the Power Points  
2 from that workshop. That is available to anyone that  
3 wasn't available -- wasn't able to attend the meeting.

4 Additionally, obviously, the State Water Board  
5 is hearing from interested persons here today in Fresno.  
6 As Chair Marcus indicated, we're taking written comments  
7 and that deadline was recently extended to June 1st at  
8 12:00 noon.

9 In the next set of slides, I'm going to  
10 summarize some of the significant proposed revisions  
11 that are in the staff-proposed order. Before I do so, I  
12 want to emphasize here that the proposed orders  
13 represents recommendations by staff and that staff and  
14 board members are actively encouraging comment on the  
15 proposals and the alternatives to the proposals.

16 Based on input we receive today, staff  
17 recognizes there are a number of areas where the  
18 staff-proposed order requires further clarification and  
19 revision. The State Water Board will be considering all  
20 the comments it receives carefully and responding as  
21 appropriate with such clarifications and revisions prior  
22 to any adoption of a final order.

23 So the first set of significant revisions,  
24 distinction between high vulnerability and low  
25 vulnerability areas. The existing general WDRs

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1 distinguish between high-vulnerability and  
2 low-vulnerability areas for surface water and  
3 groundwater and allow a reduced level in frequency of  
4 reporting in the low-vulnerability areas.

5 The staff-proposed order removes that  
6 distinction, except for purposes of prioritization.  
7 This revision is based on a recommendation of the  
8 agricultural expert panel that rejected reduced  
9 requirements for nitrogen management based on risk  
10 determinations and emphasized the need for good nitrogen  
11 practices in all areas.

12 Under the staff proposal, certain requirements  
13 of the permit would apply uniformly to all growers. In  
14 particular, all members would be required to submit farm  
15 evaluations and INM summary reports annually. All  
16 members will be required to obtain certification of  
17 their INMP, and all members would have to participate in  
18 outreach activities. On this issue, staff has received  
19 significant comment today on the appropriateness of  
20 imposing uniformed requirements on all growers and will  
21 be reviewing those concerns carefully.

22 Next set of significant revisions, the A/R  
23 ratio. The agricultural expert panel proposed use of a  
24 particular metric for measuring the potential for  
25 nitrogen loading to groundwater. That metric is a

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1 multiyear measure of the nitrogen applied to the fields  
2 in the form of both fertilizer and nitrogen in  
3 irrigation water, divided by nitrogen removed from the  
4 field.

5 Nitrogen is removed from the field through  
6 harvest or by being sequestered in the permanent tree  
7 crop. Nitrogen removed is calculated in the metric by  
8 multiplying crop yield with a coefficient that  
9 represents the amount of nitrogen in the amount of a  
10 unit of a crop. The A/R ratio is not the metric  
11 currently recognized by any WDRs, but the Water Board is  
12 considering a revision that would require reporting by  
13 the members of nitrogen applied over crop yield, divided  
14 by crop yield.

15 With that revision, the approach in the general  
16 WDRs would not differ significantly from the approach  
17 proposed by the staff-proposed order. The primary  
18 difference would be in the staff-proposed order,  
19 nitrogen removed would be calculated by the growers and  
20 they would report both yield and nitrogen removed,  
21 whereas the Central Valley Board's proposal has growers  
22 reporting only yield, and the coalition would convert  
23 the yield numbers to nitrogen removed.

24 Staff has heard from the Central Valley Water  
25 Board and the coalitions, their reason for supporting

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1 reporting of only yield, instead of both yield and  
2 nitrogen removed, and is considering those comments  
3 carefully.

4 Before we move away from the A/R ratio, there  
5 are a couple of other comments that are significant.  
6 Staff also recognizes that clarification is needed as to  
7 what purpose the multiyear A/R ratio may serve in the  
8 future. Particularly, whether the ratios are expected  
9 to act as a regulatory target or some kind of trigger  
10 for specific actions. The State Water Board will be  
11 considering those comments and proceeding on that  
12 carefully, related to that issue and responding with  
13 further clarification.

14 Next set of significant revisions, irrigation  
15 planning. The agricultural expert panel concluded that  
16 irrigation is inexplicably linked to nitrate groundwater  
17 contamination since nitrate only moves past the root  
18 zone through deep percolation of water.

19 The expert panel accordingly recommended good  
20 irrigation management as an essential component of  
21 practices. The proposed order address a component to  
22 the nitrogen management plan, which is now called the  
23 Irrigation and Nitrogen Management Plan in the order.  
24 That component addresses planning for and reporting of  
25 irrigation practices.

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1           Next, field-level reporting. Under the current  
2   general WDRs, the members submit the farm evaluation and  
3   INMP summary report to the coalition. The coalition  
4   then analyzes and aggregates that data and submits a  
5   summary to the Central Valley Water Board. Under the  
6   staff-proposed order, beginning in 2019, the coalition  
7   would submit the underlying field-level data, in  
8   addition to the summarized data, to the Central Valley  
9   Water Board.

10           The staff-proposed order incorporates this  
11   revision for several reasons. The availability of the  
12   field-level data is expected to enable the Central  
13   Valley Water Board to exercise oversight, verifying the  
14   accuracy of the analyses and summaries provided by the  
15   coalition and verifying the coalition is following up  
16   with the appropriate numbers.

17           Additionally, the availability of field-level  
18   data on nitrogen application, management practices, and  
19   water quality information would allow for further  
20   modeling analysis by the Water Boards and by third  
21   parties, including academics. Staff expects that such  
22   modeling and analyses will help support determinations  
23   of the effectiveness of management practices or  
24   ineffectiveness of certain management practices, and  
25   also provide a better understanding of some of the

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1 trends in pollutant loading.

2           However, the State Water Board has heard  
3 extensively from interested persons regarding the  
4 challenges associated with field-level data reporting.  
5 In the transmittal letter that accompanied the  
6 staff-proposed order, the State Water Board recognized  
7 that there are alternatives to field-level reporting and  
8 invite a comment on those alternatives. The State Water  
9 Board continues to encourage comment on the  
10 staff-proposed approach, as well as the -- any other  
11 viable alternatives, including those laid out in the  
12 transmittal letter and including others who have come up  
13 since, such as an independent audit program.

14           Next slide. Surface water monitoring, the  
15 general WDRs incorporate a surface water quality  
16 monitoring program that is based on representative  
17 monitoring. The staff-proposed order directs the  
18 Central Valley Water Board to reconsider the surface  
19 water quality monitoring program and modify it to ensure  
20 that the monitoring is of sufficient density to identify  
21 exceedences throughout the watershed. Based on comments  
22 received today, staff recognized that more discussion  
23 and more concrete direction will be required on this  
24 issue.

25           Drinking water well testing, the State Water

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1 Board set a precedent for testing of on-farm drinking  
2 water wells when it adopted the central coast  
3 agriculture order that I mentioned earlier in the  
4 presentation. The staff-proposed order continues that  
5 precedent in requiring testing of all on-farm drinking  
6 water wells and notification of users if nitrate  
7 concentrations exceed the maximum contaminant level.

8 This provision has been proposed to ensure that  
9 anyone consuming water from an on-farm drinking water  
10 well that may pose a public health threat is notified of  
11 that health threat.

12 Next. Brief note on the presidential nature of  
13 any future adopted order, the staff-proposed order  
14 states that any adopted order is expected to guide  
15 irrigated lands programs throughout the state, except  
16 for Regional Board expressly finds the requirements are  
17 not appropriate as applied to the unique  
18 circumstances/conditions of a given area.

19 This is another issue where the State Water  
20 Board has received extensive input to date. Based on  
21 that input, staff recognizes that the discussion in the  
22 staff-proposed orders may be too cursory to anticipate  
23 and address a number of legitimate variations in  
24 programs. They want to consider carefully and provide  
25 fuller guidance on this issue.

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1 As Chair Marcus said, the State Water Board is  
2 not taking any action on the staff-proposed order today.  
3 The State Water Board will listen to all comments, take  
4 all comments received at the workshop, the two  
5 workshops, and through the written comments that will be  
6 submitted by June 1st. We'll take all of those into  
7 consideration.

8 The State Water Board may issue a revised  
9 proposed order for additional comment at a future date  
10 and any adoption meeting will be scheduled at a future  
11 date. That will be announced through the e-mail  
12 subscription list that the State Board has.

13 CHAIR MARCUS: We may have other workshops both  
14 before or after a revised order, depending on what  
15 people propose.

16 MS. WADHWANI: Exactly. That would also be  
17 noticed through the list.

18 That concludes our introduction. We will hear  
19 from several panels, including beginning with the panel  
20 of technical experts, following the two panels of  
21 residents impacted by nitrates in drinking water, and we  
22 have the Southern San Joaquin Valley Water Coalition.

23 I wanted to note, as Chair Marcus said, that  
24 the Central Valley Water Board, East San Joaquin  
25 Coalition, several of the petitioners and a number of

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1 additional interested parties, including several  
2 coalitions and environmental and EJ groups had an  
3 opportunity to present at the May 4th workshop in  
4 Sacramento. Again, that is available online for anyone  
5 who is not able to attend that workshop.

6 Today -- we begin with those presentations, but  
7 we have tried to be conservative in the amount of time  
8 allotted to the panels so we give individual speakers,  
9 the general public, as much time as possible. I think  
10 that's all I wanted to say.

11 CHAIR MARCUS: Great. Thank you, and thank you  
12 for mentioning some of the things that were raised that  
13 gave you pause or gave some of us pause in talking to  
14 you. To highlight that this an interactive process. I  
15 appreciate that.

16 With that, I'll call up the technical panel.  
17 You know who you are. I don't have titles in front of  
18 your names. I know some of you are doctors and  
19 professors and the like. Forgive me, but will Thomas  
20 Harter, Stuart Styles, Joel Kimmelshue, Rob Nicholson,  
21 David Zoldoske, and Mark McKean.

22 My apologies, the panel is set for 30 minutes.  
23 There are six of you. You can all do the math. You may  
24 well have worked out a minute trading system,

25 JEANINE TOWNSEND: Chair Marcus, will they be

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1 going in order of the list of the presenters?

2 CHAIR MARCUS: Would that be easier if you do?

3 JEANINE TOWNSEND: We're wondering about the  
4 Power Points that they have.

5 CHAIR MARCUS: My suggestion is -- have you  
6 guys scrambled the order, or can I do the order I set?  
7 That will be easier for them on the Power Points. We'll  
8 stick with that order. We don't need you to go speed.  
9 It's not like I'm going to cut off the last person  
10 because part of this is to eliminate the issues for all  
11 of us. Again, priority is to get to all of the good  
12 people who have come to talk with us today who can't get  
13 to Sacramento quite as easily because they have things  
14 to do here.

15 JEANINE TOWNSEND: Also, Chair Marcus, we will  
16 need the presenters to let us know when they need the  
17 slide changed.

18 CHAIR MARCUS: Thank you very much, all of you,  
19 for joining us. We appreciate it very much. If you'll  
20 introduce yourself briefly. I can introduce most of  
21 you. If you introduce yourself very briefly when you  
22 start, so the folks listening that don't already know  
23 you, will know who you are and why you're here. We'll  
24 start with Dr. Harter.

25 DR. THOMAS HARTER: Good morning,

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1 Ms. Chairwoman. Good morning distinguished board  
2 members. Thank you for having me. I'm Thomas Harter,  
3 the Robert M. Hagan endowed chair for water management  
4 policy at the University of California Davis. I also am  
5 on the board of directors for the Groundwater Resource  
6 Association.

7 I'm making -- when we get the slides, I'm going  
8 to make three points today. The first one that I want  
9 to talk about is the A over R ratio. We shouldn't just  
10 be focusing on the A over R ratio. It's really three  
11 things. Total nitrogen applied to total nitrogen  
12 removed in the A/R ratio.

13 The second point I wanted to elaborate on is  
14 that I think the proposal by the Regional Board of Water  
15 and coalitions to aggregate data to the township level  
16 by crop, is perfectly sufficient for doing the kind of  
17 science analysis and assessment that needs to be done.  
18 I want to very briefly close with a general comment on  
19 the domestic well sampling point.

20 With any regulations, I always love to bring up  
21 the speed limit as a regulation that we're all very  
22 familiar with. You have a responsible party, and you  
23 have brakes to control your speed with and speedometer  
24 to know your speed, and radar guns out there to enforce  
25 the speed limit. With nonpoint source with this waste

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1 discharge requirement that's not a whole lot different.

2           The most difficult part of doing this on  
3 nonpoint sources or diffused sources such as all these  
4 sources that put nitrate into groundwater is that we  
5 don't really have a radar gun that we can point at the  
6 drivers to measure their speed. There's not a  
7 monitoring device that measures the discharge of  
8 nitrates to groundwater under every field.

9           Like we do, for example, with wastewater  
10 treatment plants, they have a discharge pipe into a  
11 stream and we can monitor the water quality directly  
12 upgradient and ungradient from the discharge pipe. We  
13 do that on underground storage tanks and gas stations.  
14 We have monitoring wells upgradient and ungradient at  
15 pumping gas stations.

16           A problem with the diffused sources is, if you  
17 show the next slide, nitrate is not a plume. It's not a  
18 distinctive plume. It's everywhere, especially on the  
19 east side of the San Joaquin Valley, large areas have  
20 high levels of nitrate.

21           The other problem that we have with these  
22 diffused sources, we have many different sources. We're  
23 growing 350 different crops. We have dairies and septic  
24 systems and leaky pipes in urban systems, and as we  
25 pointed out in our 2012 report from the SBX2 1 study,

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1 these sources are neighbors to each other. It's very  
2 difficult to identify who's done it, so to speak.

3 Next slide. So let's go to that question.

4 Where is my water in my domestic well or my public  
5 supply well that may have high nitrate coming from? How  
6 well can I actually identify where or who has put that  
7 water into the ground and where that nitrate may be  
8 coming from?

9 This is a cartoon that very simply sort of  
10 identifies how groundwater flows to a well. In the  
11 Central Valley aquifer system, we have a regional  
12 gradient that transports groundwater more or less  
13 horizontally, laterally from places of higher water  
14 table to places of lower water table.

15 We have recharge that's pushing the water down  
16 as the groundwater moves laterally across the landscape.  
17 As a result, water that's coming down into a domestic  
18 well, may come from half a mile away, two miles away, or  
19 four miles away. The domestic well not being an  
20 intensive pumping well kind of sips water off the  
21 aquifer as it comes by.

22 If we have a stronger, bigger well for a barn  
23 or for irrigation or for public supply well, they create  
24 a kind of depression. They have a much larger source  
25 area.

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1 Let's look at that in a little more detail very  
2 quickly. I have the next slide, the spaghetti slide  
3 that's showing in red, the well casings pulling water  
4 into the aquifer from the well casings. This is the  
5 underground view looking from the groundwater to the  
6 top, which is where the landscape is and where the  
7 recharge happens. The spaghetti are the flow paths of  
8 water from the landscape where it's recharged to these  
9 well screens where the water is pumped out.

10 Notice the well screens have lots of these  
11 tubes going in them. The color of the tubes indicates  
12 the age. This is just one example. I don't want to go  
13 into, at this point, depth on age. You can see the  
14 spaghetti that ends at the red tubes have different  
15 colors by the time they get to the tube, meaning it's  
16 different ages that go into that well.

17 In the well, it all gets mixed up. In a  
18 domestic well, I typically have water that may be from a  
19 year, to five, to ten years, maybe even to 40 years old,  
20 and all mixed up. In bigger wells, it's even more ages.

21 So the water that goes into the top of the  
22 screen, here, you see a cross-section at the top and a  
23 map view at the bottom. The water that goes into the  
24 top of the green is typically the youngest water.

25 Next slide. As we go down in depth screen,

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1 it's older water. As we go to the bottom of that  
2 particular example, next slide, the water comes from  
3 much further away and travels for two or three or four  
4 decades. The source area of these wells may be very  
5 large. I have shown here different sources of nitrate.  
6 Each field is a separate source, separate crop. There  
7 might be lagoons or corrals, or if you're in a dairy  
8 region as well, it may be septic systems. It all gets  
9 mixed up in that well.

10 In that landscape, the complexity of that  
11 source area is large. On top of that, I don't really  
12 know what that source area is. The computer model tells  
13 me one thing, but there is some uncertainty about that.  
14 The source areas may be a little further up or further  
15 down. There's some uncertainty about that.

16 My point here is if I'm asked to tell you where  
17 water comes from in any particular well, I couldn't  
18 point to an area that's much smaller than a township.  
19 Maybe an area -- maybe a circle like we have in a  
20 drinking water program where we do the resource area  
21 identifications. The circles are two, three, four miles  
22 across. That's about the size of a township, which is  
23 six-by-six miles. Next slide.

24 So my point is the biggest thing that needs to  
25 be done here is farm practices. The coalitions are

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1 taking on this job as an -- as a corroborative of  
2 growers in charge of organizing, understanding  
3 management practices, and implementing those management  
4 practices. They cannot do it alone. They have to do  
5 this in cooperation with UC Crop Extension, CSU Fresno,  
6 and other CSU campuses and crop advisors and farm  
7 advisors.

8 This is a tremendous effort to be done, and  
9 it's going to be a large group of people that need to be  
10 engaged in this process of changing what we do in  
11 farming in this valley. In a positive way that is  
12 economically viable, at least agriculturally  
13 economically available and improves the environment.

14 For that, the public data submitted to the  
15 Regional Water Board, if those are submitted, aggregated  
16 to the township level and include the total nitrogen  
17 applied per crop and total nitrogen removed by crop, the  
18 A over R ratio is completely sufficient to do an  
19 assessment of how much crops contribute relative to each  
20 other, to nitrate and groundwater, how farmers are doing  
21 relative to each other, and to give us a tool to do  
22 trend assessment and larger regional establishments.

23 With that, we can do the next slide. We can do  
24 all kinds of things, even if they're reported at the  
25 township level. We can do Central Valley light

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1 establishments. We can do temporal establishments. We  
2 can look at distributions. We can look at long-term  
3 trends. Next slide.

4 That was the intention of what we did at the  
5 task force, the Nitrogen Task Force, that we convened  
6 after 2012, which clearly identified that the  
7 aggregation is part of it. They also identified that  
8 both nitrogen applied and nitrogen removed as an  
9 aggregated number is an important number to report in  
10 the system.

11 The agricultural panel, next slide, pointed out  
12 very specifically that in fact the reporting as part of  
13 the compliance or enforcement program, should not be  
14 done at the field level because of potential accuracy  
15 issues. Next slide.

16 My final comment is with respect to the  
17 drinking water program. I just -- I don't want to say  
18 anything about pro or con, the particular proposal. I  
19 want to point out that we have a number of different  
20 efforts going on in the Central Valley to look at  
21 shallow groundwater, at the groundwater that is serving  
22 our domestic wells of which we have between half a  
23 million and a million in the Central Valley alone.

24 We have the dairy program which has its  
25 representative monitoring program. We have the

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1 Irrigated Lands Program in the process of implementing a  
2 monitoring program. We have CV-SALTS, and I just  
3 reviewed their draft monitoring program. We have your  
4 agency doing a shallow GAMA groundwater monitoring  
5 program.

6 All of these efforts are currently more or less  
7 operating in parallel without a lot of links. I just  
8 wanted to point out I think for efficiency and  
9 effectiveness, we are all well advised to connect the  
10 dots and make these programs work together in an  
11 effective way and in a collaborative way. I think we  
12 can get to where we need to be by doing that. Thank you  
13 very much.

14 Next slide, that is just the summary of what I  
15 had said. Thank you.

16 CHAIR MARCUS: Thank you very much, Dr. Harter.  
17 You packed a lot into that. Appreciate it. Very  
18 helpful.

19 Stuart Styles. Thank you for joining.

20 STEWART STYLES: I'm Stuart Styles, the  
21 director of the Cal Poly Irrigation Training and  
22 Research Center. Just to let everybody know, I work  
23 with Charles Bert. I have been working with him since  
24 1981 when he came to Cal Poly, a couple of years after  
25 he got to Cal Poly.

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1 I was not a member of the expert panel. I was  
2 a person that was behind the scenes making sure all the  
3 60 plus hours of video and all the reports and  
4 everything was on the website. So I'm familiar with the  
5 program, but I wasn't one of the panelists. One of the  
6 panelists is up here today to talk about his views on  
7 it. I sat down with Charles Bert and put together a set  
8 of comments.

9 We have five comments, next slide, please, that  
10 we have made, in regards to the latest proposal here. I  
11 would like to go through each of the points quickly in  
12 my five minutes. I'm going to jump right in instead of  
13 summarize -- I'm not going to summarize them and talk  
14 about them. Next slide, please.

15 What we feel, as far as something that can be  
16 done today for the issue, is the bottom line is what  
17 percent of the applied N is removed by the harvested  
18 crop portions. This supplied or removed ratio gives you  
19 the key indicator, the key value of what's going on out  
20 there.

21 Extensive monitoring theory vulnerability  
22 zones, etc., do not provide direct knowledge of the  
23 bottom line. We're kind of those bottom line kind of  
24 people. We want to make sure we're kind of getting to  
25 what's going to be the key thing that does this. It's a

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1 simple concept. Whatever is not removed via the  
2 harvest, it volatilizes, leaches, or is stored. If we  
3 look at a three- to five-year average, the stored  
4 component actually zeros out. So it's a pretty straight  
5 forward look at what's applied and what's removed. Then  
6 looking at that ratio.

7 Next slide. I'm not going to refer to the  
8 specific program here, but I'll refer to this as  
9 checklists. In our experience, we have done a number of  
10 different projects over the years. These checklists of  
11 best management practices have very limited value. I  
12 know it's a big comment up there.

13 Let me explain. They sound good, but we have  
14 done these for years. We can come up with hundreds of  
15 items on checklists. It's easy to do. It's quick and  
16 dirty. It comes up with some really good ideas.  
17 They're simple. They make people feel good. It's easy  
18 to checkoff and requires minimal effort on everybody's  
19 behalf, but the only way we're going to get a good A/R  
20 ratio achieved is if we have good management practices  
21 used out there.

22 We don't need to know the details of how farmer  
23 Z accomplishes that. If the experts don't already know  
24 what works, they aren't really experts. The key point  
25 here is that we need to see if growers are putting on 10

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1 percent more or 50 percent more or 100 percent more  
2 than they need to apply. If it's only 10 percent more  
3 than they need to apply, they have good practices out  
4 there. If we see they have major issues, then we need  
5 to target some of those practices and figure out where  
6 those key practices are.

7 Our belief is, and I think it's been reiterated  
8 more than once, is we feel that only limited summarized  
9 data is needed in Sacramento. We just need to keep our  
10 eye on the objective. It's not to have a regulatory  
11 agency personnel know everything that might be  
12 interesting or useful in the future or to create huge  
13 databases for researchers to mine for whatever purpose.  
14 I think the comment that was made in earlier  
15 presentations was that this could create a database  
16 dream for researchers to collect all this information.

17 The objective is to minimize as much as  
18 reasonable the leaching of nitrates into the  
19 groundwater. So what is this minimal amount of  
20 information that is needed to know if compliance is  
21 going to be reasonable?

22 I apologize. I'm trying to read through these.  
23 I know I have five minutes, and I'm down to my last  
24 minute. Before writing these tickets, we need better  
25 information on N removed per ton of harvest. We need

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1 averages and standard deviations and we need to know  
2 what reasonable AR values are.

3 This is a new way of looking at nitrogen and  
4 water management. We haven't done this in the past. I  
5 have been teaching for the last 25 years at Cal Poly.  
6 This is not the approach that we've had in our basic  
7 irrigation management courses. Familiar teaching  
8 research and recommendations are based on plant uptake,  
9 not removal from the field. We don't even know what the  
10 range of values is for various crops.

11 Classic research is not needed. We just need  
12 hundreds of measurements from commercial fields in order  
13 to get these values. It is what is needed. We do not  
14 have this information in front of us right now that we  
15 can provide to the community, to the public. Because we  
16 don't know all the answers right now is not  
17 justification for adopting the A/R ratio. We just need  
18 time. This is very clear in the expert panel report.  
19 We need time to develop this information.

20 Last slide. We would like to recommend that  
21 these plans and information from all the different sorts  
22 of programs be consolidated. We're asking if they can  
23 be consolidated. We're aware growers are asked to  
24 provide data for different sources, for different  
25 reasons. We're asking that the -- all the agencies, not

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1 just the state and regional boards get together and  
2 coordinate those efforts on this reporting that's being  
3 asked for by the growers. Eliminate duplication, and  
4 eliminate all the nice to know data requirements. We  
5 want to make the argument, the argument it can't be  
6 dealt with right now isn't a reasonable excuse. Public  
7 agencies must not create unbearable requirements to the  
8 growers.

9 CHAIR MARCUS: Thank you. Very clear. Very  
10 helpful. Thank you.

11 Mr. Kimmelshue.

12 DR. JOEL KIMMELSHUE: Good afternoon. My name  
13 is Joel Kimmelshue. Next slide, please.

14 I'll briefly do this. Go through my  
15 qualifications. I have been studying nitrogen pretty  
16 much in California systems pretty much since the day I  
17 was born. I was born on a farm here, the fifth of five  
18 kids. I was the last one. So I had to get an  
19 education. Studied nitrogen excessively and working in  
20 that area for 20 years.

21 I'm going to touch on a few things and  
22 providing written comments as well. I'm going to touch  
23 on a few highlights here to try to stay within the  
24 five-minute time frame.

25 I want to touch on the presidential nature of

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1 the order. I would like to encourage both the board and  
2 the staff to more fully recognize the need for the  
3 balance between regulatory process in the system that  
4 they're regulating. This is no easy task, that's for  
5 sure. This is probably one of the more difficult  
6 regulatory tasks that's out there. However, in light of  
7 that, the flexibility is kind of critical for this  
8 success.

9 The systems being regulated are natural  
10 systems. They have a lot of inherent variability. So  
11 the final order should try to recognize this variability  
12 and integrate more flexibility into the regulatory  
13 process wherever possible. Too rigid of an order can be  
14 a detriment and maybe have the opposite of the intended  
15 affect. Next slide, please.

16 I want to spend a little bit of time in the  
17 importance of coalitions. You heard on the May 4th  
18 meetings some of the comments that said the coalitions  
19 have been downplayed a little bit. I think it's  
20 important to recognize, and this is all kind of  
21 foundational on what I have learned over many years of  
22 working in the area, that local knowledge is the best  
23 knowledge.

24 When you compare the two orders, it feels like  
25 those roles and responsibilities of the coalitions have

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1 been diminished. I think they should be rejuvenated, if  
2 you will. It is clearly important to establish and  
3 encourage active coalition involvement, perhaps even  
4 more than what was involved in the regional board order  
5 in my opinion. Roles and responsibilities of the  
6 coalitions should be clearly stated in the order, even  
7 more than what has been previously stated.

8 I mentioned local knowledge is the best  
9 knowledge. Other regulatory programs, such as SGMA, are  
10 built on the foundation of local knowledge and local  
11 control, local decision-making. That should be no  
12 different here.

13 I think it's important to empower the  
14 coalitions more to avoid some of the erosion of trust  
15 and animosity but build collaboration and partnerships.  
16 Those coalitions provide the most efficient mechanisms  
17 of data management reporting, education outreach, board  
18 coalition communication, and ultimately the voice of the  
19 grower. They are the representative entity of the  
20 growers.

21 I think it's important to put the burden on the  
22 coalitions and hold them accountable through what was  
23 mentioned in the May 4th meeting, some sort of auditing  
24 process. The board should have the authority to request  
25 individual grower information through the coalition;

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1 however, in a private manner. No one entity in this  
2 room can overcome this monumental task that we're  
3 embarking on or have been embarking on since 2012 that  
4 require key partnerships and everyone working together.  
5 The coalitions are critical and should be used  
6 aggressively.

7 Some points on data interpretation. One of the  
8 comments that you hear in the science is  
9 misinterpretation of data is arguably more damaging or  
10 detrimental than no interpretation at all. I'm not  
11 saying we shouldn't interpret the data. What I'm saying  
12 is the data should be interpreted and summarized only by  
13 qualified professionals, such as what was mentioned in  
14 the expert panel.

15 Preferably, those qualified professionals  
16 understand the local conditions that are best suited for  
17 the area. Those coalitions and their staff are best  
18 suited as well. Allowing the data to become public and  
19 allowing anyone to interpret the data, and I have run  
20 across this in many cases, can be concerning at a  
21 minimum. Misinterpretation, again, is one of the worst  
22 things that can happen here.

23 I heard a couple of statements at the May 4th  
24 meeting in Sacramento. There's a lot of uncertainty and  
25 gaps in the data. We need to act anyway. Set a number

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1 and work towards it. Even if it's wrong, we'll figure  
2 it out later. Those types of statements carry great  
3 concern for me as an objective scientist. That's not  
4 the way I was trained and how we approach scientific  
5 issues, which this is. Next slide.

6 High and low prioritization, coalitions have  
7 conducted and completed an enormous amount of work.  
8 That is valuable work. In many cases, it's perhaps the  
9 most viable and best summarization of the groundwater  
10 conditions and nitrate conditions within the groundwater  
11 of their individual coalitions.

12 CHAIR MARCUS: Next slide. Got it? Thank you.

13 STUART STYLES: Thank you.

14 High and low prioritization. Thank you.

15 The size and complexity of the area we're  
16 talking about, demands a prioritized approach. It's in  
17 my opinion too big to put a blanket over it and treat it  
18 the same. There are areas of the state that are  
19 probably a higher priority than others and areas within  
20 coalitions, obviously, that are higher priorities than  
21 others, and the coalitions have determined this already  
22 with the magnitude of work they have already conducted.  
23 It's the most timely, efficient, and most importantly,  
24 the most successful way to achieve regulatory  
25 compliance.

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1 Field versus township, next slide please. You  
2 got it. Both are needed. Field level achieves -- the  
3 field level is the component that achieves the balance  
4 of granularity for the action of the grower, coalition  
5 and regulatory level, while providing the power of the  
6 summation at the township level for understanding the  
7 trends and comparisons, and the two previous speakers  
8 said the same thing.

9 This allows for using the information in a  
10 meaningful and effective way. Many coalitions are  
11 managing near or at the field level already. So they  
12 have a lot of that data. I do say near or at. Some are  
13 different, but some are the same. Reporting out at  
14 essentially this level -- and reporting in a summarized  
15 fashion at the township level is the most efficient way  
16 for the regular -- for the community to understand the  
17 data as a whole.

18 This is my last slide. I encourage and was  
19 previously mentioned, integration with other regulatory  
20 programs to realize the efficiencies and data  
21 collection, data interpretation, reporting efficiency,  
22 cost savings, agency collaboration, and most  
23 importantly, the overall success of the program. Thank  
24 you.

25 CHAIR MARCUS: Thank you very much. That was

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1 good.

2 Dr. Mikkelsen.

3 DR. ROB MIKKELSEN: My pleasure to be here  
4 today.

5 I won't get into some of the technical aspects.  
6 We have already heard a lot about that. I want to speak  
7 as a representative of the fertilizer industry. I was a  
8 professor at North Carolina for a number of years and  
9 moved to California to work for the nonprofit group that  
10 is devoted to research and education throughout the  
11 world, the International Plant Nutrition Institute.

12 This nonprofit group is supported by the major  
13 fertilizer companies throughout the world. We don't do  
14 any sales, any promotion. It's just educating people  
15 how to use nutrients the best way. Really, I wanted to  
16 talk about how the fertilizer industry can help with  
17 this overall dilemma that we find ourselves in.

18 You have seen things like this before, the  
19 nitrogen cycle. There's arrows going everywhere. It  
20 looks like Dr. Harter's spaghetti slide in a way. It's  
21 a very complex issue. There's no simple answers, and  
22 you have heard that.

23 CHAIR MARCUS: Steve does a good nitrogen cycle  
24 lecture for me in the car. Every year or so he has to  
25 redo it.

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1 DR. ROB MIKKELSEN: I hope it was a long drive.

2 We're dealing with some really challenging  
3 things. As interesting as the international  
4 organization that I'm a part of, we get to see snapshots  
5 how it's developing in China and Europe and lots of  
6 different places. We're no different than many  
7 countries struggling with the same issues.

8 Several years ago, the fertilizer industry came  
9 up with the concept, the 4R concept. We're pushing that  
10 as an education tool to get people to reevaluate all of  
11 their fertilizer practices, not just nitrogen, but  
12 everything they're doing. That concerns using the right  
13 source of fertilizer, the right rate, the right time,  
14 and put the fertilizer on in the right place.

15 Often, we want to jump right to adjusting the  
16 rate of fertilizer application, and often if you just  
17 tweak that by itself, you may not achieve the goals you  
18 want to have. You need to really consider all of those  
19 things in combination.

20 We really feel like if you get these four  
21 things right and use that as the basis for conversations  
22 with farmers, there's economic advantages for the  
23 farmer. There's environmental advantages, and also some  
24 social advantages. Really, we're talking about social  
25 things as well today. Not just the environmental

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1 things. So the industry is devoting millions of dollars  
2 to research to show applying the 4R concepts can make  
3 headway in the way we want.

4 Next slide, I want to show some examples from  
5 the United States of how we have -- the fertilizer  
6 industry has been proactive in establishing these 4R  
7 principles in areas where there is environmental issues  
8 we're dealing with.

9 First is the KIC, Keep It in the Crop Campaign,  
10 which is in Illinois. There was a nice article that  
11 came out in the General of Environmental Quality showing  
12 the nitrate in the Illinois river has been getting  
13 better over this last five to ten years. We think some  
14 of that is as a result of farmer outreach and farmer  
15 education. Again, showing the simple 4R concepts really  
16 makes a difference.

17 This N-WATCH program, which is an industry  
18 university partnership of measuring how much nitrogen is  
19 in your soil before you put more on in the summer. It's  
20 been a nice partnership. Chesapeake 4R Alliance, this  
21 is really to get fertilizer dealers and farmers engaged  
22 in the conversation. We can't fix everything, but we  
23 can adjust those 4Rs. If we do that, we make headway.

24 The last one, in Ohio, the dealer certification  
25 takes place on Lake Erie where they have had some major

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1 water quality problems. This is to get the individual  
2 fertilizer dealers to say, "Yes, we're going to train  
3 our employees. We're going to have a code of ethics.  
4 We're going to report what we're doing, and we want to  
5 be able to put a sticker on the front of our door  
6 showing we are certified in managing nutrients more  
7 effectively." They're really using this as a marketing  
8 tool, truthfully. They're saying, "We can do a better  
9 job than our competitors down the road." This has been  
10 successful, this industry-led effort.

11 The next one, this is another thing we have  
12 been working on is training certified crop advisors. We  
13 have had some experience with that in California. IPNI  
14 has been very active in training certified crop advisors  
15 and we've recently been able to include a 4R nutrient  
16 management specialist certification. Crop advisors can  
17 now take the extra test showing they have expertise in  
18 nutrient management.

19 Here's an example from Illinois. This farm  
20 dealership is bragging their employees are now 4R  
21 certified and know how to manage nutrients.

22 As Dr. Kimmelshue just mentioned, surveys have  
23 been done, and they say the farmers most closely believe  
24 what they're hearing from their farm advisors. More  
25 than anybody else, it's their trusted farm advisor that

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1 lives down the street. Sometimes this may be the  
2 extension agent. It can be some other people, but it's  
3 that local relationship.

4 So as we're talking about making real  
5 differences, those local relationships really make a  
6 difference. So the coalition concept we have been  
7 talking about is so meaningful where those relationships  
8 can be built where peer-to-peer counseling can go on and  
9 adjustments can be made to improve fertilizer practices.

10 Next slide, please. Quickly, they have been  
11 dealing with some of these things in Europe. I brought  
12 this example from Germany that one of our IPNI  
13 colleagues have been working on. They have decided  
14 their whole country is a vulnerable zone.

15 For the last 20 years, they have been requiring  
16 farmers to do these farm gate budgets. Similar to what  
17 we're talking about now, how much nitrate is on the farm  
18 and how much is being removed. They have approached it  
19 a little bit differently. It's taken 20 years for them  
20 to sort of move along and get the farmers to buy into  
21 this and to not be begrudging all the reporting going  
22 on.

23 I think it's going to be a long-term process,  
24 but I think what we're talking about and proposing is  
25 something we can work towards and really make some

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1 progress. So I guess that illustrated the last slide  
2 that I had.

3 Next slide then. So we have a good basis of  
4 research and science. It's certainly not enough. I  
5 think the fertilizer industry is committed to education,  
6 to developing more tools and resources and really  
7 bringing those certified crop advisors along and  
8 educating farmers so they can really make a difference.

9 We have the outlets to do the awareness and  
10 promotional tools, the partnerships with different  
11 commodity groups. Again, we need some evaluation to  
12 really convince farmers we're making progress, that the  
13 things they're doing makes a difference, and help them  
14 become advocates of making changes in the community.

15 So I think the fertilizer industry has a real  
16 role in this. We're really engaged in other parts of  
17 the country. Some of the things we're talking about,  
18 we're excited about being part of this process. Thank  
19 you.

20 CHAIR MARCUS: Thank you very much. Thanks.  
21 We had a good discussion about the 4Rs at the last  
22 workshop. It was very helpful.

23 DR. ROB MIKKELSEN: Great.

24 CHAIR MARCUS: Mr. Zoldoske.

25 DAVID ZOLDOSKE: I'm Dave Zoldoske. I'm the

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1 director for Center of Irrigation Technology at Fresno  
2 State. My apologies to Clint Eastwood for mutilating  
3 his movie there.

4 Next slide, please. I'm starting out with the  
5 ugly. I'm just going to say the state quota process has  
6 been going on for a long time. It seems like we made a  
7 hard pivot. I understand there's reasons behind that,  
8 but hopefully the process can be cleaned up to reflect  
9 on all the learnings that have gone on there. And  
10 certainly it may have been flawed or appears to have  
11 been flawed. Hopefully, we can make those changes  
12 without losing a lot of the good work that was done.

13 Next, I am a little bit concerned about the  
14 data that's being requested and stuff. Not so much for  
15 research purposes. That might lead to some good. I'm  
16 more concerned data being grabbed for a litigious  
17 reasons. I sort of have a bad feeling in the back of my  
18 head there might be tens of millions of dollars spent on  
19 fighting over things that don't really fix the problem.  
20 I'm a little nervous about that data being out there for  
21 other reasons than for research.

22 I think coalitions are a great thing. Having  
23 been a small farmer myself, there's 21,000 out there or  
24 so under 60 acres. We need a lot of support under these  
25 complex issues. I think if the coalitions go away

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1 because the order drives them in that direction, then I  
2 think we really disenfranchised a lot of small growers.  
3 In particular in the area I live in, there's a lot of  
4 specialty crop farmers. I don't know how they would  
5 survive.

6 Next slide. So the bad. Again, about the  
7 process here, I understand there's rules and regulations  
8 and stuff. I get all that, but we had a great resource  
9 of staff working in Region 5 that spent a lot of time  
10 learning the nuances and to not be able to share that  
11 with the state staff, that's a missed opportunity. I  
12 understand if we try to fix one thing, we might create a  
13 bigger problem by doing something else. I'm pointing it  
14 out. I don't know what can be done about that.

15 Next, we have a division of drinking water. So  
16 I think we kind of have mission creep here. It feels  
17 like we're reaching in from another venue to look at  
18 what's going on with our drinking water. I think,  
19 again, rather than have multiple directions for  
20 information being required, if we go up with the system  
21 that's setup, we do have the Division of Drinking Water.  
22 We have our local public health folks. They probably  
23 should be leading the process. I think they ought to be  
24 involved in the process. I think that would be a good  
25 direction for us.

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1           Next, please. We have heard that from all the  
2 other speakers, maybe yield is something we should be  
3 reconsidering. It sounded like from the slides that was  
4 something being discussed that applied over yield and  
5 then back again to, perhaps, what was being utilized by  
6 the crop.

7           Let's move on to the good stuff here. I was  
8 part of the nitrogen tracking and reporting task force.  
9 Spent quite a bit of time up in Sacramento. There was a  
10 big group of us. It seems like there was 40 or 50.  
11 This is one of the -- probably the lesser known packages  
12 from the report. I bet you most people didn't even know  
13 it was there.

14           I wanted to, just to the last part of there  
15 I'll read that, "Current and future technology adoption  
16 by growers will provide better knowledge and management  
17 in irrigation and water utilization." We did recognize  
18 that, but we were limited to five meetings up there. So  
19 we didn't spend the time to flush that out. I think  
20 we're there.

21           Next slide. Here's what I think is good, I  
22 think we need to continue to have an aggressive  
23 education program. Thomas referred to that. There are  
24 some real keys to managing our groundwater quality, I  
25 think, that's absolutely true. I also agree with the

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1 comments from Stuart about BMPs. I think those are a  
2 box to check, but that doesn't mean we can't have tools  
3 to be making smarter decisions. I think that that  
4 information can be available.

5 We drive our cars with speedometers and drive  
6 our cars with, you know, oil pressure. There's a reason  
7 why with that information and we react to that. I think  
8 the same is true with growers in managing their  
9 irrigation systems. They have better information;  
10 they're going to make better decisions. I think that's  
11 just a common aspect of life.

12 I have to commend the California Department of  
13 Food and Ag, soil health is a really big deal. I think  
14 that gets shortchanged in all this conversation. If we  
15 increase the soil health, we increase the water holding  
16 capacity, less likely to push water down into the root  
17 zone. So let's incorporate all the elements to make for  
18 a system that's easier to manage and more robust. Of  
19 course, distribution, we want it uniformed and timing  
20 amount is critical to this whole process.

21 Okay. Again, as I mentioned earlier, feedback  
22 to the operators, what's going on with their systems, so  
23 that we make adjustments to the system when small  
24 changes of operational efficiencies start to occur,  
25 rather than when some sort of catastrophic event occurs

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1 and we find out that we have been operating all season  
2 and something wasn't quite right.

3 My last slide. So my closing remarks are  
4 really we need to look out as we see, not just our  
5 groundwater quality objectives, but we have SGMA coming,  
6 and I want to add to that. The governor's making water  
7 conservation a way of life May 9th, and he asked the ag  
8 water management plans to be updated by January 10,  
9 2017.

10 We also have CV-SALTS, and I was part of the  
11 SB7X on surface water and measurement and stuff. So we  
12 have all of these -- I'm sure I left some out, but I  
13 think if we take a big picture looking forward at the  
14 state's water management challenges, let's not create  
15 yet another one off requirements. Let's try to  
16 encapsulate through dialogue and timing all of these  
17 elements in a way that, you know, we have one set of  
18 rules.

19 I think everybody would feel more comfortable  
20 with that. I think that any time we have changing rules  
21 going on, nobody likes that. I'm in that awkward age  
22 between denial and glasses.

23 We have state funds around to help with  
24 improving on farm irrigation and water management and  
25 stuff. I think they could be more strategically

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1 targeted toward directing and involving these problems.  
2 I think if they did that narrowed scope, they are  
3 narrowed to things that benefit everybody. I think at  
4 the end of the day, we move towards solving the problem  
5 much quicker.

6 Finally, I think everybody would agree, we want  
7 less confusing requirements. We want to be more  
8 effective, and we also need to make better use of our  
9 limited resources.

10 Thank you for your time today. Appreciate it.

11 CHAIR MARCUS: Thank you for yours.

12 Mr. McKean.

13 MARK MCKEAN: I don't have any slides today,  
14 but if I did, I think it would be a bowl of spaghetti.  
15 Good illustration of the complexity of the issue.

16 Good morning, I am Mark McKean, a  
17 third-generation farmer from Riverdale. Together, with  
18 my two sons, we grow grapes, almonds, processing  
19 tomatoes, cotton, alfalfa and wheat. I'm a member of  
20 the expert panel, as well as the president of the Kings  
21 River Water Quality Coalition.

22 The State Board has suggested onerous changes  
23 to the East San Joaquin order. From the latest  
24 revision, there seems to be little, if any difference,  
25 between the low and high vulnerability. This approach

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1 is an added burden to the coalitions who now have to  
2 educate and bring along the many small farmers in  
3 low-vulnerability areas at the same pace as those with  
4 high-vulnerability areas.

5 Our coalition has nine different languages that  
6 that information needs to be delivered in. Not an easy  
7 task to accomplish. Please keep in mind this is a huge  
8 amount of data to manage. In the proposed order, the  
9 State Board has modified the farm evaluation form, the  
10 nitrogen management plan, and nitrogen management plan  
11 summary report. Now farmers will need to include  
12 information on irrigation methods.

13 One side of me sees this as a reasonable  
14 request; however, there are numerous other variables  
15 that are relevant to accurate analysis and lead me to  
16 request, why irrigation? There are many variables  
17 besides irrigation that can lead to bad conclusions.

18 A common spring thunderstorm over a field can  
19 change the A/R ratio drastically. I remind you that a  
20 very antiquated irrigation system used wisely is better  
21 than a sophisticated system used poorly.

22 The next proposed change requiring all data be  
23 sent to the board causes great concern. Coalitions were  
24 formed to be a service to farmers and the State Board  
25 with the understanding the coalitions could be the

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1 referee of sorts. The referee would deliver the  
2 education and the game rules, as well as a first  
3 contact.

4 If and when there are violations occurring, the  
5 coalitions would be the leading role in doing something  
6 about those issues. If the coalitions are not able to  
7 perform this function, I question their usefulness, and  
8 therefore, their existence. If that function is taken  
9 from the coalitions, we, on the coalition management,  
10 have lived out -- have lied to our constituents. You  
11 will have robbed us of our credibility. I understand  
12 there are different opinions on how to achieve the goal,  
13 but we will need the cooperation and good faith of  
14 farmers to achieve the desired results.

15 May I suggest a mutually agreed upon audit  
16 system that will serve your desired service of  
17 transparency and maintain our relationships with  
18 farmers. Coalitions continue to foster good working  
19 relationships with farmers, and I do not want to damage  
20 that relationship. We are willing to have further  
21 discussions on this idea, if warranted.

22 Coalitions themselves have worked to do --  
23 coalitions themselves have much work to do in  
24 understanding what the reported numbers will mean. I  
25 hope that the data will give information that leads to a

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1 list of best management practice that could be used to  
2 increase the efficiency of nitrogen utilization.

3 My last comment is farmers enrolled in the  
4 program being required to monitor drinking wells. This  
5 to my knowledge has not been proposed previously, at  
6 least in this area. Most situations, farmers are not  
7 making a lot of money renting housing to farmworkers.  
8 If you add additional burden in this arrangement, the  
9 result will be less farmworker housing. This would  
10 result in increased cost to those who least can afford  
11 it.

12 Secondly, many wells will not be monitored  
13 because they are not located on parcels not enrolled in  
14 the coalition because they're not farms. Would it be  
15 fair to require this of one party and not another across  
16 the road? This should not be a coalition  
17 responsibility. If you're not able to get the state and  
18 county drinking water authorities to handle this, why  
19 push it on the coalitions who have questionable  
20 authority to deal with the issue?

21 Lastly, I want to caution the board on how this  
22 data is handled. Put into the wrong hands, the data  
23 gathered could be used against innocent individuals that  
24 can be destroyed -- they could be destroyed defending  
25 themselves. Legal actions usually don't solve water

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1 quality problems. Many farmers are feeling helpless  
2 about their future. Many are struggling to keep up with  
3 the information on water quality and SGMA. As they have  
4 in the past, farmers are willing to do their part.  
5 There has been a lot of regulation being put on their  
6 plate recently, and many of it -- much of it doesn't  
7 make sense to them.

8 In conclusion, I want to thank the board for  
9 coming to Fresno. It is appreciated that you meet on  
10 our side, as well as yours.

11 Any questions for the board or panel?

12 CHAIR MARCUS: Thank you all very much for  
13 joining us and doing -- I know you can each do a half  
14 hour each. I appreciate your crunching it down, even  
15 though it went a little longer than we planned. Still  
16 very helpful.

17 I want to see if my colleagues have any  
18 questions.

19 BOARD MEMBER DORENE D'ADAMO: I have two  
20 questions. First of all, on the -- some of you  
21 mentioned the possibility of -- you can't hear me?

22 So the -- some of you talked about the  
23 potential of an audit system. I believe Dave Zoldoske  
24 had something in there about accountability. So what  
25 I'm wondering is in your thoughts on what the East San

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1 Joaquin Coalition walked us through at our last meeting,  
2 and that had to do with how you handle outliers.

3 So there seems to be, you know, still quite a  
4 bit that we don't know about these values, but when  
5 there are outliers outside of a range, what should be  
6 done with them? Keeping in mind whatever system we end  
7 up with, needs to have a robust component for  
8 accountability. So when the individual is outside the  
9 range as I understand it in year one, the coalition  
10 tries to work with that individual.

11 In year two, maybe working with them on best  
12 management practices, and in year three, the potential  
13 for turning the information over to the Regional Board.  
14 If we don't know exactly what these values mean, how do  
15 you have a robust system for enforcement and  
16 accountability?

17 MARK MCKEAN: I'll take a stab at that one. In  
18 between what you said there, I think there needs to be a  
19 reasonable approach between the coalition and the grower  
20 to explain the numbers.

21 As I mentioned, there are a lot of  
22 game-changing events that have happened in mother nature  
23 that can be explained better in person or by a letter  
24 versus just A/R ratio numbers, but the coalition, at  
25 least in our coalition, the Kings, our plan is to do

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1 that communication back with those outliers. But we  
2 need to communicate how to get better.

3 We don't plan on an enforcement action by any  
4 means. I think after two or three attempts -- I  
5 shouldn't say "I think." After two or three attempts,  
6 if we're not getting someplace, we're handing that  
7 person back to you. That's going to be your issue. We  
8 don't really have the authority to do such, but we're  
9 going to do everything we can between that time of  
10 recognition of an issue and handing it to you to try and  
11 make it better. It would do that individual good, as  
12 well as the coalition good, to become better in that  
13 sense. I don't know if that answers your question.  
14 That's how we plan on attending that.

15 BOARD MEMBER DORENE D'ADAMO: Anyone else?

16 The second has to do with target values, the  
17 establishment of target values. The proposed -- the  
18 staff proposal suggests that the regional boards, in  
19 conjunction with these parts, may be a little unclear to  
20 me, but some role between the coalitions and the  
21 regional boards to develop target values.

22 My question to you all, especially those in the  
23 research community, what's the best way to develop  
24 target values? Recognizing they may serve limited value  
25 because we don't really know because we have a target

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1 value. We don't know depending on soil types, etc.,  
2 what the target values could be used for.

3 DR. THOMAS HARTER: There's a lot of experts.  
4 I'm not sure I'm the right one. From the prospective  
5 from having been on a committee of consultants, the  
6 Regional Water Board, Region 5, I believe it was in 2002  
7 or 2003, to ask that exact question with respect to  
8 dairymen rural management.

9 The result of that deliberation, among about 10  
10 or 15 scientists, was a ratio, A over R ratio range from  
11 1.4 to 1.65. Those of you that have dealt with the  
12 dairy order have heard many times. The process there  
13 was to look at management practices, to look at typical  
14 ratios currently -- achieved at the time, and combine  
15 the field work that some of us were doing, with modeling  
16 work that others were doing, and the modeling work was  
17 led by Dr. Andrew Chang and John Levy UC Riverside at  
18 the time. This was over 12 years ago.

19 It was a combination of field understanding, of  
20 understanding what growers were doing, dairy farmers  
21 were doing, and using cutting edge modeling tools to get  
22 to the answer of the question what is a reasonable ratio  
23 to expect given the tools farmers have available for the  
24 A over R ratio in the particular cropping systems that  
25 they were dealing with.

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1 DR. ROB MIKKELSEN: I want to mention from an  
2 international perspective, the UN global partnership on  
3 nutrient management, are using A over R as a indicator  
4 of nutrient use efficiency. They're using as a global  
5 indicator. We're in good company if we want to use  
6 that. I think for many of the global crops, they're  
7 looking at three or four crops. We have a much more  
8 complex system in California.

9 One thing we might partner with, we don't  
10 know -- we have so many crops, we don't know the  
11 answers. There's a wide -- a big industry of lab  
12 analysis laboratories in California. They do this  
13 routinely. They have hundreds of thousands of analyses  
14 on these things. We ought to engage them. They know  
15 what the nutrient removal is because they're measuring  
16 these samples. They haven't been engaged.

17 It's a well-established industry in California.  
18 We could get close to the right answer pretty quickly  
19 without agonizing over it too much. We would have to  
20 refine it over time.

21 STUART STYLES: The only thing I wanted to add,  
22 I made the comment in my comments earlier. We don't  
23 have the data, the amount of removed in harvest. We're  
24 proposing to take a crop like tomatoes and collect this  
25 data because we don't have this information locally in

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1 California. Maybe it's available in some other  
2 resource, but it hasn't been done in California. We  
3 haven't done it for almonds.

4 Now, the data is available if someone was to  
5 take the time and energy and resources to go out and  
6 document this information. We don't know how tight it  
7 is. We don't know what the standard deviations are if  
8 we can do the correlations. The first step would be to  
9 know what good A/R ratios could be is to get the basic  
10 information out there and get that collected and go to  
11 the next step.

12 An A/R ratio of one is ideal. That's not  
13 totally reasonable. We look for the target value after  
14 getting an initial set of data in. Again, that first  
15 step is to find the resources to go out and collect that  
16 data. It's not basic research. It's more within  
17 commercial fields and getting commercial yields and  
18 seeing what's coming off the fields. We don't know how  
19 tight that information is, how good the variability is.  
20 Maybe it's a thousand fields. We just don't know. We  
21 don't have the information yet.

22 CHAIR MARCUS: Question, one of the things the  
23 expert panel talked about, how it's not appropriate to  
24 use one year's worth of data because of the variability  
25 of what can happen and a reference that you see mirrored

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1 in the staff proposal to hold the data for three years,  
2 is based, I think, on the expert panel in the sense it  
3 takes a few years.

4 How long do you think it will really take to  
5 get enough data, no matter who gets to see it, but how  
6 much -- how many years would it take for that data to  
7 yield more awareness of what's happening, knowing what  
8 crops need, knowing there's variability in years, soils,  
9 etc.?

10 STUART STYLES: I see you're looking at me. I  
11 better answer it.

12 CHAIR MARCUS: You're channeling Dr. Bert, who  
13 was on the expert panel.

14 STUART STYLES: I'll try not to answer for  
15 Dr. Bert, ever. I'll give you my opinion. The  
16 three-year --

17 CHAIR MARCUS: He's listening right now. Your  
18 phone is going to ring. I'm sure.

19 STUART STYLES: He's down in San Diego at a  
20 conference.

21 I know that was one of the reasons for  
22 extending it out is because things can't be shown in a  
23 single year. Plus the idea was if you throw this at the  
24 growers in a single-year format, it's just going to  
25 shock everyone.

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1 One of the ideas was not to get everybody in  
2 that mode where it was all this stuff is kind of  
3 happening all at once. The multi-year format was to get  
4 things to average out. Mostly -- also to give us time  
5 to kind of get our act together on some of these  
6 comments. As experts we're looking for the state, also.  
7 So we know what to give back to recommendations. I will  
8 channel that question with Dr. Bert when we do our  
9 comments back to the board.

10 CHAIR MARCUS: Right, because I understood the  
11 limitation of saying one year doesn't work, so it leaves  
12 three. I guess I'm saying how many more before you all,  
13 as scientists, think you will have data that's going to  
14 be useful? I'm trying to figure out how to take the  
15 data and put it into its most useful place.

16 At a superficial level, as more of a layperson,  
17 it seems something about the data where farmers can kind  
18 of see what other farmers -- you're also using farmer  
19 knowledge, grower knowledge, to figure out what's  
20 reasonable as opposed to it being a scientific directive  
21 from somebody in a lab.

22 STUART STYLES: I can speak from experience on  
23 other projects where we have done this on water use, for  
24 example, in the Oxnard Plain, we put in a ratio. The  
25 growers very quickly, with the four years of drought,

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1 very quickly adopted to the new standard. I would say  
2 within two to three years, it was very quickly, you  
3 know, known and what the outliers were, 1.4 was kind of  
4 our cutoff.

5 We were able to very quickly go into a program  
6 like that and demonstrated to the growers that were  
7 outliers what the issues were, and changes occurred very  
8 quickly because it was enforcement.

9 JOHN KIMMELSHUE: One I think I would like to  
10 expand on with that, it's obviously because it's a  
11 natural system, it's never really going to be perfect;  
12 right? We know this. I think at the May 4th meeting,  
13 there was a presentation given on the A/R ratio  
14 calculated from tomatoes. We saw a wide range of A/R  
15 ratios from tomatoes annual crop; right?

16 Obviously more easy to or easier on a permanent  
17 crop than an annual crop that rotates from one field to  
18 the next, different soil type, different environmental  
19 conditions, perhaps one year to the next, perhaps a  
20 different water supply. I would just caution the board  
21 that, probably, more attention needs to be paid over  
22 longer periods of time. I think three years or four  
23 years is a good starting point, but we can continually  
24 use time to learn more about and refine those A/R ratios  
25 over time.

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1 DR. THOMAS HARTER: I want to add to that. I  
2 hear three questions. One question is how long will it  
3 take the experts or agricultural researchers to come up  
4 with a recommendation on what the ratios may best be and  
5 understand what growers are doing.

6 Another question, I think that's the one  
7 addressed in the proposed order from the State Board  
8 staff is what number are we looking at in terms of  
9 understanding where a farmer might be or a crop might  
10 be. Is it the one year number in the proposal from  
11 staff? It was no, it should be a moving three-year  
12 average. That's a different question, and it speaks to  
13 the year-over-year variability. It speaks to the  
14 spaghetti plot that I showed. The water that goes into  
15 a well is water from many different years with the  
16 younger water at the top of the screen, and the older  
17 water coming at the bottom of the screen.

18 In looking at the long-range impact, as opposed  
19 to the specific year impact, is consistent with the  
20 impact to wells is not from a particular event but from  
21 the accumulation of events from a two-, three-, or  
22 five-year period.

23 CHAIR MARCUS: Other questions? That was  
24 helpful.

25 BOARD MEMBER STEVEN MOORE: Thanks to the panel

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1 and everybody for making time to attend this meeting.

2 I'm Steve Moore, Water Board member.

3 We're talking about audits at the last

4 workshop. Mr. McKean talked about maybe refining it.

5 I'm wondering if you have any ideas how to enhance what

6 the Regional Board is doing under the existing order? I

7 have been told under many conversations, quote/unquote,

8 "auditing is occurring." You can call it one thing or

9 another.

10 Have you thought about or had discussions about

11 how the current order could be enhanced to make the

12 auditing process more transparent and have a more

13 predictable framework for more certainty for the

14 regulations community, more transparency for those that

15 are concerned about preventing nitrogen accumulation in

16 groundwater?

17 MARK MCKEAN: I must admit to you the idea is

18 somewhat new, and I don't have a lot of details on. It

19 is one I would invite State Board staff and coalitions

20 to be able to sit down and throw out what could and what

21 could not work. You might say, with in mind, the

22 protection of the data from all sources. I really

23 haven't got details for you.

24 BOARD MEMBER STEVEN MOORE: That's okay. The

25 idea -- I think it makes a lot of sense, if we can

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1 define the process together, better, and create the  
2 right amount of randomness to it so it has that validity  
3 for not being overly targeted but more objective, less  
4 subjective in terms of how it's implemented. It will  
5 benefit all of those that are affected by it.

6           There is some confusion in this area. It's  
7 interesting because I have worked more in the central  
8 coast than this part of the state, the issue of domestic  
9 well sampling. I'm wondering even if staff, you can  
10 explain briefly what are the existing authorities and  
11 gaps with the domestic well sampling program?

12           Our division of drinking water regulates down  
13 to 15 connections, and then there's the state smalls,  
14 which are five to 15 connections to a well, and then  
15 there's less than five connections. And different  
16 counties have different authorities in terms of when the  
17 sampling is done, property, sale, or if there's a new  
18 tenant.

19           If these gaps -- everyone here wants safe  
20 drinking water for their communities they're around.  
21 There's no question of that. The question here is  
22 what's the frequency of the sampling, and what is the  
23 state and the county already doing? And where are the  
24 gaps, and why is there so much unknown information now?

25           DARRIN POLHEMUS: Darrin Polhemus, Deputy

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1 Director for the State Water Board.

2 You pretty much summarized in your question  
3 kind of the whole gamut there. I'll start at the  
4 bottom, which is individual private wells have no  
5 regulatory agency overseeing them whatsoever. It's at  
6 the discretion of the individual private owner to know  
7 what their water is, to have it tested and so forth.

8 So there's no counties that step in. Some  
9 counties have ordinances for a property exchange test,  
10 but even that's very few in California. It's really  
11 kind of an owner beware, on your own regard.

12 As you mentioned, the regulation component  
13 comes in at 14 connections as well. There are some  
14 counties that regulate between four and 14 homes  
15 connected to a single well becomes a public water  
16 system, a state water small system at that point.  
17 Fifteen and above are covered by the State Drinking  
18 Water Act passed nationally, that the state implements  
19 for the State Water Board. Those are for our considered  
20 small systems on the state regulatory structure.

21 So there's a limited testing that occurs on a  
22 four connection to the 14 by some counties, but we have  
23 data on what the amount of that is. And it's very  
24 limited as well.

25 BOARD MEMBER STEVEN MOORE: In the central

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1 coast, there's a different order of magnitude. Is that  
2 not true in terms of the number of domestic wells? The  
3 Regional Board staff and the coalitions on the central  
4 coast have made a valiant attempt and successfully,  
5 actually, characterized a lot of domestic wells near or  
6 on farms, but that's a different order of magnitude than  
7 what we're dealing with here.

8 DARRIN POLHEMUS: Certainly. I think from an  
9 aerial extent, the density of wells in the -- in all ag  
10 areas can be somewhat similar. Certainly, the ag areas  
11 on the central coast are smaller in their total extent;  
12 therefore, the number would be greatly reduced as to the  
13 number of domestic wells scattered throughout the area.

14 I don't have a number for you on what it is.  
15 I'm sure it's several orders of magnitude just knowing  
16 the San Joaquin Valley is much bigger than the Salinas  
17 Valley. It's a much broader extent.

18 BOARD MEMBER STEVEN MOORE: Yes, there are  
19 differences in our state.

20 With the high -- to the panel, the proposed  
21 removal of the high/low vulnerability zones. On the one  
22 hand, we want to -- as you have all articulated, we're  
23 learning how to do this together. It's an evolving  
24 practice of nitrogen management, along with irrigation  
25 management, but we do need to prioritize. There's no

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1 question.

2 If we remove the high/low vulnerability, is  
3 there room in the proposed order for the coalitions to  
4 have enough flexibility to create priorities for growers  
5 to collect information?

6 MARK MCKEAN: The expert panel had a  
7 conversation about this. One of the main reasons for  
8 designation of low and high is because we knew there had  
9 to be some priorities set. In setting those priorities,  
10 that seemed like a reasonable designation.

11 The work of the coalitions is huge. I'm not  
12 going to kid you. It's a big undertaking. It seems  
13 only reasonable to approach the areas of which we have  
14 known problems and do as much as you can there. It's  
15 not to say we're ignoring the other areas, but I just --  
16 the coalitions' responsibilities here are very big.  
17 That's, I think, a reasonable approach to doing that.

18 The new order, obviously, throws out the high  
19 and low. There really is no difference, per se. That  
20 is -- that's the main reason for that, in my opinion. I  
21 speak from the expert panel or the coalitions as well,  
22 we need to focus on where the issues are the biggest.

23 BOARD MEMBER STEVEN MOORE: Mr. Kimmelshue, you  
24 mentioned --

25 JOEL KIMMELSHUE: They have a term in farming,

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1 do the long rows first and do the short rows later. I  
2 agree with Mark in that we have done, and I mentioned in  
3 my talk, there has been a lot of work done. And no  
4 summarization has been done like the coalitions have  
5 conducted in many of the areas already.

6 I'm familiar with one coalition in particular  
7 took into account soil type irrigation method, crop  
8 type, groundwater concentration, depth to groundwater.  
9 Many, if not all the coalitions, did something very  
10 similar. Those types of efforts have not been conducted  
11 previously to my knowledge, in that large of extent of  
12 area across the Central Valley.

13 I think those high- and low-vulnerability areas  
14 absolutely should be used for prioritization. I think  
15 over time, maybe we can see trends in that area, too,  
16 with regards to areas in different parts of the valley  
17 and in different parts of coalitions that we can say,  
18 you know, we really don't see any issues here at all.  
19 We should focus our efforts over there instead and be  
20 more strategic in how we approach it.

21 In the end, you get more effective success with  
22 that type of approach, rather than a blanket approach.

23 STUART STYLES: I'm going to chime in real  
24 quick. I know teaching irrigation, this is a common  
25 thing we say. Basically, nitrate leaching is a fact of

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1 life for all irrigation. So the plans should apply to  
2 all. That was kind of the approach we have always  
3 taken.

4 With that said, you know, when a coalition is  
5 trying to target key areas, the high and low risk is  
6 actually good because you can focus on, you know, kind  
7 of where the greatest needs are. We're not saying  
8 abandon it, but the plans should apply to everyone.

9 That was a recommendation out of the TRIC. I  
10 know Charles probably brought that to the table  
11 strongly, but I'm agreeing the high and low can be used  
12 by the coalitions for targeting things.

13 BOARD MEMBER STEVEN MOORE: There's a balance  
14 there. I know you were talking about it. There's the  
15 case of rice, which has a layer of prevention of nitrate  
16 movement into groundwater. We're looking at that.

17 One more last thing because, Mr. Mikkelsen, you  
18 brought the international perspective and I appreciate  
19 it. In terms of surface water improvements that have  
20 been documented through targeted work in the Illinois  
21 River Basin and you brought the Germany example. Have  
22 you seen any parallel monitoring efforts in groundwater  
23 that has shown improvement around, you know, targeting  
24 nitrogen management efforts?

25 DR. ROB MIKKELSEN: I think we're taking the

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1 lead in the groundwater efforts. Most of the focus on  
2 nutrient management has been on surface waters where the  
3 impacts are more immediate, and the improvement is more  
4 immediate. We're looking at a much longer term, but I  
5 think the principles still apply that we have to be more  
6 patient in achieving results that we want. We know we  
7 can make progress on our nutrient management. I think  
8 we're all on board with that.

9 DR. THOMAS HARTER: If I can chime in, this is  
10 Thomas Harter. The European Union has had the nitrate  
11 directive since 1980 or 1985. It's now been dealt with  
12 on what you call the water frame directive that takes  
13 into account groundwater and surface water in quality  
14 and quantity. It's a very large integrated framework.

15 The two countries that have among the highest  
16 nitrogen losses to both groundwater and surface water  
17 are the Netherlands and Denmark, and Northern Germany as  
18 part of that as well, and parts in France. The  
19 Netherlands have probably done the most science work on  
20 this and also engaged growers most intensively in the  
21 process.

22 In the last two or three years, there have been  
23 a number of publications that have tried to get at  
24 exactly the question you are asking about, has the  
25 nitrate directive in its 30 years of existence, been in

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1 any way successful?

2 Europe is trying to get to what they call good  
3 status in their water bodies, groundwater or surface  
4 water, by 2015. They go through two six-year  
5 extensions -- seven-year extensions through 2022 and  
6 2029, and there are a few that have obtained that good  
7 status. Germany has about a 33 percent -- a 66 percent  
8 compliance rate on that good status. There's a third of  
9 groundwater bodies that are not meeting good status  
10 currently. Most of that because of nitrate.

11 The Dutch and the Danish have in fact been able  
12 to show they are turning around the nitrate ship to  
13 where they are actually reducing with management  
14 practices and programs, and they have gone through a  
15 number of different regulatory programs over the last 30  
16 years, are in fact -- are showing results in terms of  
17 their groundwater concentrations. It's not a process  
18 that happens overnight. It's not a process that's very  
19 clear-cut is what comes out of the data. The trends are  
20 such that there is a strong indication that the programs  
21 are in fact successful in those two countries.

22 BOARD MEMBER STEVEN MOORE: Thank you.

23 DR. ROB MIKKELSEN: Much of that impact is due  
24 to animal waste. It's a little different than what  
25 we're dealing with here, manure disposal in groundwater,

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1 I think, the principles are true. I have to be patient  
2 and keep moving in the right direction.

3 BOARD MEMBER DORENE D'ADAMO: Dr. Harter, could  
4 you provide us with additional information on those  
5 programs?

6 DR. THOMAS HARTER: Absolutely.

7 CHAIR MARCUS: That would be helpful. Great,  
8 thank you.

9 I think in deference to the time, I'm going to  
10 take a -- I don't know what the facilities are like. I  
11 didn't check it out. There are a lot of people here.  
12 Does ten minutes work for a break or no?

13 JEANINE TOWNSEND: The women's restroom is out  
14 the corner and to the right.

15 CHAIR MARCUS: Let's try for ten because I want  
16 to get through the panels this morning and get started  
17 with the public comment. I know folks have other things  
18 to do. So we'll probably take a latish lunch break.  
19 Let's try for a ten-minute coffee break.

20 (Recess taken)

21 CHAIR MARCUS: That ran a little long. I know  
22 there are some people that need to go soon. With your  
23 indulgence, on the early side -- there's a lot of people  
24 that wish to speak. Let Ms. Townsend know, and I'll  
25 take a few speakers between panels and may ask

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1 indulgence from the South San Joaquin panel because I  
2 know they'll stay to let us to take public speakers and  
3 perhaps have them speak after lunch. We will be here,  
4 obviously, all day.

5 If you need to leave early in the afternoon,  
6 late morning, early, please let Ms. Townsend know, and  
7 I'll put you between panels.

8 We now have a couple of panels organized by the  
9 Community Water Center. One on well testing and cost of  
10 nitrate for 15 minutes. Can I ask that panel to come on  
11 up? I know there's a Power Point for this. Go ahead  
12 and introduce yourself, slowly, for the court reporter  
13 and interpreter.

14 GERRARD TINOCO: We're still waiting on  
15 somebody else. My name is Gerrard Tinoco. I'm an  
16 employee for the Community Water Center, and we have a  
17 couple of residents also here. I'll let them introduce  
18 themselves. You can go.

19 LUCY HERNANDEZ: My name is Lucy Hernandez and  
20 I'm from the west Goshen community.

21 GERRARD TINOCO: First of all, my name is  
22 Gerrard Tinoco. Thank you for having me here. I'm here  
23 to speak in support of one part of the draft order.  
24 Specifically the domestic well testing portion of it.

25 I wanted to share a quick overview of Community

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1 Water Center private well testing program that we just  
2 recently completed, and share a little bit about what we  
3 learned about nitrate pollution, the feasibility of it,  
4 and just testing in general. I prepared a very brief  
5 Power Point to kind of give you a visual of what I'm  
6 talking about.

7 We can go to the next slide. CWC's program, we  
8 tested 32 domestic wells. As mentioned before, they  
9 don't have any over sites. A lot of the residents we  
10 outreached to didn't even know they were supposed to  
11 sample their well water. Most times, their water came  
12 out looking very healthy and very clear. So there was  
13 no reason for them to suspect there was something wrong  
14 with the water.

15 As you know, nitrate contamination is odorless,  
16 colorless. You can't tell it's there unless you test  
17 for it. A lot of people didn't have reason to be  
18 suspicious about their water quality. We offer this  
19 service and tested for eight contaminants, one of which  
20 was nitrates. We provided this, again, to give  
21 residents a peace of mind, and we gave them further  
22 information about what it was once we got the results.

23 The next slide, we went out and -- it was  
24 pretty -- I had to get trained to handle the sampling.  
25 Other samples, arsenic, TCP, those required very careful

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1 procedural, you know, handling of them. They have  
2 harmful preservatives in them such as nitric acid and  
3 hydrochloric acid.

4 Nitric sampling is very simple. There's no  
5 preservatives. It's basically just filling up a bottle  
6 of water. It's one of the most easy tests to perform.  
7 Disinfect the well head, and take a lot of precautions  
8 when doing that sampling. But nitrates is pretty basic.  
9 We learned that nitrogen is pretty cheap to test for.  
10 It usually runs about \$15. Most labs are pretty  
11 flexible.

12 We got a deal with BC Laboratories in  
13 Bakersfield. They cut it down to \$7 for us. I know  
14 another concern was just the logistics of it. Most labs  
15 offer a complementary courier service. They will pick  
16 up the samples. You just have to fill up the water  
17 bottle and have it available to pick up.

18 Moving on to the nitrate contamination and  
19 things we learned, you know, nine wells exceeded the  
20 MCL. Another well was pretty close to the MCL 45. It  
21 was at 43. Over 50 percent of the wells we tested were  
22 above 20 parts per million. There's a high number of  
23 them.

24 Once we got back the results, we can recommend  
25 people to buy bottled water or a nitrate filter in their

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1 homes. Unfortunately, the State of California only  
2 certifies filters up to 108 parts per million. There  
3 was instances where some of the people we tested had  
4 nitrates in concentrations above that amount.

5 I attached a graph of our findings on the next  
6 slide. You can see there, the green bar represents the  
7 MCL, which is 45. You can see how many of them exceeded  
8 the MCL. Those two high concentrations, you can't even  
9 get an in-home residential filter for those because the  
10 concentration is so high. We would obviously recommend  
11 those people to get water service or things like that.  
12 We're also donating nonprofit to upload information to  
13 get results. You can go on there for results.

14 As far as results for the other contaminants we  
15 tested for, this is a crucial part we are very  
16 supportive of. Not only is it an additional data point  
17 on monitoring, but also giving the people information  
18 that they don't receive anywhere else. They don't get  
19 an annual CCR report. They have no other way to really  
20 know what's in their water, unless they test for it.

21 That being said, I'm going to let the residents  
22 also tell their stories about how nitrate contamination  
23 affects them personally.

24 LUCY HERNANDEZ: Hello. Thank you for having  
25 me here today. Like I said, my name is Lucy Hernandez.

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1 I live in the west Goshen community for the past ten  
2 years. When we found out we had nitrates in our water,  
3 it was a bad position. We didn't know what to do and  
4 what that meant to us. We were scared for our children.

5 We started purchasing water bottles to drink  
6 and cook. It was very expensive. We pay \$75 for our  
7 water bill, and we spent about \$80 to \$100 a month  
8 buying water bottles. That really impacted our  
9 families. We got to the point where we had to tell our  
10 kids to stop drinking a lot of water because we knew we  
11 run out of water, that meant another trip to the store  
12 to buy more water.

13 Most of the parents in our community that we  
14 talked to, they would only give the water bottle to  
15 children and use the tap water because they wanted to  
16 save a little bit of money for food, instead of buying  
17 water bottle for the adults. That really get us sad  
18 because we're the parents. We need to take care of  
19 ourselves because we need to take care of our children,  
20 not just take care of our children by giving them the  
21 water bottle. They will say, you know, like I said,  
22 they would only protect their children from drinking the  
23 tap water so they wouldn't get sick.

24 We are in favor of an effective irrigated  
25 agricultural regulations. We need a stronger program to

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1 reduce the nitrate contamination and to protect our  
2 agricultural communities. I'm glad to say we are free  
3 of nitrates now, but I support our neighbor communities  
4 that have nitrates in their communities. Let's work in  
5 a long-term solution for all of California. Safe  
6 drinking water is the law. Let's implement it now.  
7 Thank you.

8 CHAIR MARCUS: Thank you very much.  
9 Sorry, we got started without a lot of warning.  
10 Glad you joined us.

11 GUSTAVO CHAVEZ: My name is Gustavo Chavez, and  
12 I live in Porterville. I have lived in this place for  
13 12 years. I know we had the retractor of the water  
14 since I lived there. Last year I find out that some  
15 company or somebody went and checked my water. They  
16 said it's real contaminated. They said 108 on the  
17 retractor. I live in the middle of the field, a dairy.  
18 I move off this property because I have -- I think I was  
19 one of the -- the best place for my family, I guess is  
20 the words.

21 I don't know what to do. I know that I have  
22 contaminants in the water. So I have been spending a  
23 lot of money. I have quite a few kids raising up or  
24 living. That's my -- but it's -- it's real dangerous,  
25 the water that we had. And that's all I -- I mean --

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1 that's all I can say, you know? Thank you.

2 CHAIR MARCUS: Thank you. Thank you very much.

3 Also, thank you. Interesting about the testing  
4 and the cost for nitrogen as opposed to other things.  
5 It would be interesting, I'm sure, there will be a  
6 discussion of that.

7 Just so folks realize, I believe, and correct  
8 me if I'm wrong, staff, part of the thinking in the  
9 central coast order, as well as in this order, is that  
10 because dealing with nitrates will be long term, sort of  
11 it's kind of in exchange for being in a longer-term  
12 process.

13 We make sure the most immediate problem is  
14 folks being exposed to heavy amounts of nitrate that  
15 they would not even know about, gets taken care of, that  
16 allows a lot of us to sleep a little better at night.

17 Folks have raised who should be doing that.  
18 Right now in California, we're trying to hobble together  
19 everybody we can in many regards so we buy the time it  
20 takes for the long-term issue. Thank you for raising  
21 that. Thank you for doing that.

22 GERRARD TINOCO: We want to be viewed as a  
23 resource, the Community Water Center. Whatever we can  
24 do to help, we're more than willing to do that.

25 KEITH FREITAS: Is that a scientific testing,

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1 Felecia? How do we know that wells weren't tested from  
2 septic tanks, individual septic tanks, that are within  
3 100 feet of the well? How do you know it's not an  
4 individual septic system and that was tested? There's  
5 no basis for that. They have no data or information  
6 that tells us where the proximity of the source of that  
7 nitrogen is from.

8 CHAIR MARCUS: We'll get to this, Keith. The  
9 issue is just to let people know. The issue isn't to  
10 assess or do anything regulatory. It's just so people  
11 know.

12 KEITH FREITAS: Okay.

13 GERRARD TINOCO: We collected field sheets. We  
14 took pictures of the well sites. We were trained by BC  
15 Samples to process samples and collect samples. We were  
16 funded by the state to do this private well testing  
17 program. We follow a very rigid set of standards.  
18 Those are online that you can see for yourselves. Like  
19 I said, GeoTracker, you can see all the results and the  
20 protocol we used to sample these sites.

21 CHAIR MARCUS: You had a question?

22 BOARD MEMBER FRANCES SPIVY-WEBER: Frances  
23 Spivy-Weber, I'm a board member.

24 What kind of outreach did you do -- how did you  
25 choose -- how did you know where to go to do the

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1 testing?

2 GERRARD TINOCO: There was several motivating  
3 factors that we kind of looked for. We were working in  
4 the northern Tulare County for the regionalization  
5 project. We wanted to give people information about  
6 their water quality to see if it would benefit  
7 themselves to connect to that regional project or they  
8 wanted to say on a domestic well.

9 We did a lot of outreach, door to door, asking  
10 people if they wanted to participate in the program. We  
11 also did the same thing in east Porterville, in the  
12 wells that actually had water for us to test, if it  
13 would be beneficial for them to connect to the new  
14 project going on there, that would like to continue on  
15 the domestic well. We're giving them information to  
16 make decisions for themselves.

17 We tested a couple in Fresno and Kern County.  
18 Just out of basic interest, they came to us. We offered  
19 to sample their well.

20 BOARD MEMBER DORENE D'ADAMO: There we go.  
21 Thank you for this information. Is the testing ongoing,  
22 or is this just the 32 tests?

23 GERRARD TINOCO: For now, this is, like, a --  
24 we had funding for this amount. Right now, we aren't  
25 actively outreaching. When people come to us or they

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1 hear about the program and are interested, we keep them  
2 in mind. We have their contact stored in case we get  
3 further funding on a later -- at a later date to do.  
4 Right now, we're no longer sampling.

5 BOARD MEMBER DORENE D'ADAMO: How much was the  
6 grant?

7 GERRARD TINOCO: I didn't deal with the  
8 finances myself. I can ask my colead, and we can get  
9 back to you with those numbers.

10 BOARD MEMBER DORENE D'ADAMO: Yeah, just a  
11 little more information about the program, how much went  
12 in to your budget.. I'm curious about what it would cost  
13 to run, obviously, a larger program would be more  
14 involved. This is really interesting.

15 You have a slide here about testing for other  
16 contaminants. Do you have that information or could you  
17 provide it to us? Did you test for 123TCP, arsenic --

18 GERRARD TINOCO: Yeah. So the contaminants we  
19 tested for were DBCP, 123TCP, uranium, chromium,  
20 arsenics, nitrates, ecoli and bacteria. All that  
21 information is the GeoTracker GAMA site, or I handled  
22 the data management on CWC's part. I can make that  
23 available to you if you would like to see that as well.

24 We also measured where we were able to, we were  
25 able to measure the depth to water, It wasn't at every

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1 well because some well sites were constructed  
2 differently. We're using a sonic sounder, which we got  
3 trained to use. Where available, we were able to  
4 measure the depth to the well water.

5 BOARD MEMBER DORENE D'ADAMO: Thank you.

6 CHAIR MARCUS: Thank you very much. I'll call  
7 the next CWC panel.

8 DEBBIE ORES: Good morning, board members my  
9 name is Debbie Ores. I'm here with Community Water  
10 Center. I'm doing a quick big picture look at this. We  
11 support the organization of a strong and effective  
12 irrigated lands regulatory program. That actively works  
13 to prevent groundwater pollution by agriculture, so  
14 communities are no longer facing nitrate contamination  
15 in their water.

16 The framework needs transparent data and  
17 on-farm domestic well testing in order to better  
18 understand nitrate contamination and needs to have some  
19 sort of mechanism to provide potable water to these  
20 communities that are impacted.

21 There's communities throughout the Central  
22 Valley impacted by nitrate contamination, rendering the  
23 water useless. As you saw from some of our slides  
24 earlier. For small water systems, this can mean  
25 expensive treatment to deliver potable water to the

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1 residents. Those customers can't always afford the  
2 increased costs.

3 For private well owners, the solution isn't as  
4 simple. For some it means drilling other deeper wells.  
5 That's beyond the means of many residents. The other  
6 option is expensive treatment options or buying  
7 replacement water. The thing that connects everyone,  
8 regardless of whether you're a system or private well,  
9 is that the residents are paying the costs of nitrate  
10 contamination, not the polluters themselves.

11 In our previous panel, you heard from residents  
12 impacted by nitrate contamination. On panel with me now  
13 is residents that are not currently impacted, but  
14 without a strong framework, they will join the people  
15 impacted by nitrate contamination. Without regulations,  
16 which of course are best management practices, allow  
17 transparent data and provide means for reliable  
18 solutions for communities without safe drinking water,  
19 the well being of people in the Central Valley will  
20 continue to suffer.

21 This order needs to create an effective  
22 framework to prevent further nitrate contamination  
23 before the wells can no longer support the communities  
24 or agriculture. I will leave the rest of my time to the  
25 residents here with me.

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1           ANDREA GARCIA: Buenos dias. My name is Andrea.  
2           Garcia.

3           THE INTERPRETER: I am up here to provide  
4           translation.

5           ANDREA GARCIA: Good morning. My name is  
6           Andrea Garcia, and I'm from the Porterville area. My  
7           community, many like mine, are very close to an  
8           agricultural canal. I have been living in the same area  
9           for 40 years. One of our community's wells had to be  
10          closed because it was too contaminated.

11          Our new well also currently has nitrate  
12          contamination equally, and they run tests every two or  
13          three years. It's been over a year since we have been  
14          given information about our water quality and our  
15          children are drinking the water. Children have been  
16          sick in our community. There's frequently more  
17          contamination.

18          We don't want to affect anybody, no farmer.  
19          We're well aware they need their agricultural chemicals  
20          and pesticides to continue, but we would like them to  
21          make an effort, that both the farmers and the companies  
22          selling the chemicals look for alternatives, because the  
23          people who provide these chemicals to them, essentially  
24          tell them to use more and more to fertilize their crops  
25          and kill pests.

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1           They also tell them that you're not going to  
2   impact people with these chemicals. We see to the  
3   contrary. I, myself, am a fieldworker. Every day I see  
4   my fellow fieldworkers sick with stomachaches. So we  
5   would just like to ask the farmers of the Central Valley  
6   to work with us and help protect the communities and the  
7   fieldworkers.

8           We want to support each other so that we can  
9   all work together, helping each other to protect our  
10   water, our land, and our air that we have been  
11   contaminating for years. We just want everybody to  
12   support each other, and we don't want anybody to lose.  
13   We just want farmers to put themselves in our shoes and  
14   understand the workers drink contaminated water, that  
15   our children go to daycare or school where they drink  
16   contaminated water. They know that we don't earn enough  
17   money -- we don't earn enough money to be purchasing  
18   bottled water and also paying a water bill.

19           We want to thank the board for coming to our  
20   area. We hope that nobody is impacted and we all help  
21   to support each other. Thank you.

22           VERONICA SOLIS: My name is Veronica Solis.  
23   I'm a member of the Agua Coalition. I have lived in the  
24   Cutler/Orosi area for 13 or so years. Our communities  
25   have been highly impacted by chemicals in our water,

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1 nitrates among others, DBCP. I know that they haven't  
2 used DBCP for many, many years, but it's still in our  
3 water. It's very difficult to remove from the soil.

4 What I'm trying to say is if we continue to  
5 allow contamination of our groundwater, we're never  
6 going to deal with the situation and deal with it for  
7 years and years to come. I want to emphasize what my  
8 colleague said that we're not here to be against the  
9 farmers. We're not here to be against the packing  
10 houses. We all depend on the local agricultural economy  
11 for jobs as well, but if the workers in the fields, in  
12 the packing houses were healthier, they would probably  
13 yield more effective labor.

14 Another thing is in Orosi High School, where  
15 Veronica's son attends, they had to close the well two  
16 years ago because of nitrate contamination. On top of  
17 the cost of having to purchase water, we have to send  
18 our kids to school with bottled water because we can't  
19 trust the water during recess and sporting activities is  
20 safe to drink.

21 We're here just to let you know from the other  
22 side what it looks like, what's to be impacted, and to  
23 remind you that it's your job to put an end -- to  
24 support an effective regulation of how and where  
25 chemicals are used. So some time in the future all of

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1 us can sit at a table with a glass of clean water and  
2 raise the glass and cheers with a glass of safe drinking  
3 water. Thank you so much for your time and hearing us.

4 SIMONE MAGANA: Good afternoon. My name is  
5 Simone Magana, and I'm the owner of a private well.  
6 Last -- our well dried out in a drought, almost two  
7 years without any water. When we bought the first  
8 house, the well had contaminated water. We lived in the  
9 house for 40 years, and we didn't know the water  
10 contaminated were also fieldworkers.

11 For the 40 years, we were drinking that water  
12 and didn't know it was contaminated until we did finally  
13 find out the water was contaminated and purchased water  
14 bottles to drink. We were able to get the funding to  
15 drill a new well once the first is dry.

16 We don't know this one is safe. I suspect it's  
17 not so we don't drink that water either. We're asking  
18 for is safe drinking water and asking for better control  
19 of the chemicals used in ag. We all have to work and  
20 work together so ag is able to reduce the pollution in  
21 contamination. Thank you very much for hearing us  
22 today.

23 CHAIR MARCUS: Thank you for joining us. Thank  
24 you very much. Thank you for taking the time to join  
25 us.

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1 I'm going to move to some of the speaker cards  
2 that have to go. We're going to set it for three  
3 minutes each. We're going out of order. I'll call out  
4 three of them so you have a sense. It looks like you  
5 can go to either one of the podiums. I'll keep doing it  
6 in three so you will have notice ahead of time. Ron  
7 Ratto who may have left or may still be here. Oh, darn.

8 Greg Mussen, followed by Joe Scoto from  
9 Riverside County Farm Bureau and Jennifer Markarion from  
10 Markarion Family Limited Farm Partnership.

11 Mr. Musson, go ahead.

12 GREG MUSSON: My name is Greg Musson, and I'm  
13 the president of GAR Togeelian, Incorporated. We're an  
14 ag chemical fertilizer company. We have been passing  
15 out paychecks for 70 years. Employ roughly about 110  
16 people in the Reedley area. We do business from Delano  
17 to Chowchilla. We deal in close to 300 different crops,  
18 1400 growers we do business with. Mostly family farms,  
19 which is changing, by the way. We have seen a mass  
20 exodus of growers, small growers in particular, 70, 80,  
21 100 years some of them their family has been in farming.  
22 They're getting out.

23 The regulations are insurmountable. The  
24 requirements being put upon them are insurmountable.  
25 Many of the farms don't have 100 people to help with the

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1 regulatory stuff. They deal with the small number of  
2 people on that farm. It's just getting impossible to do  
3 that business today. The level of expertise that's  
4 being required.

5 I'm here to tell you I really think you guys  
6 need to consider the money involved on this stuff. I  
7 think you need to look at -- we have issues over here  
8 where we're talking about well testing on an ongoing  
9 basis forever and ever; right? How about instead of  
10 buying bottled water, they put in a \$50 unit to get rid  
11 of that pollutant if they're concerned about the  
12 nitrogen; right? Something that's a little bit more  
13 common sense. Something that businesses have to deal  
14 with all the time. You are putting farmers out of  
15 business.

16 The solution to a lot of this problem certainly  
17 is groundwater and its depletion that's going on. I  
18 think a lot of that can be remedied by turning on the  
19 pumps, sending water down here to our part of the  
20 valley. As you know, there's a lot of pressure out of  
21 the Sacramento area to continue to let them pollute that  
22 delta.

23 The water being sent down here -- not being  
24 sent down here is not to save fish, it's so they can  
25 meet their water quality objectives up there. You're

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1 going to be talking, I think next month, about a  
2 municipality that your staff has recommended to continue  
3 to allow Sacramento an exemption on them putting  
4 partially treated sewage into the delta. I find that  
5 outrageous.

6 It's time for them to start meeting all the  
7 other requirements that we have. Fresno, this city,  
8 \$500 million we just spent on trying to get our sewage  
9 treatment plant up and to standards that are needed.  
10 Sacramento needs to do the same. Lodi, Stockton, all of  
11 those towns, to continue to allow them to be exempted  
12 from the requirements is not helping the fish in the  
13 delta. The fish aren't getting better.

14 You heard about the nitrogen issue. Thirty  
15 years they have been doing this in Europe. They have no  
16 idea whether or not it works. Think about, really, what  
17 you're bringing to the table here. You're  
18 potentially -- you're looking at 300 different crops  
19 that we grow here in the valley that supplies over half  
20 the fresh fruits and vegetables in the nation. You guys  
21 have to think about that. Make certain you're not going  
22 to take away what the consumers in this country, which  
23 is a safe, plentiful, and affordable food supply.

24 CHAIR MARCUS: That is the balance we are  
25 charged with. It doesn't beep like the other one. We

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1 have to look. Thank you.

2 Just, for the record, we ordered Sacramento to  
3 upgrade. It's a one and a half billion dollar upgrade.  
4 I'm not sure what the thing is next month, but they're  
5 not being exempted. It's temperature or something;  
6 right? We haven't done that yet.

7 GREG MUSSON: Notice of public meeting in  
8 occurrence with Central Regional Water Quality --

9 CHAIR MARCUS: You don't need to read it. We  
10 have an item on there, thermal, but they are upgrading.

11 KEITH FREITAS: Explain Thermal, Felicia. What  
12 does it mean?

13 CHAIR MARCUS: This is not the hearing for  
14 that. I'm sorry, Keith. We can have a conversation at  
15 any other time. I have to get through the speakers on  
16 this particular matter today.

17 Mr. Scoto, followed by Ms. Markarion, followed  
18 by Tom Rogers.

19 JOE SCOTO: Joe Scoto. Thank you for giving me  
20 the opportunity to speak today. I'm a third-generation  
21 farmer in Merced County. Our family grows six different  
22 commodities with over 2700 acres, all enrolled in the  
23 East Side Water Quality Coalition since the beginning.

24 It's very disturbing to me and the rest of the  
25 members of the coalition that we have neighbors and

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1 growers that are not members of the East San Joaquin  
2 Water Quality Coalition and do not have individual  
3 permits. These landowners have not paid a single due,  
4 attended a single meeting, and have most times tossed  
5 the East San Joaquin Water Quality Coalition paperwork  
6 in the trash.

7 During the past years, some landowners have  
8 made 20-year leases planning permanent crops and some  
9 have farmed 100 percent of their land with well and  
10 surface water while never belonging to the coalition.  
11 It is infuriating that a member of the coalition -- as a  
12 member of the coalition, I have had to fallow one-third  
13 of my acres because of a lack of water while still  
14 bearing the costs and complying with the paperwork.

15 There have been multiple promises by the State  
16 Water Resources Control Board to enforce enrollment in  
17 these coalitions or make nonmembers file for individual  
18 permits. Apparently, these promises were just meant to  
19 make the original members feel good. Now, the State  
20 Water Resources Control Board staff, is considering  
21 changes to the general order which would further hinder  
22 its members.

23 Without 100 percent participation, how can the  
24 Water Board have ample data back to back to propose  
25 changes to the order? Lacking total involvement would

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1 make this information invalid and unacceptable. The  
2 water coalitions and its members have done the job you  
3 have asked them to do. They are in full compliance and  
4 State Water Resources Control Board that needs to stop  
5 up and make sure the nonmembers join or file for an  
6 individual permit. As a result, the information  
7 gathered will be accurate.

8 CHAIR MARCUS: That's something we do need to  
9 follow up on that. You're the first one to raise that  
10 issue. I will follow up on that.

11 JOE SCOTO: As members, we get threatened all  
12 the time. You're going to get fined a thousand dollars  
13 a day and do this and do that. I have neighbors that  
14 are just doing what they do and other neighbors that are  
15 infuriating.

16 CHAIR MARCUS: The leveled playing field issue  
17 is a really important one that, frankly, comes up most  
18 in regulations about being fair. Thank you.

19 JOE SCOTO: These individuals that have not  
20 paid should pay the fine because they -- you've got  
21 to -- everybody has to be 100 percent enrolled. That's  
22 what it's going to take to get the ample data.

23 CHAIR MARCUS: Ms. Markarion, followed by  
24 Rogers, followed by Agri-World Cooperative.

25 JENNIFER MARKARION: Thank you for giving us an

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1 opportunity to come and speak to all of you. I  
2 appreciate it.

3 I would like to preface, as I have been jotting  
4 down notes like crazy, it's not my intention or need to  
5 be sold on good practices. I take pride in them. My  
6 name is Jennifer Markarion. I'm a fourth-generation  
7 farmer, working with my dad and son in growing 900 acres  
8 of wine grapes and almonds in Madera County.

9 I live on the ranch, in the middle of the field  
10 that I farm. I came on board to farm with my dad in  
11 2012 when he contracted West Nile Virus and subsequent  
12 brain tumor discovered with the MRI with that. I left  
13 my position as a sixth-grade teacher to keep our family  
14 farm operation going in order to keep our 14 full-time  
15 employees working and housed in a comfortable and safe  
16 environment.

17 We provide free housing, PG&E, vehicles, and  
18 there's no water bill or anything like that that they  
19 have to pay. Some of our employees have been with us  
20 over 30 years. I think that speaks to how we operate  
21 our farm and our employees.

22 We have the next generation of the farmers, the  
23 sons of the men now working. I have known them since I  
24 was five. On any given weekend, I'm engaged in one of  
25 their quinceaneras or wedding or baptism. We celebrated

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1 25th wedding anniversary for one of the couples. I'm  
2 involved with these people and I care about them.

3 I think that needs to be established that you  
4 understand I want to keep them employed, and with the  
5 regulations coming down the shoot, it makes it very  
6 difficult to do so. We invest a lot of hours in our men  
7 and our families. We cannot afford a CCA, so you're  
8 looking at her. I check fields. I'm the management,  
9 nitrogen application person, the pesticide applicator.  
10 I manage the employees, the equipment, contract  
11 negotiations, quality issues. I'm a busy girl, but I  
12 believe it was important to be here today to speak.

13 I'm nervous about the data aggregation  
14 component of this. I'm afraid if something like this is  
15 uploaded, like the Markarion name on the GO site, it  
16 opens up so many issues, lawsuits could come. They  
17 could come after a direct farmer and not knowing, it  
18 could be an inaccurate way of trying to digest the  
19 information that you're seeing on a website.

20 That's the problem with the Internet these  
21 days. You have no idea what we're doing in the field.  
22 You don't know it hailed on our crop, and that's why the  
23 nitrogen application might have been more than needed.  
24 We didn't know it was going to hail. It will create  
25 this ambulance chasing kind of thing if you do that.

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1 I'm running out of time. I'll skip domestic  
2 wells. There is a lot more cost incurred than \$15. I  
3 do it all the time. It's the irrigation component of  
4 the nitrogen plant. I'm already reporting that on the  
5 farm evaluation surveys. It seems somewhat redundant.  
6 It's not my intent. I don't want nitrogen to leach past  
7 the roots. That's a waste of money. I have a detailed  
8 and explicit water plan.

9 I don't want to bore you, if you have to read  
10 through everything I do. I have 14,000 binders in my  
11 office to keep track of things. I'm out of time. I'll  
12 leave it at that. I appreciate the opportunities.

13 CHAIR MARCUS: Thank you for taking the time to  
14 join us.

15 Mr. Rogers, followed by Mr. Aviles, followed by  
16 Ralph Pistorersi.

17 THOMAS ROGERS: Good morning, and thank you  
18 very much for this opportunity. I'm Tom Rogers. My  
19 brother and I have been on our ranch for 100 years. We  
20 would like to think we're sustainable there.

21 We are making every effort to use our  
22 fertilizer and inputs wisely. What we do today is not  
23 even similar to what we did three years ago. When my  
24 dad started farming almonds, the common practice was,  
25 "Well, give him a little fertilizer in, maybe,

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1 November."

2 We kind of know right now, that's about the  
3 worst time you can possibly do it, but that was the  
4 common wisdom of the day. Today we watch ground  
5 temperatures, we wait until the ground is warm enough to  
6 support microactivity so we can get the sufficient  
7 uptake.

8 It's just -- we're looking -- there's no things  
9 coming along all the time. So where we are today is not  
10 where we're going to be tomorrow. We put our fertilizer  
11 out in all of our water, we look in parts per million.  
12 We have an idea what the plant can take up. There's no  
13 point in putting more there than what the plant can use.

14 As new technology comes out, the way we  
15 irrigate, we used to be flood and then solid sets and  
16 micros and now in drip irrigation. We do pulse  
17 irrigation. We water around the clock now, short  
18 pulses. So we're doing everything we can, as Jennifer  
19 said, to hold the nitrogen up.

20 We know for almonds, the top 18 inches is the  
21 most effective area for the plant to take of nitrogen.  
22 That's what we're working on and playing around with  
23 what we did last year. We're doing something different  
24 this year. Trying to figure out what is the best way.

25 If we look at this data, we have to look at

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1 multiple years. What we did three years ago is not  
2 going to reflect what I did today. We have to take  
3 averages. There's going to have to be some -- I don't  
4 see how you can just look at one year and say, "Well,  
5 what's what we're doing."

6 As far as my fertilizer program, I set that in  
7 January, maybe February. I can't, anyway. If you can  
8 tell me what my crop is going to be, I would love to  
9 market it early. Last year, we got hit with hail and  
10 probably lost a thousand pounds per acre. We adjusted  
11 the program, but by the time the hail hit, we were 80  
12 percent through our fertilizer program. There's no  
13 going back and taking it out.

14 One of the things we would like to see is  
15 consistency in the rules. We get a rule and another one  
16 and another one. Pardon me, I'm tired of all the rules.  
17 I guess the consistency in aggregation of data. The  
18 other thing is please don't give out my individual  
19 ranch. I think the groups are doing a good job of  
20 aggregating data and giving it to you. Let's maintain  
21 that, please.

22 CHAIR MARCUS: Thank you very much, sir.  
23 Mr. Aviles, followed by Mr. Pistorersi, followed by Jay  
24 Mahil.

25 THOMAS ROGERS: Thank you for your time.

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1 CHAIR MARCUS: Thank you.

2 DEVIN AVILES: Following up on what Tom was  
3 just saying as far as the data aggregation goes, that  
4 has been a big concern for all of us. I work for an  
5 outfit in Madera. At our peak, we have anywhere from 50  
6 to 75 employees on that ranch. They're our family. We  
7 take care of them. It's not our intent to contaminate  
8 them or anybody else. It does us a disservice to do  
9 that. We take care of our employees.

10 When you start providing this information on  
11 the GeoTracker, is that going to do anything to help  
12 with the groundwater? I don't see how it will. It will  
13 open up other people's eyes on what individual people  
14 are doing. I believe most farmers, and the farmers in  
15 the San Joaquin Water Coalition, are doing what it takes  
16 to keep their fields doing the right thing. Not over  
17 applying or under applying, doing what the crop needs.

18 This year in pistachios, we had an event where  
19 it was pretty much a disaster, but you were planning on  
20 a crop of 2500 pounds per acre, 3,000 pounds per acre.

21 CHAIR MARCUS: Right. So the math comes out  
22 wrong.

23 DEVIN AVILES: All of a sudden, you might get  
24 500, but you can't -- you don't know about this stuff  
25 until several months down the road. So some of this

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1 information, it concerns me that giving out the  
2 information so early could harm our own selves and  
3 living in a litigious society that we do, people are  
4 always looking for a way to come after you, especially  
5 in the agricultural community.

6 I believe what's going on with the regional  
7 boards and the coalitions, they're finally -- I think  
8 everything has come together. Are there still issues?  
9 Yes. Are we still growing? Yes. I believe most  
10 farmers are coming on board and doing what it takes to  
11 see that you are using your nitrogen appropriately.  
12 You're applying what your crop load is. You are  
13 irrigating as needed in the field to limit how much.

14 Just like Tom was saying, we are improving, we  
15 are using tensiometers, which are soil readings. That's  
16 going to tell us -- that's new technology for us. We're  
17 starting to see how where the water is going and how  
18 quickly do we need to get back and apply the water.  
19 Don't over apply.

20 Then what happens, you start the leaching  
21 process. We're seeing that. We're using weather  
22 stations to help us to know when storms are coming. We  
23 try to make sure we're doing everything with the best  
24 practices that we can because it benefits everybody.  
25 Thank you for your time.

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1 CHAIR MARCUS: Thank you. Very helpful.

2 Mr. Pistorersi.

3 Mr. Mahil.

4 JAY MAHIL: Thank you very much. My name is

5 Jay Mahil.

6 CHAIR MARCUS: Sorry.

7 JAY MAHIL: That's okay. I'm a

8 fourth-generation farmer with Creekside Farming Company

9 and also the president of Madera County Farm Bureau.

10 Our family farm farms wine grapes, almonds, pistachios,

11 walnuts. We farm from Lodi, Madera, Chowchilla, and out

12 in the west side area. Our family farm spans over 7,000

13 acres.

14 I'm fourth generation. My family, myself, we

15 all live on the farm. My son, hopefully, who is 13

16 years old, will be a fifth-generation farmer for us.

17 Our operation, we think of ourselves as

18 sustainable. We're doing everything possible to make

19 sure we comply with the rules and regulations. Our

20 operation is fortunate enough to employ an in-house PCA,

21 who is a certified crop advisor that fills out the forms

22 sent to us on a daily basis.

23 Looking at the new laws and regulations that

24 you are proposing and the forms that are to be filled

25 out, are going to be very difficult. Even my PCA has

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1 times that he gets frustrated of trying to figure out  
2 what needs to be put down.

3 Now, if you want somebody who is a smaller  
4 grower, who cannot have the resources to have somebody  
5 help them with this information, you're going to start  
6 getting inaccurate information because they're going to  
7 be afraid they need to fill something out and send that  
8 form in.

9 Now, if this information is public information.  
10 You're going to have people look at the information and  
11 saying, "Why is so-and-so doing this, and so-and-so is  
12 doing this?" You're going to get a lot of contradiction  
13 within the ag community. I think that's going to cause  
14 a lot of unjust for everyone, not just our ag community,  
15 but also for yourselves. Again, like everybody has  
16 mentioned, it's not going to help groundwater.

17 I think growers have done a lot in the future.  
18 Kind of like Tom had mentioned, also. Operations have  
19 changed. We're farming in a totally different way than  
20 my father and grandfather was farming. I think we move  
21 to realize that changes is inevitable. We have to  
22 change. We're doing everything possible.

23 I think the coalitions are a great factor for  
24 everyone. Not everybody has the mindset to be able to  
25 understand and do what needs to be done. I think the

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1 coalitions are helping guiding everyone in that right  
2 direction. I think since the formation of those  
3 coalitions and to where we're at now, there's been  
4 tremendous change. I applaud them for doing that.

5 So I think going to this new regulation is  
6 going to steer most of these growers away from a  
7 coalition and say, "Why pay when I have to fill out the  
8 information and it falls on my back?" I think the  
9 coalitions are going to kind of go by the wayside after  
10 all these years of investment with them, is going to be  
11 a true unjust for everyone.

12 CHAIR MARCUS: You have vigorous nodding  
13 happening behind you.

14 JAY MAHIL: It's the truth. I understand  
15 sometimes we get painted with a bad picture. It's not  
16 our intent. Like I said, we're all living on the farm,  
17 most of us. We eat, breathe, drink the same air and  
18 water that everybody else does. I don't think we're out  
19 there to pollute that. I think we want to sustain that  
20 for generations to come. That's all I got.

21 CHAIR MARCUS: Appreciate it. We're going to  
22 move back to the agenda. I'll call on the Southern San  
23 Joaquin Water Quality Coalition, and then we'll go --  
24 we'll probably take a lunch break somewhere midway  
25 through the lunch hour. Someone who has been out

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1 there -- I saw a Subway. I don't know how far people  
2 have to walk to get food. Normally, I make it really  
3 short, but this is a big room.

4 KEITH FREITAS: That Subway fills up fast.

5 CHAIR MARCUS: Maybe there's a half hour.  
6 Where are the taco trucks? Cancel my order. I'm going  
7 to the taco truck. Someone has to point it out to me.

8 CASEY CREAMER: Before we start, we have a lot  
9 of growers that want to talk, we can come back later on  
10 after lunch, if you want to work through the growers.  
11 We can come back.

12 CHAIR MARCUS: That's very kind of you. If  
13 that is all right, can you give me another batch?  
14 That's great. Thank you, Casey. I appreciate that.

15 It's always a mix between folks being able to  
16 hear you. Let's me say -- if you're going to come after  
17 lunch, why don't I take another -- I'll take another  
18 batch -- these all want to speak in order. I don't know  
19 if I can get through all of these. That would be 33  
20 minutes if people stick to their three. Let's give it a  
21 try.

22 I don't want to be effecting people's blood  
23 sugar levels. I have one nut bar in my purse if someone  
24 is really hungry. We'll say we'll go for a half hour,  
25 33 minutes -- to a quarter of 1:00. We'll do that so

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1 people can plan and see what we can do here.

2 I have Kevin Severns, followed by Chris

3 Valadez, followed by Ryan Jacobsen. Please, if you find  
4 a microphone that will work.

5 BOARD MEMBER DORENE D'ADAMO: As folks are  
6 coming up, I'm very curious about cost. So if you're  
7 comfortable talking about it, I know a lot of you have  
8 prepared notes, but curious about if you have a CCA,  
9 what cost does that involve. If you're able to provide  
10 the cost, you know, per acre.

11 I know we're already looking at the fee for  
12 State Board fees, water quality coalition fees. So  
13 we're looking at, you know, cost per acre. Anything you  
14 can do to help give us an idea for that cost is  
15 appreciated.

16 CHAIR MARCUS: I neglected to ask the court  
17 reporter. Are you okay? Hopefully the interpreters are  
18 okay. You don't want to lose your interpreter. Okay.  
19 Good.

20 KEVIN SEVERNS: Thank you board members. I'll  
21 have to leave the answer to your question to somebody  
22 after me, but thank you for asking that.

23 Good morning. My name is Kevin Severns. I'm  
24 the chairman of California Citrus Mutual. I happy to be  
25 a 40-acre citrus grower and the Orange Cove Citrus

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1 Associations manager. We have about 70 growers and 100  
2 employees. It's a cooperative of mainly small family  
3 farms.

4 I'll preface my remarks with the comment an  
5 older gentleman made at Kings River Water Quality  
6 Coalition outreach event held earlier this year. Upon  
7 hearing of what was going to be demanded of him and his  
8 farming operation, by requirements much less onerous  
9 than those being proposed, he abruptly said, "Time to  
10 sell out." Farmers have had it. Frustration with the  
11 changing and ever increasing demands of documentation,  
12 restriction, regulation, and essentially  
13 self-incrimination are driving many seriously question  
14 the time honored profession of providing food and fiber  
15 for our nation and the world.

16 We are in grave danger of destroying the family  
17 farm. What will the food supply look like when it is  
18 ultimately controlled by a few mega corporations with  
19 entire departments devoted to regulatory compliance, or  
20 worse, when we are reliant on other countries for our  
21 food?

22 Now, it seems that we're facing another bait  
23 and switch dilemma. With the outgrowth being greater  
24 exposure and scrutiny by individuals that neither know  
25 about or care about the individual grower situation. Am

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1 I opposed to the location and information of my wells,  
2 ag and domestic becoming a matter of public record?  
3 Without reservation, yes.

4 Is it because I'm afraid that it may expose  
5 some nefarious activity that I have been up to? Of  
6 course not. It's because I have been around the block  
7 enough times to realize there are those who do operate  
8 with agendas or so-called data is manipulated in order  
9 to create a false narrative, what I call a lie, or  
10 otherwise operate in less than the best interest of what  
11 I and the people I represent do.

12 Originally, we were all under the impression  
13 that cooperation with the local water coalition would  
14 somewhat shield us from those hostile agendas. We sense  
15 the freedom to report the requested data and move on to  
16 the other issues and reports that are demanded of us.  
17 The proposed revisions, strips away the trust built with  
18 and within the Central Valley region and local  
19 coalitions, doing away with data aggregation and  
20 reporting individual grower, field-level data, directly  
21 to the Central Valley Water Board, removes a primary  
22 incentive for working with the coalition. The impact  
23 and concern for me, personally, would be that private,  
24 confidential information about where I live, would be  
25 made a matter of public record.

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1           The goal -- if the goal is collection of real  
2   materially useful information, the best source is  
3   aggregated data through the local coalition. We heard  
4   of that earlier this morning. I'll shorten my comments  
5   and say that the growers I represent care deeply about  
6   water quality, including the pursuit of water in all  
7   communities in the areas we operate within.

8           Farmers by nature are problem solvers and look  
9   for real-world solutions to water quality problems  
10   within the individual communities. Such cooperation is  
11   fostered by considering those in production ag to be  
12   assets and not liabilities in such an endeavor.

13          I have to say much of what is being proposed  
14   does not give one the sense that the San Joaquin farmers  
15   are anything but a liability and most of us are thinking  
16   we may be persona non grata in our state. Such would be  
17   an unfortunate national situation what has been at least  
18   until now, the best agricultural state in the nation.  
19   Thank you for listening.

20          CHAIR MARCUS: Thank you for that.

21          Chris, followed by Mr. Jacobsen, and followed  
22   by Will Scott by the African American Farmers of Central  
23   California.

24          CHRIS VALADEZ: Chris Valadez director of  
25   environmental and regulatory affairs for the California

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1 Fresh Fruit Associations. Given the gist of the  
2 comments that have been presented already today, I will  
3 shorten mine to get to different points where possible.

4 As you may or may not know, we are a voluntary  
5 trade association. So growers volunteer to be part of  
6 our association for the benefits and services we provide  
7 for them, largely on public policy related issues. You  
8 may have heard this from coalitions, but I can't assume.  
9 I will tell you directly firsthand that I have some  
10 grower members questioning with their understanding of  
11 particularly the farm-level reporting section as  
12 currently referenced in the proposed order, why they  
13 would continue to pay money to a coalition when it's  
14 perceived that function of the coalition and what the  
15 function may become is solely a pastured function as  
16 opposed to what they perceive it to be today, which is  
17 not only education oriented, but it's opportunities  
18 oriented in working not only with -- amongst other  
19 growers, with UC as an academic arm, but with a trade  
20 association like ours, delving into research to  
21 understand the gaps that still exist.

22 We represent the table grape industry and stone  
23 growers and fresh crops, even having in mind some of the  
24 examples and studies that exist today for what's  
25 removed, there are many areas where those studies are

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1 still deficient. They're not necessarily uniformly  
2 applicable to all varieties of table grapes, for  
3 example, in all situations, giving irrigation system,  
4 how the crop is irrigated, and/or the soil type, and/or  
5 what region the crop may be grown in.

6 As you heard from the experts, there are a lot  
7 of data caps and a lot more information to generate, but  
8 you should also know that in addition to grower buying  
9 it, to the existing program and what the program will be  
10 in the future and to the extent that buy in will  
11 continue and/or the incentives that may exist for that  
12 buy in, I think you have heard from both experts and  
13 growers today, there are significant incentives being  
14 forthright and forthcoming with providing information at  
15 a farm-level basis.

16 When I think at the end of the day, if we're  
17 all applying a data significance and a data quality  
18 filter, you look to the coalitions because they, quite  
19 frankly, have been the ones hopefully, likely, continue  
20 to be the ones to be that first line quality control.

21 If there's anything I can leave with the board  
22 and staff, I would suggest a reassessment of the current  
23 point of view to look at the significance the role  
24 coalitions play as a first line quality control. I  
25 recognize as written the current proposal envisions a

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1 role for the coalitions.

2 I will tell you in the area of farm-level  
3 reporting, that's been a major theme. There appears to  
4 be a disincentive for growers to continue to work  
5 aggressively under the current program in volunteering  
6 the information, one of which is exposure. One of which  
7 I can repeat. You have heard it qualified from the  
8 experts themselves. That's a data quality issue, and no  
9 one wants to get to the question of improving  
10 groundwater quality with poor or information that is not  
11 as robust as it should be.

12 I want to thank you for this moment to speak.  
13 The parting question or comment is something that staff  
14 mentioned today. When staff was distinguishing where  
15 this level is with respect to farm-level reporting and  
16 contrasting what is under the current order, that it  
17 make a qualification and that qualification is the  
18 coalitions themselves have a quality control component  
19 to analyze and assess that data. They didn't use the  
20 terms when describing the farm-level reporting and how  
21 that mechanism could change that. Again, understand the  
22 significance of the quality control component of the  
23 coalitions. Thank you.

24 CHAIR MARCUS: Mr. Jacobsen from California  
25 Farm Bureau, followed by Mr. Scott, followed by Chukou

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1 Thoo from the National Hmong American Farms.

2 RYAN JACOBSEN: Good afternoon. As I  
3 mentioned, I'm with the Fresno County Farm Bureau. Our  
4 organization has been very involved with the coalitions  
5 as we went through this. I think this is important to  
6 mention this is one of the most intensive outreach  
7 efforts we have ever done as an organization, that has  
8 been involved with a lot of folks that you have seen  
9 here.

10 It is been very long, expensive, and difficult  
11 process. I feel like we're making even roads. That's  
12 the question I have for the board. I feel like we're in  
13 an unnecessary cross road. I feel like we're making so  
14 much process going forward, and to go in and make the  
15 changes right now undoes a lot of the goodwill and  
16 credibility that all organizations have been able to  
17 work with the coalitions and develop the process.

18 The process has not been easy whatsoever, a  
19 large educational outreach. Statistically speaking, you  
20 have seen the numbers in front of you, how much of the  
21 outreach has taken place, how comprehensive the outreach  
22 is, and now to throw this on top of this, the additional  
23 burdens is very concerning.

24 As we had the conversations this morning and  
25 the staff reports, I found it interesting we're looking

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1 at the board taking into consideration the proposal in  
2 front of you or changing the proposal based off of  
3 input, something more manageable. I don't understand  
4 why those are the only two options.

5 Right now, I'm thinking it should be dropped,  
6 the proposal in front of us. As Mr. McKean brought up  
7 this morning, I think one of the major parts is if we're  
8 looking at and focus on the audit side of things, as he  
9 said, it's kind of a new development as more recently.  
10 But I think work with the coalitions, work with the ag  
11 groups, work with others to try and develop a protocol  
12 that would make this process, both the board and the ag  
13 groups and farmers, feel confident in the process. I do  
14 feel, again, we continue to make the process, it will  
15 absolutely be lost if we move forward as the current  
16 guidelines have.

17 As we look at the success of the coalitions,  
18 Fresno County Farm Bureau is a major supporter. We have  
19 several coalitions within the confines of the county.  
20 They have worked successfully. The outreach we have  
21 participated in has not been only participating in  
22 meetings but make sure the farmers and the ranchers as  
23 part of the coalitions to be there. As we progress  
24 forward, we're looking at stopping this proposal, going  
25 back to the drawing board, and developing a process we

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1 think works for all of us, auditing process.

2 CHAIR MARCUS: That was quick but clear.

3 Impressive. I can't do that.

4 Hello, Mr. Scott. Nice to see you. Followed  
5 by Chukou Thoo, followed by Manuel Cunha, Jr., from the  
6 Nisei Farmers League.

7 WILL SCOTT: I want to say thank you for coming  
8 out and hearing our complaints and concerns. I come as  
9 the president of the African American Farmers,  
10 California, which we compose, probably, half a percent  
11 of the farmers in California. I stand before you as a  
12 small farmer with some concerns.

13 As a small farmer, I kind of feel like a piece  
14 of meat in a butcher shop with a thousand butchers,  
15 everybody gets a whack. I see this as some of the  
16 regulations coming down because as farmers, we're  
17 impacted by mother nature all the time. Now we're being  
18 impacted by these regulations coming down. When these  
19 regulations come down without any input from the people  
20 impacted dramatically by it.

21 That's why I would urge what they say looks  
22 good on paper, but we need to take it one step farther  
23 and see who is this going to impact, you know, at the  
24 end, the least of us. I feel this way what happened to  
25 the least of us will affect the rest of us.

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1 With that in mind, I would like to say, too,  
2 this drought has been really tough on the small farmer  
3 because every time the water table drops ten feet, we  
4 have a small farm going out of business. You can have  
5 the land, you can have the seeds and equipment, but if  
6 you don't have water, you're not a farmer. You're just  
7 a landowner with assets.

8 I ask the board to do this is that these  
9 regulations, that you think about them before putting  
10 them in place. I suppose I do what I do best, that's  
11 farm. Regulation tell me I have to take 15 minutes out  
12 to document what I did and what I'm doing. That takes  
13 away my time from farming.

14 I have farmed -- I have joined a water  
15 coalition because it was going to take some of those  
16 duties off of my hand, which I thought was good because  
17 not only are they local, but they're somebody I can see  
18 and they can see the condition I'm in.

19 I have been to Sacramento, talking to people up  
20 there, that when I talk about small farmers, always  
21 talking about African American farmers in particular,  
22 they seem to be interested, but they're so far in the  
23 boat, that I know they're not hearing me.

24 When we put these regulations into effect, we  
25 should make sure -- if there's going to be collateral

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1 damage, because the government should be owned by the  
2 people, for the people, and by the people, and should  
3 protect the least of us. So when these regulations come  
4 into effect, there's going to be collateral damage. The  
5 government should have something in place.

6 Now, as a small farmer, this drought has been  
7 really tough on me, is that I had a domestic well that  
8 went dry. I have an ag well pumping mineral water out  
9 three rows at a time. I need to go deeper, you know? I  
10 think this is that -- we have a drought situation, but  
11 we have plenty of water. All we have to do is divert it  
12 from the ocean, or we have to go deeper, because there's  
13 water, we need to go deeper. That's where the equity  
14 changes for the small farmer because the big farmer can  
15 go deep. He has the money. We can't go deep. Am I  
16 running out of time? Let me finish.

17 Anyway, is that this drought, we have predators  
18 that come in, and they want to charge me \$75 to \$100 a  
19 foot. I can't afford that, but I will tell you that  
20 there's some small farmers who care about each other,  
21 and I had a gentleman call me up, and I got a domestic  
22 well now. Hopefully I have an ag well.

23 I'm saying to the board is that before you put  
24 something in effect, find out who it's going to affect  
25 the most. Put it in place so you can keep that person

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1 alive. I think these small farmers, we're being  
2 eliminated. Just because we were built on small farms.  
3 It's a way of life. We should maintain it. Thank you.

4 CHAIR MARCUS: Thank you very much.  
5 Cunha is not here.

6 MANUEL CUNHA: This woman is going to speak for  
7 me. She's better looking than me. You'll be happy.

8 CHAIR MARCUS: I will be happy.

9 MANUEL CUNHA: Thank you very much for being  
10 here. I do have to leave right now. We have an  
11 immigration issue that we're handling, I am, for a  
12 person that is, you know, some people said. I need to  
13 leave for a hearing. It's important, but this is  
14 important. Janie is one of my board members. She's  
15 better looking. She doesn't get as riled as I do.  
16 She's as well a farmer's daughter.

17 Real quick, I want to say in the future, I  
18 mentioned this in Tulare, you need to have the farmer  
19 speak before any more panels, ever in the future. You  
20 need to start at six o'clock in the morning. We get up  
21 at 5:00. I'm a 55-acre farmer. So don't count Jenny's  
22 time as my time. Please try to have them. Let the  
23 panels go; okay? First, after the growers, because a  
24 lot of growers have left. Chuko apologizes. He had a  
25 family emergency at a hospital. He represents a lot of

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1 Hmong and many other Asian farmers.

2 As Mr. Scott says, I want to thank the farmers  
3 and put together a fundraiser so Will Scott can have a  
4 farm because he didn't get much cooperation for the  
5 federal government at all. Thank you very much,  
6 Felicia. We look forward to working for you.

7 CHAIR MARCUS: Thanks very much, Manuel. We  
8 tried to make it shorter this morning and failed. I'm  
9 sorry. It was useful, but your good advice, if we're on  
10 the road, that was our intent.

11 Janie Lagoluso, nice to see you.

12 JANIE LAGOLUSO: My name is Janie Lagaluso. I  
13 represent Frank A. Lagaluso Farms. My grandfather  
14 started the business at the turn of the century. My  
15 father is 91. I'm the third generation. The fourth  
16 generation is working, and the fifth generation is in  
17 grammar school. I don't know whether they should go  
18 into farming. That remains to be seen.

19 I'm here to let you know that I'm in favor of  
20 the coalitions. We need to keep the small family farm  
21 in business. We used to be huge in four counties. We  
22 suffered a setback in the early -- about 2000. We're  
23 now farming about 1500 acres. We need to keep the  
24 family farm in business. Kids need to be able to start  
25 farming when they get out of college.

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1           So these coalitions work. I'm a member of  
2   three. I have done all the paperwork myself. I drive  
3   my cousin, who is the PCA, crazy to get everything done.  
4   I almost went insane with all the paperwork that was due  
5   in March and April. I have three drawers full of data.  
6   I farm in an area where we have been doing  
7   sustainability practices for over 30 years. We have the  
8   data to show for it.

9           The coalitions can handle this. You will get  
10   better data that way. It virtually will be impossible  
11   for the individual farmers to do so. I do not like the  
12   fact the data will be public. When you add the  
13   irrigation practices to it, there will be yield  
14   information that should stay private. It's proprietary.  
15   It belongs to me and what we do.

16          I'm not afraid of anything we do. I'll  
17   volunteer for audits in all three coalitions, if you  
18   want. Don't tell my cousin Ryan that. He'll kill me,  
19   but we do do things right. If you farm in an area with  
20   no water, which I do, you learn to take advantage of the  
21   latest technology. Technology is catching up. Yes, we  
22   have 30 years or 50 years or 100 years of practices we  
23   need to correct that won't be corrected overnight.

24          Every one of us is spending money on a new  
25   technology. If we have young farmers in our families,

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1 they are going to want the new gadgets, and they do  
2 work. We're careful what we do. We test water and  
3 soil, everything. We make sure we don't waste any  
4 money. The result of that is you don't waste  
5 fertilizers and chemicals.

6 Thank you for your time.

7 CHAIR MARCUS: Thank you. Thank you for  
8 joining us.

9 Roger Ion from California Cotton Grower's  
10 Association and Western Ag Processors, followed by  
11 Matthew Efird from a couple of places. I'll let him  
12 introduce that, followed by Paul Giboney.

13 Hi, Roger.

14 ROGER ISON: Good afternoon.

15 CHAIR MARCUS: Good afternoon.

16 ROGER ISON: Thanks for the opportunity to  
17 provide comments here. Let me start off by thanking you  
18 for coming to Fresno to hear us. I hope that you're not  
19 just hearing us but actually listening to us.

20 I think the thing I found this morning, and you  
21 haven't had a lot of growers come up here, but you have  
22 had several. What you haven't heard is we're not going  
23 to do anything or not searching for ways to make this  
24 work. It's about trying to do what we have already  
25 worked with the Regional Board with.

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1           It was a little over three years ago in my  
2 office that we got all the coalition groups, the  
3 commodity groups, several growers, and the Regional  
4 Board and said, "Okay. We're a long ways away." We  
5 took three years to hammer out a program, while we may  
6 not like every aspect of it. We accepted, and we know  
7 what we have to do and go to work.

8           That's what we have been doing for the last  
9 several months is implementing that program. I know  
10 Chair Marcus and Board Member DeeDee D'Adamo can relate  
11 to this through the air quality aspect. Growers in the  
12 San Joaquin Valley have a proven track record. When you  
13 look at the air qualities we faced, we took a problem  
14 and went above and beyond and provided better results  
15 than they were looking at.

16          I looked at the irrigated lands very much like  
17 the conservation management program we did for PM10,  
18 fugitive dust. We sat down with EPA, ARB, the local air  
19 district, growers. We said, "This is what we have to  
20 get. What practices can we do? What's the science  
21 around it?" We sat down and worked over a year to  
22 develop a set of over 100 practices that were grower  
23 specific, crop specific, soil specific, and actually  
24 hammered out a program that provided -- covered more  
25 acres than what the air district wanted originally, and

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1 more importantly, provided more reductions than they  
2 expected.

3 As a consequence, not the only reason, but one  
4 of the main reasons that the air district is now in  
5 obtainment for PM10. That's a great example for how  
6 growers can work together, work with you guys, and be  
7 successful.

8 Similar program on ag pump engines, they had we  
9 had to upgrade our engines. We sat down and went  
10 outside of the box and worked with the Public Utilities  
11 Commission and Energy Commission, and developed a  
12 program and got the growers to convert to electric and  
13 far exceeded what they were looking for in terms of  
14 reductions. There's a proven track record.

15 Growers will sit down and work with you and  
16 find a solution, but you have to have one thing, and  
17 that's the one thing we have right now, and that's  
18 grower buy in. If the growers aren't bought into it,  
19 it's going to be kicking, fighting, screaming the entire  
20 way. We have that with the Regional Board.

21 The only thing I can urge is not throw that  
22 away. Consider the program we have in place right now.  
23 Let it work its course. If in two or three years, it's  
24 not getting the results you want, then let your program  
25 come in and take over. Right now, we have a program

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1 growers have accepted, bought in and working on. Let's  
2 continue that process and let it work. Thank you.

3 CHAIR MARCUS: Thank you very much.

4 You are, however, making Dee Dee and I feel  
5 old. Those conversations were in the '90s.

6 Mr. Efird, thank you, followed by Giboney, and  
7 followed by Sam Vang from USDA Natural Resource  
8 Conservation Service.

9 MATTHEW EFIRD: Good afternoon, board. My name  
10 is Matthew Efird. I'm a fifth-generation grower in the  
11 Curuthers area south of Fresno here. We farm almonds,  
12 walnuts, wine grapes, and raisins. I'm the  
13 vice-president of W. Farms, our farming company, as well  
14 as Efird Enterprises, our commercial endeavor.

15 I'm here to oppose the State Water Resources  
16 Control Board proposal, to modify the irrigated lands  
17 regulatory program that was developed and approved by  
18 the Central Valley Regional Quality Board. Good faith  
19 negotiations with agriculture has worked with the board,  
20 the Regional Board, to come up with solutions that I  
21 think are realistic.

22 My biggest concern is the elimination of the  
23 coalition. That's basically what's going to happen if  
24 we have to report directly to the State Board. We need  
25 to have the intermediary between us and the state. In

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1 my operation, I think we're fairly progressive. We use  
2 soil moisture watering. We use soil sampling. We use  
3 tissue analysis to determine our nitrogen needs.  
4 Last year, I implemented the program as it was  
5 outlined and as I understood it. Consistently  
6 throughout the growing season, through my tissue  
7 analysis, I found we were 15 to 20 percent under budget  
8 of nitrogen for what my trees use. My concern is if I'm  
9 filling out this paperwork and reporting it directly to  
10 you and I'm over applying nitrogen as proposed based on  
11 the information that's been given, I'm afraid I'm going  
12 to get recourse about being a gross nitrogen applicator.  
13 Even though I have means to prove it and back  
14 it up, it's a process I don't want to have to go  
15 through. With my local coalition, I'm able to provide  
16 that information, explain my situation, and have them be  
17 that buffer that allows me to show them my good farming  
18 practices are something that's allowing us to look at  
19 our yield and nitrogen uses.  
20 The second thing that I don't -- that concerns  
21 me about this is the domestic well sampling requirement.  
22 Although clean drinking water is important for all of  
23 us, I just don't think it has any place in this  
24 regulation. The initial intent of this is to look at  
25 our nitrogen management.

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1 Also in talking about groundwater -- we're  
2 talking about our domestic wells and water quality in  
3 those wells and how we're supposed to be responsible for  
4 that. I think it would be more effective on the county  
5 level, but not in this program.

6 Again, I want to stress best management  
7 practices, being fifth generation, I think that's  
8 sustainable in and of itself. I hope there's a sixth.  
9 Practices changed over time. Research changed over  
10 time. The farmers are quick to adapt that research into  
11 every-day practice and principles.

12 Moving forward, I think agriculture is more  
13 than willing to adapt to these practices, but only  
14 through good faith and education and outreach of  
15 coalitions. Thank you.

16 CHAIR MARCUS: Thank you very much. Helpful.  
17 Mr. Giboney, followed by Mr. Vang, followed by Tzexa Lee  
18 with Vegetable Farmers.

19 PAUL GIBONEY: My name is Paul Giboney. I'm a  
20 certified pest control advisor. I work for the Hronis  
21 family in Delano where we grow table grapes and citrus.  
22 I have worked for a water hydrologist and participated  
23 in a two-year evaluation of water and energy  
24 efficiencies in the Southern San Joaquin Valley with the  
25 Department of Soil Environmental Science at UC

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1 Riverside.

2 I don't understand here what's broken, that  
3 needs to be fixed. Groundwater degradation is a legacy  
4 largely of the past. It's as a result of nitrogen  
5 exceedances. With water being the diverted, Dr. Henry  
6 Vox of UC Riverside wrote, "Where water is costly or  
7 scarce, there is more likelihood it will be managed  
8 intensively."

9 The Southern San Joaquin Valley is a region  
10 where water is relatively scarce. The frequency of  
11 deficit irrigation, as well as the general absence of  
12 runoff and run on from or to irrigated fields, are  
13 obvious symptoms of this fact. With these recent years  
14 of drought, almost certainly a continuing uncertain  
15 supply of water irrigation, growers have a strong  
16 economic insensitive to be as efficient as possible with  
17 this limited resource. In addition, I am seeing how  
18 they recently enacted the Sustainable Groundwater  
19 Management Act is already exerting additional influence  
20 on how farmers use and manage water.

21 There's questions nitrogen demand. The  
22 coalition's function is quality control and an  
23 information source for us. There's a tremendous amount  
24 of research being conducted on crop nitrogen demand.  
25 The CCA program has only been recently mandated and only

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1 beginning to create the benefits that we expect. The  
2 proposal to require growers to submit direct data to the  
3 State Board and to -- to the Regional Board, only will  
4 inspire distrust and lack of cooperation from the  
5 community.

6 To post that information publicly, especially  
7 given that we do not have good crop removal nitrogen  
8 values is actually irresponsible. Individual growers  
9 will become lightning rods for litigation by those that,  
10 one, don't understand, and those with ill intent. The  
11 board will also be dragged into litigation.

12 These proposals will not get the board closer  
13 to the mandated goals, but they will be costly and  
14 litigious. I ask we continually utilizing the  
15 coalitions, and it's our best opportunity for it --  
16 achieving success in protecting the groundwater. Thank  
17 you.

18 CHAIR MARCUS: Thank you very much.

19 Mr. Vang.

20 SAM VANG: Thank you. Good afternoon. Thank  
21 you for the opportunity. My name is Sam Vang, and we  
22 work with the USDA National Resources Conservatory in  
23 Fresno County. My position is soil consumptionist.

24 Fifty percent of my time in working with the  
25 farming community and currently, there are,

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1 approximately, a thousand small farmers in the Fresno  
2 County and an average of five acres per family. These  
3 are considered small and family operations. This  
4 farmers, they struggle year to year.

5           Myself, I'm a farmer. I started my farm back  
6 in '89 and create my farm -- I have 40 acres, strawberry  
7 operation. I farm -- I quit that in 1994 due to the  
8 immigration reform. Couldn't find workers. I went out  
9 of business. That's too bad. I went back to school and  
10 got my degree and work for the USDA.

11           My hope is -- my goal is to help the little  
12 farmers that struggle like myself. I work every day  
13 with this farmer for 19 years, and this farmer struggle  
14 day to day because they are limited farmers, limited  
15 resources farmers, but they try to survive, raise a  
16 family.

17           It's a family farm, and as the time gone by, a  
18 lot of Asian strife. If you remember, the immigration  
19 reform and the -- it's a lot of dysfunction and out of  
20 business. Those who truly believe in our agriculture  
21 because that's the only way to put food on the table for  
22 your family members.

23           This is their continued struggle, but the  
24 problem is that now we have to face the water quality  
25 control, especially groundwater. As someone who work

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1 with them every day and every day I walk into the field  
2 and found each grower with five acres, they have over a  
3 dozen of different crops on that five acres.

4 I couldn't imagine by looking at this farm, to  
5 send in the report form. How they going to do that? A  
6 lot of data need to go in the form and numbers go in the  
7 form. How they going to get the number from? Who going  
8 to provide the number to them? A lot of farmer ask me  
9 who going to help us? What we going to do? Is that  
10 pretty much like we stop farming? What about my family?

11 That's the only background, only education or  
12 background that I have, that I can raise my family. So  
13 this kind of thing is a challenge to the small farmers.  
14 I look at those, especially the A/R, A/R ratio, and the  
15 harvest yield and the harvest yield of the post -- the  
16 remove -- end remove, what does the number come?

17 Currently, about over 32 different variety of  
18 Asian crop that they're growing right now. How they can  
19 afford that? Where is the number going to come from?  
20 Does it come from the Asian local people? Is it from  
21 the government, local or state or federal government?  
22 Who going to provide them that information?

23 I, myself, I really struggle with that. Thank  
24 you very much for that. I hope that the board can  
25 consider and give them a way that they can still be able

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1 to farm and raise a family and have -- the propriety of  
2 what they have in their mind of something they can  
3 become and get good citizen and be part of the American  
4 industry of ag industry. Thank you.

5 CHAIR MARCUS: Thank you very much, Mr. Vang.  
6 Finally, Mr. Lee. Tell me how to pronounce  
7 your first name. Great name.

8 TZEXA LEE: Good afternoon. My name is Tzexa  
9 Lee. My middle name is Chura. That is what my company  
10 name is. Thank you for giving me this opportunity to  
11 speak. When I attend school, my professor said,  
12 Mr. Lee, your voice is too soft. You need to speak  
13 louder. So I will try to speak louder.

14 I am a farmer. I start farming in 1983. At  
15 the time, there were a lot of Asian farmers in Fresno,  
16 what we call the new -- the last waive of refugees.  
17 Because we didn't have many other skills, except  
18 farming. We did not speak English as well.

19 Even now, the Asian farmer are those that speak  
20 limited English, and we have very hard time to follow  
21 these rule and regulation. Every year it seem like a  
22 new thing to us.

23 Now, I'm here to represent myself and the Asian  
24 farmers, what I call the Asian crop growers. As you  
25 know that we come here, we farm to raise our family. So

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1 our farm are a family-based farm. We do not have a lot  
2 of workers. Mainly, we use own family members to help.

3 The acres that we grow, it's about, like, five  
4 or ten acres. I am the biggest farmer, the biggest  
5 Asian farmers. I grow about 100 acres, and that's very  
6 small acreage for the big farmer in this country. So I  
7 always fall in the crack. This is -- they say, "How  
8 many acres do you grow?" I say, "100." "Oh, you're a  
9 big farmer." When I go to the big farmer, "Oh, no,  
10 you're a small farmer." I have been fighting and stay  
11 in the crack.

12 Today, I want to tell you that we, the Asian  
13 farmers, especially the Asian crops, I, myself, every  
14 year, I grow more than 40 items. I spend time,  
15 countless time to do report -- pesticide report. Now,  
16 we are -- I'm required to report fertilizer. How am I  
17 going to -- I want to see how I'm going to do report. I  
18 grow one row, I have three item in that one row. I put,  
19 let's say, five pound of fertilizer, and then so I have  
20 to make three report. Is it ridiculous? I guess the  
21 people up there have no idea what we're facing.

22 In addition, there is a requirement that we  
23 have to have a certain amount of nitrogen per acre.  
24 Yes, that's right. I have been farming for 30 years. I  
25 lease the farm, this plot and that plot. I grew the

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1 same vegetables, the same crop on these two plots. Each  
2 plot required different amount of fertilizer. If I  
3 report that of my Plot A, I spend 20 pound of  
4 fertilizer; by Plot B, I spend five pound of fertilizer;  
5 and that would be a big question with -- on the board.  
6 So these are the things we are facing.

7 Now, we grow -- if we grow vegetables, the leaf  
8 vegetable, that's fine because it's only one-time crop.  
9 I grow green long bean, the string bean. I grow other  
10 type of fruit vegetables. I have to harvest every other  
11 day. If I harvest every other days, every two weeks, it  
12 require fertilizer. If I don't put fertilizer, no food  
13 coming. That is something no one have idea about.

14 This is what I am asking you to look at it and  
15 help us to move on. We certainly need someone like  
16 water coalition to help. We need assistance. We need  
17 research more on the stuff that we do.

18 CHAIR MARCUS: And you should wrap. You have  
19 gone long.

20 TZEXA LEE: I want to tell you that we started  
21 farming in 1980s. There were about 4,000 of us. Last  
22 year, there were about 1,000. This year, I believe,  
23 only 6- or 700 of us left. Without your help, without  
24 this rule, we probably won't be able to, without this  
25 rule, we probably won't be able to continue. Otherwise,

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1 what will hear is OSHA say you cannot hire people to  
2 work. You have to pay Worker Comp, and now you have to  
3 do this report. That's the ends of our farming. Thank  
4 you.

5 CHAIR MARCUS: Thank you very much for joining  
6 us.

7 I want to thank you all for those thoughtful  
8 comments. We'll now allow you to photosynthesize,  
9 nourish yourselves and come back for more. Very  
10 thoughtful and helpful. 1:30, 1:35. I don't know. I  
11 want to make sure everybody gets a chance to eat. So  
12 1:35.

13 (Recess taken)

14 CHAIR MARCUS: Thank you all for being so  
15 thoughtful in your comments.

16 Thank you. It's now 1:41, and we're  
17 reconvening, pretty much close to on time. The Southern  
18 San Joaquin Valley Water Coalition has graciously  
19 offered to go at the end. They may duke it out with  
20 Dr. Longley for the last word, but very kindly, so that  
21 other folks who wish to speak and then be able to leave,  
22 can get on with the rest of their lives after helping us  
23 think about this important topic.

24 So with no further ado, unless there's an ado I  
25 need to do. Jeanine, any ados?

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1 JEANINE TOWNSEND: No ado.

2 BOARD MEMBER DORENE D'ADAMO: I have an ado.

3 For the record, I want to indicate that Jennifer  
4 Markarion, who spoke earlier, provided me with a list of  
5 costs. So I'll provide this with staff so they can  
6 introduce them into the record. I can just pass it  
7 along to each one of you and then give it to staff.

8 CHAIR MARCUS: Sounds great. Terrific.

9 Our first speaker will be Fred Strauss,  
10 speaking for Certified Crop Advisors on the board.  
11 Followed by Shawn Ramirez, followed by Mike Brancato.

12 FRED STRAUSS: Good afternoon. Is this on?

13 CHAIR MARCUS: No.

14 FRED STRAUSS: There we go. Can you hear me  
15 now okay?

16 CHAIR MARCUS: Yeah.

17 FRED STRAUSS: Thank you for letting me speak  
18 before the board. My name is Fred Strauss. I'm the  
19 chairman of the California Certified Crop Advisor Board.  
20 As an individual who is a certified crop advisor and  
21 pest control advisor, the last few years, I have been  
22 involved with the Central Valley Water Quality Control  
23 Board, Region 5, in developing the current plan that's  
24 in effect and was approved in 2012.

25 That plan was not created in a vacuum. That

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1 plan was created with much input from the so-called  
2 environmental groups, public justice groups, ag groups,  
3 and through much haranguing and back and forth, the plan  
4 was approved in 2012. Did everybody get what they  
5 wanted out of the plan? Absolutely not. Did everybody  
6 get something of what they wanted? Absolutely.

7 There's a workable plan in place, and I'm  
8 asking for this to not make any changes to the plan. As  
9 a matter of fact, as a CCA, I just started writing  
10 nitrogen management plans for farmers last year.

11 This year, we're required to do an advanced  
12 plan, which we have already done, which we didn't have  
13 to do last year. Now we have to do a plan in advance.  
14 When we finish the season, we have to do a plan that  
15 summarizes everything we did by field, by crop, by  
16 quantity, and so on. What concerns me now is the one  
17 area where they're talking about taking it down to the  
18 individual farm level.

19 Certified crop advisors have no insurance.  
20 Pest control advisors in the State of California is a  
21 license. We can get insurance for decisions related to  
22 pest management. Because the certified crop advisor  
23 program is a certification, not a license, getting  
24 insurance doesn't happen.

25 If you take this down to where the individual

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1 farmer releases to the public, on a website or whatever  
2 they do, then these environmental groups will file  
3 lawsuits, as we all know, to individual farmers and  
4 create a big issue.

5 If you take it down to that level and don't  
6 have the coalitions overseeing what's going on, then  
7 people like me will not write nitrogen management plans.  
8 I can get sued for any reason. Growers can be sued for  
9 any reason. You can be 100 percent right and be sued.  
10 You still have to pay that bill.

11 I would ask this board, continue with Region  
12 5's plan. It's really only been implemented for a year  
13 or two. Let's see what happens. We're paying for the  
14 legacy problems that have come about many years ago. I  
15 will put before you we're not adding to the problem  
16 today. I thank this board.

17 CHAIR MARCUS: Thank you for joining us.

18 FRED STRAUSS: Thank you.

19 CHAIR MARCUS: Mr. Ramirez, followed by  
20 Mr. Brancato, followed by Bill Thomas with South San  
21 Joaquin Coalition.

22 SHAUN RAMIREZ: Good afternoon. Thank you for  
23 taking the time to hear us and to hear our concerns. My  
24 name is Shaun Ramirez. I was a second generation  
25 farmer. The reason I say "was" is because I would like

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1 this board to understand that certain things that have  
2 been done, certain proposals and decisions that have  
3 been made, you can see a direct consequence of some of  
4 those decisions.

5 I lost my farm due to problems done with water  
6 release for the farming area, me and my farm, both.  
7 Besides losing the farm, I lost my house, I lost my  
8 vehicles, I lost everything I had. From there I became  
9 a farmworker. I work as a regular general labor.

10 These farmers today are using everything to  
11 their availability that they can, whether it comes down  
12 to nitrogen uses, pesticide usage, or anything else that  
13 any other tools that they had at their access.

14 I currently work for a farm in the East San  
15 Joaquin Water Quality Coalition. Every time we're going  
16 to apply nitrogen, we use tissue samples, soil samples.  
17 We're very respectful, and we're very aware of nitrates  
18 in the groundwater. With that being said, I have heard  
19 terms like accountability toward farms. I have heard  
20 issues how farmers have been irresponsible in the past.  
21 We cannot look at past practices and what was done 50,  
22 60, 30 years ago, and compare then to now. Because  
23 today we have so much more scientific knowledge.

24 Farmers are not just throwing out tons upon  
25 tons of nitrogen into the ground. Instead, they are

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1 being very effective, using drip irrigation,  
2 microsprinklers. We are monitoring everything we do.  
3 That not only goes for the farm I work for now, but the  
4 farms I worked for as a farmworker as well. I have to  
5 respect when people came up and talked about their issue  
6 with domestic wells and the nitrates in there, but  
7 unfortunately, the nitrates in that groundwater have  
8 been in that groundwater for the last 50 years.

9 Another part of accountability I would really  
10 like to bring to the table, the current monitoring that  
11 we have going on currently, does not tell us what one  
12 year to the next is doing as far as nitrogen leaching  
13 into the ground, whether it's the East San Joaquin Water  
14 Coalition or State Resource Board. We have no way of  
15 knowing, nor will we have any way of nothing if what we  
16 are doing is affecting nitrates in the groundwater in  
17 the future to come. We will not have any idea what's  
18 being done will have any significant impact for at least  
19 40 to 50 years.

20 As far as putting people's yields as public  
21 knowledge, I have to say if that is done, you are going  
22 to further push farmers away from working with their  
23 water quality coalitions or reporting anything. It is  
24 nobody's business, other than the proprietor themselves  
25 for what their yields are, because what other outside

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1 people will do and try to use it against these farmers  
2 is they are going to go ahead and get an average price  
3 of what the yield was and say this farmer made millions  
4 upon millions of dollars without any idea of what kind  
5 of inputs they put into the field, what they had to do  
6 to keep the farm going, how much they had to pay for  
7 outside water to water those fields.

8           So I think it's something that can be used  
9 against the farmers. I ask that you do, any time you do  
10 make a decision, think about the people you are directly  
11 affecting because I think sometimes when we start  
12 looking at numbers, we start looking at issues, and when  
13 decisions are made, we lose part of our human impact.

14           So I just beg that you consider the people here  
15 in this room and the people that have been directly  
16 affected by decisions made in the past. There's only  
17 three percent of our nation that grows 100 percent of  
18 the food for this nation. So when we cause farmers to  
19 close down and we push them out of business due to  
20 regulatory issues, we are taking away from our own food  
21 supply and from our national security. Thank you very  
22 much.

23           CHAIR MARCUS: Thank you very much.

24           MIKE BRANCATO: My name is Mike Brancato from  
25 Bakersfield, California. I'm a third-generation farmer.

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1 My grandfather came over from Italy in 1922 and been.  
2 farming ever since. Plus, I'm a retired state worker.  
3 Don't hold that against me.

4 I don't understand why this is moving so fast.  
5 In Kern County, they're going to redo the dam, Isabella.  
6 That's a 25-year project. They haven't even started it  
7 yet. This is three or four years, and already you're at  
8 mock speed. I don't understand that. These are bullets  
9 I have and comments I want to make. So bear with me.

10 In 2012, this group went to Bakersfield and  
11 spoke. At that time, they said that these were only  
12 going to be suggestions. Upon questioning further, I  
13 found out that it's not suggestions. It's going to be  
14 mandates. If you don't follow the mandates, eventually,  
15 they will confiscate your property through fines and  
16 attrition and things like that.

17 Then the people that spoke earlier, the Spanish  
18 people that didn't speak English, they were there and  
19 they spoke. Their wells at that time had the same  
20 problems. In all this time, A, they haven't done  
21 anything to fix the wells, and they haven't learned the  
22 language. That doesn't sit well with me.

23 Number three, I'm very nervous, sorry. All the  
24 suggestions that you have heard now and in the past, are  
25 you going to implement any of them, and if so, what

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1 suggestions would the farmers have made that this came  
2 from a farmer in Fresno and this is the suggestion and  
3 going to implement it? Are you going doing anything of  
4 that nature?

5 CHAIR MARCUS: We do, eventually.

6 MIKE BRANCATO: That was just a question that I  
7 had.

8 Then the price per acre, we're at hundreds of  
9 hundreds of dollars trying to comply, not counting the  
10 PCAs and all the other environmental stuff. We're a  
11 small farm, approximately 130 acres, and we're paying  
12 around -- last I checked, by my own -- it was about  
13 14,000, I believe, is what she told me. That's a lot of  
14 money. That's a lot of money. We have no employees.  
15 You're looking at him. I'm 57. I'm getting tired.

16 How can you state -- oh, shoot. No. I don't  
17 know where to begin. I agree with the guy before me  
18 that Region 5, we have a coalition. My woman is Nicole  
19 Bell. She's great. I believe we should stick with the  
20 coalition.

21 I don't want anybody knowing my personal  
22 business. It would be just like me saying to you I want  
23 to know what you paid in taxes, how much you paid PG&E,  
24 and what your financial expenditures were in your house.  
25 You wouldn't want me to know that. I don't want other

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1 people to know my personal business. I think it's only  
2 fair.

3 If you were on this side, would you want  
4 everybody and their brother to know everything that's  
5 going on in your life? Do you want them in the middle  
6 of your Cheerios? You want to add your own milk and not  
7 have someone else put milk in your Cheerios. Do you  
8 know what I mean?

9 CHAIR MARCUS: I'm stealing that metaphor.

10 MIKE BRANCATO: You're more than welcome.

11 CHAIR MARCUS: You should probably wrap.

12 MIKE BRANCATO: I thank you very much. I'm  
13 very nervous, but thank you. Have a great day.

14 CHAIR MARCUS: Thanks for trying.

15 Mr. Thomas, followed by Charlotte Gallock from  
16 the Watershed Coordinator at Westland's Coalition,  
17 followed by Harold Brockman from Brockman Farming.  
18 Thank you for your extensive comments. They're very  
19 helpful.

20 BILL THOMAS: Sure. The South San Joaquin  
21 Water Coalition is one of the three petitioners. You  
22 heard from the delta, the farm bureau, Sacramento. I  
23 want to say thank you for this hearing, down here in  
24 Fresno. Phil Wyels reminded me I needed coffee this  
25 morning. I made that request that it be accommodated.

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1 So I thank you.

2 This issue -- I only have three quick issues.

3 One, this individual farm data becoming public. I spoke  
4 to that in Sacramento. Many others have here. I have  
5 three subthoughts to share with you because I'm sure  
6 you're faced with if we don't do that, what do we do, so  
7 it is to accommodate that.

8 The first, you'll hear later from John Dickey  
9 about the impact program. I think that's a very big  
10 component of that. Secondly, the experts this morning,  
11 pointed out why township reporting is virtually the  
12 right granule for this. Third, that Steve, you  
13 mentioned in Sacramento, about the need for an audit if  
14 we don't go to everybody's individual public exposure.  
15 We are taking that serious, scratching our head. Other  
16 people have talked about that. So we're -- that's a  
17 work in progress. We'll probably make some suggestions.

18 Second issue, the -- is the legal issue.  
19 That's parties' status. In the South San Joaquin order,  
20 we have many things in the record that are not in the  
21 East San Joaquin record. Emel spoke to recognizing this  
22 as a problem and that you're going to give further  
23 thought to that. It is important to do. We'll be  
24 anxious to see how you fulfill that deal, Emel. That's  
25 a very big issue to us. These orders have a way to get

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1 to court. It will be pivotal in that forum should we  
2 have to go there.

3 Lastly, on drinking water and the monitoring of  
4 farm drinking water wells, our coalition has been at the  
5 forefront trying to work with the EJ community on these  
6 issues. We understand the problem.

7 Dee Dee reminded me in a phone call, a meeting  
8 the Kern folks had with staff that this is important and  
9 we have to start somewhere. I'm not advocating that you  
10 necessarily start there, but should you, the -- we have,  
11 as others have said, SGMA, your own drinking water area,  
12 and CV-SALTS is getting into this. The replacement  
13 water as well. Even if you order it here for the small  
14 subset that are on the farm drinking water, the -- once  
15 a more global program comes in place, it ought to  
16 off-load from the farm side.

17 CHAIR MARCUS: Coordinate them.

18 BILL THOMAS: Thank you very much.

19 CHAIR MARCUS: Thanks very much.

20 BOARD MEMBER SPIVY-WEBER: I just wanted to  
21 thank you for mentioning because several people have  
22 brought it up, why are we here? Why are we, the State  
23 Board, here? It is in part -- in 100 percent part, it  
24 is because it was petitioned that what the Regional  
25 Board did was petitioned by three different types of

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1 groups to the State Board. That's why we're here. It's  
2 not an idea hatched in our heads.

3 CHAIR MARCUS: That's not to say we don't hatch  
4 ideas in our heads, but this wasn't one of them.

5 Thanks.

6 Ms. Gallock, thank you. Followed by  
7 Mr. Brockman, followed by Karl Longley. Unless, Karl,  
8 you want me to hold you. Karl, do you want me to hold  
9 you to the end or go?

10 KARL LONGLEY: I can wait. I'm staying.

11 CHARLOTTE GALLOCK: Hi, you did a fabulous job  
12 pronouncing my name. I'm Charlotte Gallock. I'm here  
13 on behalf of Westland's Water Quality Coalition that  
14 represents growers in the Western Tulare Lake Basin  
15 area. Thank you for the opportunity to be here today.

16 I'm the primary staff member representing  
17 nearly 1500 participants with over 49,000 irrigated  
18 acres enrolled. We charge 3.09 per irrigated acre to  
19 our members for implementation of the program. The  
20 Westland's Coalition and its members are interested  
21 stakeholders in this process to amend the East San  
22 Joaquin general order as the Water Boards may seek to  
23 similarly amend other general orders; however,  
24 Westland's comments here are not intended to be  
25 exhausted or to satisfy any rights it may have under

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1 similar proceedings that the board initiates to amend  
2 Western Tulare Lake Basin general order because it has  
3 no -- it has received no formal notice that the board  
4 intends to do so.

5 It is our understanding that these proceedings  
6 only apply to the East San Joaquin. Westlands believes  
7 that proposed amendments to any other general order  
8 should be subject to similar review and comment as has  
9 been provided for each San Joaquin, even if those  
10 amendments are the same or similar.

11 I had three specific comments with regards to  
12 the revisions. First, most of them agree with what's  
13 been said this morning and this afternoon. The  
14 elimination of the vulnerability designations will  
15 prohibit the Regional Board and the coalitions' ability  
16 to prioritize and focus efforts and resources in areas  
17 with the most significant water quality issues.

18 In addition, the reporting of data at the field  
19 level. Field-level reporting will remove a primary  
20 function and benefit of the coalitions. Both the  
21 Regional Board and the coalition will be collecting and  
22 analyzing all data. We're duplicating efforts and  
23 duplicating costs.

24 The Regional Board maintains the right to  
25 review raw data and an auditing system is currently

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1 there or is available if they need to review any  
2 information that the coalition has. Third, cost  
3 implications. With the removal of the prioritization  
4 and reporting data on a field-level basis, the Regional  
5 Board fees will increase. As they stated in the  
6 Sacramento workshop, that they would require over 90  
7 staff members to handle this information and this data.

8 This would require the coalition fees to also  
9 increase drastically above \$3.09. One of the fears I  
10 have is that the farmers that you have heard today may  
11 not farm any longer in California. That's on a personal  
12 note, not okay with me, because my job depends on ag.  
13 My husband's job depends on ag, and neither of us are  
14 farmers. We're in support of areas of farming.

15 In conclusion, the program as it stands and  
16 implemented currently, is designed with the ability to  
17 evolve over time. Regional boards through the  
18 coalitions have the best understanding of the specific  
19 regulated region. Allow the current program to run its  
20 course with the evolution guided by issues analyzed data  
21 and extensive grower education and outreach.

22 Thank you very much for your time.

23 CHAIR MARCUS: Thank you.

24 Mr. Brockman, followed by Wayne Cederquist,  
25 followed by Keith Freitas. Thank you, Keith, for

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1 suggesting we get a bigger room, which we did.

2 Mr. Brockman?

3 Mr. Cederquist? After Mr. Cederquist and

4 Mr. Freitas, we'll go to Velvet Gaston.

5 WAYNE CEDERQUIST: Good afternoon. My name is  
6 Wayne Cederquist. I am a pistachio grower in Madera  
7 County. I would really like to urge the board to listen  
8 to what the scientists have said today. They're people  
9 who are not really hired by anyone with a vested  
10 interest in decisions that are made, and I think it's  
11 remarkable that unanimously, they said the exact same  
12 thing, the existing setup is probably the best situation  
13 we're going to get for accurate reporting.

14 Many of us have talked about how we are  
15 voluntarily getting behind this. As a third-generation  
16 farmer who lives here, I do not want to see our  
17 groundwater become any more polluted. I think most  
18 farmers would echo those words very strongly. The  
19 reporting aspects of this, the burden of having to start  
20 to collect data that we are not currently collecting, I  
21 am the guy in my farming operation who does all of this,  
22 and honestly, it is reaching a point where I can't take  
23 on too much else before I have to go out and hire a  
24 person to take care of the bureaucratic load.

25 I would urge you to think about the number of

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1 farmers who have basically taken a day off from their  
2 job today to come here and speak of the burden of these  
3 proposed regulations. The idea of having my private  
4 information put out there is appalling. People can look  
5 at my yields. As another speaker said, can look at my  
6 yield acre, times the acres I farm, times the price of  
7 my crop, pistachios, and have an approximation of my  
8 gross income every year. That's frightening.

9 I think a lot of farmers probably feel -- I  
10 know I feel like I am being regarded as an enemy in many  
11 parts of the State of California. We were vilified in  
12 the media in parts of the state last year during the  
13 drought. These proposed regulations have a feeling of  
14 being almost punitive, and it should not be that way.

15 Through the coalitions, you have our  
16 cooperation. As some other speakers mentioned, believe  
17 me, we all realize that groundwater, under my feet, when  
18 I'm standing on my property, is the same groundwater as  
19 is under my neighbor. I don't want a neighbor, who is a  
20 slob and creating issues for me. Please, place this on  
21 a cooperative basis. Thank you.

22 CHAIR MARCUS: Thank you.

23 Mr. Freitas, followed by Velvet Gaston,  
24 followed by Dr. David Cehrs, I think.

25 KEITH FREITAS: So this is going to probably

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1 not be politically correct, a lot what I want to say.

2 You might want to cover your ears if you're sensitive.

3 CHAIR MARCUS: I think that would be illegal  
4 for me to cover my ears.

5 KEITH FREITAS: I'm Donald trump without the  
6 money.

7 So if we're going to do science, let's keep the  
8 science all tracking on the same basis. Let's don't  
9 include comments from people who don't have proper  
10 science backing their statements, number one. That's  
11 real important, I think, for us. It takes it out of  
12 context.

13 If we have people that are saying there's  
14 nitrogen loads or nitrate loads in certain areas, we  
15 have to define that. There's a lot. Septic tanks and  
16 septic tanks under old codes, etc., etc. You have to  
17 really, really, really drill down into those.

18 Secondly, I really appreciate -- I really  
19 appreciate the fact that you folks are reminding us of  
20 how human you are. We're all in the same bathtub. Do  
21 you think I want to crap in my own bath water? I don't  
22 want to crap in my own bath water. I want clean water.  
23 You're in the same state I'm in. You have a vested  
24 interest in seeing this water clean, the same way we  
25 have a vested interest in seeing the air clean.

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1. We were taking your dirty air in San Francisco  
2 and Sacramento. It comes this way. Yet, we were put  
3 under burden to clean it. We have shown more than --  
4 more than a two-time effort to do that. I think that  
5 voluntary effort speaks volumes and loud to us to be  
6 willing to volunteer to help clean the water.

7 To hold us as the bad guy and even in the media  
8 campaigns or even in the backroom conversations,  
9 thinking that, you know, we need to put another grapple  
10 hook inside these farmers and pull more money out of  
11 them, my operation and my well that I put in was all  
12 designed 20 years in advance. I have been putting less  
13 water on my trees than I ever thought would keep them  
14 not just alive, but keep fruit production on them. I  
15 did that voluntarily, myself, nine years ago, when I  
16 made that decision to buy the right kind of pump.

17 I'm pumping out of fractured rock. I was  
18 forced into that type of cultural practice. I didn't  
19 have enough money for nitrogen. If you can show farmers  
20 a different source of nitrogen, like the plant-based  
21 nitrogen they have out there now introducing in organic  
22 farming, you show farmers a different source for  
23 nitrogen, even if it costs a little bit more, the  
24 component, the cost component, if it costs more but  
25 better for crop, gives better production and cleans the

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1 environment, I don't think -- I don't think they even  
2 look back. They just order it.

3 So what I would say is there's a lot of  
4 different ways to fix this. I just want you to know  
5 that I appreciate you bringing the humanness by coming  
6 down here and being in this process with us. Saying  
7 we're not alone.

8 CHAIR MARCUS: Thank you. I appreciate what  
9 everyone else has brought to the comments on all sides.

10 Velvet Gaston. Ms. Gaston, followed by  
11 Dr. Cehrs, if I have that right. Great. Followed by  
12 Jesus Quevedo from Agua.

13 VELVET GASTON: Good afternoon, my name is  
14 Velvet Gaston I'm an assistant with Frederick Consulting  
15 Group and serve as a technical assistant to the Kern  
16 River Watershed.

17 CHAIR MARCUS: Slow down.

18 VELVET GASTON: Thank you. I'm pretty bad  
19 about that. I'm here today to present a general cost  
20 overview of incremental changes from what has been  
21 proposed in the order.

22 In evaluating the changes that were proposed,  
23 the State Board considered the cost and the scope that  
24 would be applied to members to be unsubstantial. Brief  
25 reviews of these changes and their impacts indicate that

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1 they really need to be looked into and a lot more detail  
2 before we can make any judgment and say that those are  
3 unsubstantial changes to be made. I think this needs to  
4 be considered, especially when looking at the end  
5 coefficient research, the removing of HD areas, and the  
6 increased in reporting requirements, the domestic well  
7 supply monitoring, and also in terms of the increased  
8 staffing of the Regional Board and their review time.

9           So to develop this overview, we used a cost  
10 report that was submitted by the Kern River Water Trade  
11 Coalition in 2013. We preliminarily updated that cost  
12 report with estimates to include some of these changes  
13 that were recommended to get a little bit of a better  
14 sense of the annual cost we may be seeing just from the  
15 four I outlined above.

16           In terms of end coefficient research, there's  
17 very little data available for what has gone into  
18 similarly conducted research programs and the cost  
19 associated. Some of the earliest estimates are looking  
20 at tens of millions of dollars to attach to the 95  
21 percent in three years goal that has been mandated to  
22 provide those end coefficients. That's Central Valley  
23 wide.

24           In terms of HDA removing, that would cost the  
25 Kern River Water Coalition one million dollars annually

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1 in direct cost to members. That's not something they  
2 would pay in fees but their direct effort. Of course,  
3 this is hitting the smallest and low-vulnerability  
4 members the hardest because now they're receiving  
5 certification requirements and our input, that they  
6 wouldn't have had to have put in previously. In terms  
7 of drinking well monitoring, based on our demographics  
8 and considering who would have to be doing continuing  
9 samples, using a proxy would cost \$700,000 annually, a  
10 direct cost to members, and \$670,000 annually.

11 In terms of the increased Water Board staff, we  
12 use the estimate provided by the Regional Board as of  
13 the Sacramento meeting. They estimated 99 PUI. That  
14 was a little higher than the written comment, which  
15 would bring us up to 80 plus PUI that needed to be  
16 added. Just in terms of KRWCA's share of that, we would  
17 be looking at a additional \$1.3 million annually to Kern  
18 growers. That cost would be levied directly through  
19 increased fees.

20 This brings the total impact felt by our  
21 growers to \$3 million annually, and that's just for the  
22 Kern coalition. That will vary by coalition depending  
23 on demographics. Areas with larger low-vulnerability  
24 populations and larger small operations will be impacted  
25 more substantially in terms of the aggregate cost and

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1 direct cost to growers.

2 CHAIR MARCUS: You should start wrapping.

3 VELVET GASTON: Absolutely. Overall, we just  
4 consider that evaluating all of these costs, you  
5 recognize that these are not unsubstantial changes and  
6 that should be evaluated at the State Board level in  
7 reference to any other revisions that are brought  
8 afterwards.

9 CHAIR MARCUS: Thank you.

10 BOARD MEMBER DORENE D'ADAMO: I assume you're  
11 providing a report.

12 CHAIR MARCUS: In the written comments.

13 VELVET GASTON: It will be provided in the  
14 comment letter for the KRWCA with the care costs and  
15 care associated. If you have any other questions.

16 CHAIR MARCUS: Dr. Cehrs, followed by  
17 Mr. Quevedo, followed by Mark Estrada.

18 DR. DAVID CEHRS: My name is Dr. David Cehrs.  
19 I have a Ph.D. in hydrology. I'm a register geologist  
20 and certified hydrogeologist with the State of  
21 California.

22 I would like to bring a report to your  
23 attention. It was in response to the Harter report that  
24 came out and said 96 percent of the nitrogen in the  
25 groundwater was due to agriculture. So the Kings River

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1 Watershed Coalition contracted with Lawrence Livermore  
2 National Lab to do an isotopic study to see if we can  
3 identify sources for the nitrogen in the water and the  
4 area.

5 The study area was the valley floor on the east  
6 side of Fresno County and some of Tulare County, the  
7 Alta Irrigation District. The results -- I should  
8 mention it's Lawrence Livermore National Lab Technical  
9 Report 682246. It's still in draft, but it's close to  
10 being done.

11 CHAIR MARCUS: Okay.

12 DR. DAVID CEHRS: The results were equivocal.  
13 I will read one of the results. Measured nitrate  
14 isotopic compositions are consistent with multiple  
15 sources of groundwater nitrate from my expectation of  
16 reduced nitrogen derived from applied in septic system  
17 effluent, animal manure, food processing waste, and/or  
18 soil. Nitrogen and oxygen isotopic conditions of  
19 nitrates in sample ground waters are not consistent with  
20 synthetic nitrate fertilizer being a primary or  
21 significant source of nitrate to these wells.

22 There are two other technical reports. One is  
23 Tulare County Domestic Wells and other, Tulare County  
24 Dairy Wells, that were also done with nitrates. If you  
25 look at the data, it's plotted on an N1508 diagram, and

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1 there are fields that delineate different sources.

2 Now, these fields overlap. One of the  
3 interesting things is that most of the Tulare stuff  
4 falls within the soil field. That soil field also  
5 overlaps septic and manure and some of that field also  
6 overlaps ammonium fertilizer. So the response is that  
7 you cannot specifically tell that this well, the  
8 nitrogen in it came from that source. It could be any  
9 one of a multiple of sources.

10 So from the standpoint of the Harter report  
11 saying 96 percent is ag, these kinds of data imply that  
12 it's -- we've got a much more complex system on the  
13 whole thing. The sedimentary geology is complex. The  
14 hydrology within that is complex. The well drilling and  
15 completion are complex. To know where any one source  
16 is, you don't know.

17 So some of the things to take away from this is  
18 it's really tough to figure out where some of this is  
19 coming from. Definitely, some of it is ag. Definitely,  
20 some of it is septic. The one thing I would like to say  
21 about septic is based on looking at the GeoTracker GAMA  
22 data in the Fresno area, you can actually see where  
23 areas that were on septic tanks, sort of rural  
24 residential with time, when they went on to the City of  
25 Fresno sewer, the nitrogen disappeared or went away.

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1           So the comment I would make is that if you're  
2   going to look at domestic wells, you need to look at all  
3   rural residential wells. Everybody that's got a septic  
4   tank, you should be looking at because they are a  
5   potential source on their own.

6           Anyway, the big thing is that you can't tell  
7   specifically where the stuff is coming from. You might  
8   be -- one thing real quick. Septic manure is all  
9   mammal. You can't distinguish one mammal from another.  
10   If we started putting caffeine in it, you maybe can  
11   distinguish dairy and pigs from humans. So there's  
12   other things that you need to look at.

13           CHAIR MARCUS: Interesting. Thank you, sir.

14           Mr. Quevedo, nice to see you. Followed by  
15   Mr. Estrada, followed by --

16           JESUS QUEVEDO: Good afternoon. Thank you for  
17   coming down here to Fresno. As the day has progressed,  
18   I have been taking notes on what I have been hearing and  
19   everybody has their key message and theme.

20           As I have been listening today, I have been  
21   paying attention to different themes, and the farmers  
22   have one point of view. Those of us that work with the  
23   farmers have a different point of view, but I come to  
24   relay a specific case from my town.

25           CHAIR MARCUS: He needs to take notes.

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1 JESUS QUEVEDO: In my town of Cutler, our  
2 community has eight wells, but due to contamination, six  
3 of those had to be closed down. We only have two that  
4 are still providing water that meets standards as they  
5 should, but one thing none of these figures show is the  
6 cost in terms of sickness of people who have gotten sick  
7 from drinking this water. Children whose families never  
8 take them to the hospital or where the diagnostic is  
9 directly linked to people in our community that have  
10 died of cancer and never conclusively conclude the  
11 cancer was caused by exposure to bad quality drinking  
12 water.

13 So I'm in agreement with some of the things  
14 that some of the things the people said and in  
15 disagreement with some of the others. I acknowledge the  
16 gentleman that came in and said his family came from  
17 Italy, and the family learned to speak English. I come  
18 from a closer country, Mexico, and I recognize I  
19 probably should have learned English by now, but the  
20 other gentleman who said you should have given the word  
21 first to the farmers, and he went running out the door,  
22 I don't agree with him.

23 The implication was people like myself are  
24 causing problems to farmers like him. I want to remind  
25 you that farmers are causing problems for people like

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1 me. I lost two members of my family to cancer.

2 So we all have a reason to be here today.

3 Whether we have everything we need, whether we have very  
4 little, or those of us that have almost nothing, we're  
5 all here today, but I want to remind you that even those  
6 of us that have nothing, are impacted by sicknesses and  
7 illnesses. As a result, I hope you take that into  
8 consideration when you put a more careful control on  
9 nitrate emissions.

10 So I just want to remind you that it's not fair  
11 that our community once had eight wells, and now we only  
12 have two. And now they're going to the state for  
13 additional funding to drill a new well. So thank you.

14 CHAIR MARCUS: Thank you for the translation.

15 Mr. Estrada, tell me if I got that right,  
16 followed by Donald Ikemiya from the Kaweah Basin Water  
17 Quality Association, followed by Hugo Trujillo.

18 MARK ESTRADA: My name is Mark Estrada, and I'm  
19 from Yettem. The town you saw up there that had 180 MCL  
20 on the nitrates. My family has lived in this valley  
21 since the late 1890s. We have a small farm out there in  
22 Yettem, 40 acres with on olives and pecans and grew corn  
23 and barley and kind of got taken over, but anyway, I  
24 have been watching the nitrate levels go up every year.

25 About 20 years ago, we got a system -- a sewer

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1 system put in so a lot of the septic systems are gone  
2 now. The nitrate levels continue to rise every single  
3 year. You can watch them go up.

4 The irony is that the people that live there  
5 are the ones that are working these fields. They're  
6 getting poisoned by this water. There's a lot of stuff  
7 we can do that I don't think that has a lot to do with  
8 what the CCA is recommending. When I was a kid here in  
9 this valley, I remember seeing frogs and bugs, go out  
10 there at nighttime, and they would be thick. There's  
11 none. Big butterflies, big giant moths, you don't see  
12 any of those anymore.

13 I guess, you know, the pesticides have done  
14 their job, but the main thing I would like to stress is  
15 that you don't need to throw a chemical at every problem  
16 that you have in the field. I think people need to get  
17 more back to the roots of farming, sustainable farming,  
18 where you grow soil and your crop is your by-product.  
19 That's -- once you have your soil going, you can have  
20 good crops.

21 I'm sure there's a mixture that you can use  
22 with the chemicals that we have today and with old  
23 sustainable methods. Using a lot more manure, cover  
24 crops, there's a couple of great -- there's one great  
25 one called sun hemp. It's a really good cover crop.

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1 There's a few other things that can go with industrial  
2 hemp that you can grow here in the next couple of years.  
3 It has a feature -- a thing called phytoremediation  
4 where it actually will clean the soil that you planted.  
5 It goes into the plant. You can use the plant for  
6 whatever, burn it, do whatever, that will take care of  
7 the soil.

8 There were chemicals used 40 or 50 years ago  
9 that are starting to appear in the water now. Who knows  
10 what else we're going to be seeing in the next 20 years,  
11 but anyway, as far as getting rid of those, we need to  
12 definitely attack this nitrate problem head on. That's  
13 pretty much all I've got to say.

14 CHAIR MARCUS: Thank you for joining.

15 Mr. Ikemiya, followed by Mr. Trujillo, followed  
16 by Hugo Trujilo.

17 DONALD IKEMIYA: Good afternoon, Chair Marcus  
18 and board members. Thank you for the opportunity to  
19 speak today. My name is Donald Ikemiya. I am the  
20 executive director of the Kaweah Basin Water Quality  
21 Association. I'm also a professional civil engineer and  
22 agricultural engineer, and I grew up about 30 miles from  
23 here on a small family farm, farmed it for years with my  
24 dad. We now lease it out. Our farm is in the Kings  
25 Coalition.

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1 I would like to emphasize one item, and that  
2 item is trust. Within the last two and a half years,  
3 the life-span of the Kaweah Basin Water Quality  
4 Association, with the direction from our board of  
5 directors, we worked so hard to build trust with our  
6 growers. Our Kaweah Basin is comprised of about 1300  
7 growers. We have about 163,000 acres that are covered  
8 in Northern Tulare County. About 800 of that 1300  
9 growers, are less than 60 acres. They are small  
10 growers. In fact, 500 of our growers, have 20 acres or  
11 less.

12 So a large portion of our membership is also  
13 elderly. They tell us. They don't have a computer.  
14 They don't go on the Internet. They're still  
15 struggling, but they're trying to make things work with  
16 what we're trying to provide. We have many Spanish  
17 speaking growers, and we provide Spanish interpretation  
18 as necessary.

19 Like any new regulatory program, we started out  
20 rocky with our growers. I'll say we were cussed at. We  
21 were called names, but over time, we listened. We  
22 persisted, and we built trust with our growers. By  
23 putting ourselves in their shoes, we built trust through  
24 nearly 2,000 phone calls, e-mails, they would come into  
25 our office, one-on-one conversations. It took a while,

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1 but we did build that trust.

2 So we also conducted over 17 personal one on  
3 one -- not one on one, but group workshops, and these  
4 were very well attended. So over time, many of our  
5 growers, we saw a shift in overall understanding of the  
6 irrigated lands regulatory program. They started to  
7 embrace the aspect that the coalitions are an  
8 intermediary of their data. They like that. They trust  
9 coalitions. We built that trust.

10 So now they trust us with the private,  
11 sometimes proprietary information. And so now, however,  
12 there are also many small limited resource growers that  
13 are outside -- they're on the tipping point. They, even  
14 with the existing program, you know, it's an additional  
15 cost for them. The paperwork is time-consuming. The  
16 regulations are complex and confusing, and they do not  
17 have the means to hire somebody to take care of this for  
18 them themselves.

19 So these are the same growers that want to be  
20 good stewards of the land. They don't want trouble with  
21 the government. That's a quote. They trust the  
22 coalitions to help them. So we have worked the  
23 coalitions, we have worked years producing technical  
24 reports. We have met with and interacted with the  
25 Central Regional Water Quality Control Board. We are

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1 also just beginning to build mutual trust between the  
2 Regional Board, the coalitions, the growers, and the  
3 environmental community.

4 Here we are today, discussing a significant,  
5 and I'll say unnecessary, changes to the existing  
6 general orders. So as someone who is --

7 CHAIR MARCUS: You should wrap. I got a bunch  
8 more cards. The day just got a lot longer. I'm short  
9 on time. It's not me, it's the people behind you  
10 waiting to speak. You know me, I'll stay all day and  
11 night. It helps me. We have to keep moving.

12 DONALD IKEMIYA: So as someone in the IRP  
13 implementation trenches every single day, I know these  
14 proposed changes will severely damage the trust we all  
15 worked hard to build; therefore, I ask you suspend  
16 revisions to the orders and allow good technical work  
17 and grower trust building of the existing program to  
18 continue. Thank you.

19 CHAIR MARCUS: Thank you very much.

20 Mr. Trujillo. After that, just so people know  
21 is Juventino Goya and Chris McGlothlin from Cotton  
22 Ginners.

23 HUGO TRUJILO: My name is Hugo Trujillo. I  
24 come from the community of Bethany Track in Fresno  
25 County, an unincorporated disadvantaged community. In

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1 my community, I bathe with the water that everyone here,  
2 the farmers as well. I pay for my water as everyone  
3 else here, as the farmers, with the exception I get  
4 quarterly reports from the State Water Board saying at  
5 certain points, when the water exceeds the maximum  
6 level, I cannot drink it.

7 So the notices here say that -- this is from  
8 directly Hugo, that you can't open your mouth when  
9 you're taking a shower because of the contaminant levels  
10 that harm you. He's asking what am I supposed to bathe  
11 with? What water am I supposed to wash dishes?

12 That's why I'm here in support of stronger  
13 regulations because some of us fight for money, while  
14 others, like Mr. Trujillo, fight for families and our  
15 lives every day. Thank you.

16 CHAIR MARCUS: Thank you.

17 JUVENTINO GOYA: Good afternoon. My name is  
18 Juventino Gonzales. I come from town unincorporated  
19 disadvantaged community of Lenar, which is also in  
20 Fresno County. I support this proposal because we are  
21 in the State of California. On three different  
22 occasions just this year, I have gone to the state  
23 capital in Sacramento to advocate around issues of  
24 contaminated water, and he added the contaminated air  
25 around our state and our communities.

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1 In our community, we had a well. The year it  
2 was constructed of 1979. That well exceeded the maximum  
3 levels in the state of arsenic; therefore, we're having  
4 to get other wells from the funding that came from the  
5 State Water Board, but it's unknown what contaminants it  
6 contains now that it's being tested.

7 I believe in the month of July, our water  
8 testings will be completed, and we will find out whether  
9 our water is drinkable or not. It is not a large  
10 community. It's about 148 home connections. So if  
11 we're fortunate, our water will be drinkable.

12 I also want to add that it's also important.  
13 He understands it's not just about the pesticides  
14 regulations, but he wanted to ensure they would clean up  
15 around the communities as well, that might add to the  
16 contaminants in the community. In this case of Lenar,  
17 and he's asking that in Sacramento for over 50 years.  
18 Once again, thank you very much. I hope to see you once  
19 again because we're not that far from Sacramento. Thank  
20 you.

21 CHAIR MARCUS: Thank you.

22 Chris McGlothlin, followed by Pat Ricchiuti,  
23 followed by Eric Hansen. Pat Ricchiuti had to leave.  
24 So then it will be -- after Mr. Hansen, will be Roger  
25 Smith.

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1 CHRIS MCGLOTHLIN: Good afternoon. Thank you  
2 Chairwoman Marcus and members of the board and staff  
3 members from the State Water Resources Control Board for  
4 coming down to Fresno. We appreciate the opportunity to  
5 comment.

6 As I stated before, I'm the director of  
7 technical services with the California Cotton Ginners  
8 and Growers Association and the Western Agricultural  
9 Processes Associations. We wanted to touch on a couple  
10 of key issues that we saw in the petition that we would  
11 like to address. So that the first major concern that  
12 we have is with the Regional Board's ability to handle  
13 the increase in responsibilities that would come with  
14 this petition.

15 As stated before, I believe it was the engineer  
16 from Provost and Pritchard said it would take over 99  
17 PUIs. Currently, we have been working with the  
18 accounting department with the State Water Board.  
19 Members for our associations have -- some of our members  
20 have seen increase in waste discharge requirement fees  
21 of 130 percent over five years. We feel the only way  
22 the Regional Board would be successful in compiling and  
23 going through and researching all of this data that  
24 would be submitted directly to them, we see that as a  
25 result, end result will be an increase in waste

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1 discharge associated with our membership. Second, in  
2 addition to that, we see that as an increased burden on  
3 small farmers, which also comprises a majority of our  
4 membership as well.

5 The second issue that we wanted to bring up,  
6 it's an experience with our associations in terms of  
7 personal information, not long ago, probably within the  
8 last 20 years, it used to be more common of a practice  
9 that you would drive by a cotton field and see a marker  
10 set up, and that marker would indicate the type of seed  
11 that farmer was growing on that specific plot of land.  
12 Through that, there were actually a couple of major  
13 events that happened with that posting.

14 The first major event was that a cotton seed  
15 facility was burned to the ground in Visalia, a victim  
16 of arson, because they processed GMO cotton seed at that  
17 facility. The second action, we had student projects at  
18 UC Davis, senior thesis projects, destroyed in the field  
19 based on the research of GMO crops. To hammer the point  
20 home, growers are extremely fearful these same types of  
21 actions would be taken against their farm if posted  
22 online with specific data.

23 Last point I would like to touch on, we ask you  
24 trust the programs currently involved in addressing the  
25 long-term drinking water quality issue within the

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1 Central Valley. The Central Valley solemnity  
2 alternatives for long-term sustainability and CV-SALTS,  
3 I know I haven't been in the meeting room as long. I  
4 have only experienced two years worth. I know people  
5 have been sitting in that room for ten years.

6 Through that process, ten years, millions of  
7 dollars in research and development, as stated before in  
8 Dr. Harter's Power Point presentation, there are five  
9 programs that address drinking water quality. We feel  
10 those programs are effectively set up and let run their  
11 course and potentially address later on down the road if  
12 drinking water quality objectives aren't being met.  
13 Those are my points. Thank you very much, again.

14 CHAIR MARCUS: Perfect timing, too. Thank you,  
15 Mr. McGlothlin.

16 Mr. Hansen, followed by Mr. Smith, followed by  
17 Alex Peltzer. No Eric Hansen.

18 Mr. Smith, Roger Smith? I feel like we ought  
19 to send notes to all these people.

20 Alex Peltzer. Mr. Peltzer, thank you.  
21 Followed by Laura Gutile, followed by Don Lindsay.

22 NICHOLAS CARDELLA: Alex actually had to go.  
23 My name is Nicholas Cardella. I'm an attorney with his  
24 office, Peltzer and Richardson. We represent the Kaweah  
25 and Tule Basin Water Quality Coalitions. I want to --

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1 CHAIR MARCUS: What is your name?

2 NICHOLAS CARDELLA: Nicholas Cardella.

3 CHAIR MARCUS: Thanks. I'm just changing the  
4 card so we have it. Okay.

5 NICHOLAS CARDELLA: I want to touch on one  
6 issue that I think is particularly relevant in light of  
7 the proceedings is the presidential nature of the order.  
8 A precedent of the order applies statewide except where  
9 the Regional Water Board finds there are truly  
10 significant site-specific conditions that render these  
11 requirements inappropriate. This is extremely  
12 problematic.

13 Obviously, conditions are not uniformed across  
14 the state. This is precisely what the proposed order  
15 assumes. What the growers speaking today have shown is  
16 the assumption is not correct. For them, the proposed  
17 order burdens outweigh the benefits. They are rightly  
18 concerned for their livelihood.

19 One simple change would go toward alleviating  
20 the concerns. Eliminate the presidential status of the  
21 order and permit the Regional Water Boards to apply the  
22 order only if they find are appropriate in the area.  
23 Further permit the boards, the regional boards to admit  
24 particular features of order if they find it is  
25 inappropriate for their region. Thank you.

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1 CHAIR MARCUS: Thank you. We spent a lot of  
2 time on that on the 4th. That clearly, the coalitions  
3 were also different. So as I think as Ms. Wadhvani  
4 said, we had to narrow it, quite aside from the legal  
5 points people have made a couple of times we have to  
6 talk about.

7 Ms. Gutile, followed by Mr. Lindsay, followed  
8 by Daniel Hartwig.

9 LAURA GUTILE: Good afternoon. I'm Laura  
10 Gutile, but I do go by Gutile. That's all right.

11 CHAIR MARCUS: I'm sorry.

12 LAURA GUTILE: Not a problem at all. I wasn't  
13 going to speak today at all, but I'm the secretary of  
14 the Madera County Farm Bureau. A couple of my  
15 colleagues asked me to tell my story. Mr. Greg Mussen,  
16 who was here earlier reinforced that. I am the fourth  
17 generation, and I'm also the last in my line to farm.

18 My daughter and my nephews don't want to farm.  
19 They don't see the value of farming. They hear from  
20 their friends and community members that, of course,  
21 farmers are the bad guys. Agriculture is good, farmers  
22 are bad, because we apply pesticides, we apply nitrogen,  
23 we apply these things to grow food, which, you know,  
24 these are high school kids, which I try very hard to  
25 educate when they're in my home. But faced with that

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1 and faced with the summers that my daughter would help  
2 me out in the office and my nephews would be out on  
3 tractors, my daughter would be out on a quad checking  
4 sprinklers, they just don't see the point, which is  
5 really sad. It's really sad. It breaks my heart.

6 To reiterate some of the other points, we had  
7 2600 acres, my family farm had 2600 acres that we sold  
8 all but my 17 acres of. My parents now live in Idaho.  
9 My sister lives in Idaho, and very soon, my brother is  
10 leaving for Colorado, because largely of our state  
11 legislation and the fact that it is pro consumer, more  
12 so than pro ag.

13 I was just doing some brief numbers, and the  
14 PCA -- I'm part of a co-op, and my portion for our  
15 current PCA/CCA who is retiring, I pay him \$612 a year  
16 just for him to come out to look at my field. I can't  
17 even -- I have a college degree, but I cannot even begin  
18 to decipher without the help of the East San Joaquin  
19 Coalition. I can't decipher what the data that they  
20 want.

21 They have been really instrumental in being  
22 able to sit down with us and say, "Okay. This is what I  
23 want you to measure. This is what I want you to test.  
24 This is what I can do for you."

25 I thank you for coming down here. I wasn't

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1 able to go to the Sacramento meeting. I'm grateful you  
2 were able to come down here to help us here in the  
3 Central Valley. Thank you.

4 CHAIR MARCUS: Thank you very much for being  
5 willing to come. I appreciate the spirit of mutual  
6 respect that we have heard today. I hope you have heard  
7 us defending agriculture against simplistic sound bites.  
8 That's my mission in urban California, to tell them  
9 where their food comes from.

10 By the same token, I'll defend fish. To a  
11 farmer, it's like the Californians need it all. We need  
12 safe drinking water, we need communities, we need each  
13 other, we need ag. The simplistic blaming of somebody  
14 else doesn't get us where we need to go.

15 LAURA GUTILE: It certainly doesn't. You're  
16 absolutely right. I didn't know what to expect. I  
17 didn't know if I was walking into a roomful of enemies.  
18 I'm grateful that there's going to be a meeting of  
19 minds, I think. Thank you.

20 CHAIR MARCUS: Thank you. That's the only way  
21 we ever really move forward, by listening to each other.

22 Mr. Lindsay, Hartwig, and then Janaki  
23 Jagannath, with the best handwriting of the day.

24 DON LINDSAY: My name is Don Lindsay. My  
25 family farms near Bakersfield. We're a small family

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1 farm, just under 400 acres. We grow pistachios and  
2 almonds. Not too long ago, we grew all kinds of other  
3 interesting things like alfalfa and cotton, tomatoes and  
4 black eyed peas. Sadly, we were forced to move to  
5 permanent crop because it's the only thing sustainable  
6 to keep our business operating.

7 The increasing cost of water, of labor, and of  
8 variety of regulatory programs, drove us to that  
9 conclusion. Along with that, we have been forced to  
10 become efficient. We used to flood irrigate. Then we  
11 went to sprinklers. Now we're on single line drip  
12 system. We have water meters, weather stations, soil  
13 moisture probes, all manner of data acquisition.

14 We do our own detailed irrigation fertilizer  
15 plans. Not because we're required to by regulation,  
16 because it's a necessity for survival. Efficiency is a  
17 way of life. It's something that has to be done in  
18 order to continue farming, which is also a way of life  
19 for us.

20 As a third generation, I very much hope my son  
21 will be the fourth generation. I hope he will have the  
22 ability to farm in this valley if he chooses to.

23 The increased amount of reporting and  
24 documentation takes more and more of my time and takes  
25 me away from the field, which is what I love to do and

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1 what I need to be doing. Not all of it is unnecessary,  
2 but it is burdensome. It's something that I hope you  
3 will take into consideration in ordering more.

4 A particular concern of the order is the  
5 publicizing of individual farm data that other people  
6 have spoken of. As a small farmer, I feel like this  
7 puts a target on my back to unscrupulous individuals  
8 that may see me as an easy target. Someone of modest  
9 means but a decent insurance policy, also, who won't  
10 have the chops or budget for a long legal battle.

11 Someone can look at my last year's data and see  
12 I put nitrogen on my pistachios for 3500 pound per acre  
13 crop. They can see I only yielded 2,000 pounds per  
14 acre. What they wouldn't realize, in the middle of  
15 July, I had a booster pump failure that shut my watering  
16 ability down for seven days and cost me 1500 pounds per  
17 acre yield, nor would they care if they were out for an  
18 easy payday.

19 Something I hope this board will take into  
20 consideration is the unintended consequences of the  
21 order. You have a heavy weight upon you to make good  
22 rulings that help all of us, that move us all in the  
23 same direction we want to go, but some of us more than  
24 others of a variety walks of life are susceptible to be  
25 injured by them. Thank you very much.

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1 CHAIR MARCUS: Thank you very much.

2 BOARD MEMBER STEVEN MOORE: That reminded me of  
3 a key point, that we see also in the storm water program  
4 with the urban runoff, and I want you to know that the  
5 issue resonates with me, and I think with fellow board  
6 members about finding that right balance between doing  
7 the good work and then working to report on the good  
8 work you have been doing. How much time do you spend  
9 reporting versus actual doing.

10 So I want you to know that resonates very  
11 heavily with me. As we work with regional boards on  
12 designing a regulatory program, we're really seeking to  
13 create efficiencies in those areas, so that you feel you  
14 are creating enough transparency. Still have enough  
15 time in the day to actually do the work to protect the  
16 water, protect the soil, and make a living. So I just  
17 want you to know I'm hearing that loud and clear.

18 CHAIR MARCUS: Hartwig, followed by Janaki  
19 Jagannath, followed by Karl -- you're not in the back  
20 anymore. More people came. I'm going to keep moving  
21 your card, followed by Ernest Conant from the Kern River  
22 Watershed Coalition.

23 Mr. Hartwig, thank you for staying with us.

24 DANIEL HARTWIG: It's a good thing you got me  
25 in. I think I have to pick up my kids. My wife just

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1     texted me. .

2                 Members of the board, thank you for the  
3     opportunity to speak today and actually holding the  
4     hearing here in Fresno. It made it easier to attend and  
5     be a part of this process. My name is Daniel Hartwig,  
6     and my brother and I farm 40 acres of vines and trees.  
7     I also work for a larger farming operation to actually  
8     pay my bills. So not really sure I understand the  
9     reasons that we're here today.

10                I have tried to work with the coalitions, you  
11    know, and helped develop the process over the last few  
12    years. Previously, I worked for an ag association and  
13    was part of helping to develop this. We spent a lot of  
14    time working on that, in developing the coalitions and  
15    developing the paperwork that's associated with what we  
16    do now.

17                Now we're regretting it because I'm responsible  
18    for filling out a lot of that paperwork and realizing,  
19    my God, what I thought was easy at the time, is much  
20    more challenging than what -- than what it's become.  
21    I'm looking at this and thinking the ink is barely dry  
22    on the first set of data that's collected and looking  
23    and saying now we have to do extra.

24                We basically only have a year's worth of data,  
25    aggregated data, and it's -- for some reason, it seems

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1 like it's not enough for some folks. It's been my  
2 experience, you know, running trials on the farm that  
3 you look at the data and see what the results are  
4 without making a lot of changes. I feel it's important  
5 to let the program that's developed many years by the  
6 stakeholders, let it play itself out, and let it prove  
7 its effectiveness.

8 Worse, we're kind of looking now at turning the  
9 program over to the state. I say that because of my  
10 private information is going to be collected and become  
11 public information, the coalitions are going to  
12 disappear. The coalitions have proven valuable for  
13 answering questions, helping the sanity check results,  
14 and helping train farmers on how to be in compliance.

15 You may be asking yourself if they're so  
16 valuable, why would they go away? If you're a grower of  
17 any size, it's not cheap to be a member of a coalition.  
18 The larger farm I work for has spent roughly \$50,000 a  
19 year in coalition memberships. It makes sense if you're  
20 receiving benefits of membership, that you know your  
21 company is -- well, a company -- like I said, if you're  
22 receiving the benefits in the membership, you know the  
23 companies' proprietary information would aggregated with  
24 your neighbors, it would make sense to go with the  
25 coalition. It makes a lot less if your information is

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1 going straight to the public domain.

2 I have concerns about the length of the new  
3 forms and information collected there. It took almost  
4 three days of staff time, between our agronomist in the  
5 farm and myself to enter the field information for the  
6 various coalitions we're a part of it. I have  
7 significant concerns of reentering this information into  
8 an even lengthier format.

9 With that in mind, I appreciate the opportunity  
10 to comment. If you have any questions or things like  
11 that, I would be happy to answer them. Thank you for  
12 coming down here.

13 CHAIR MARCUS: Thank you.

14 JANAKI JAGANNATH: My name is Janaki Jagannath.  
15 Thanks so much, Chair Marcus, for saying my name so  
16 well. It's very rare. I'm from the San Joaquin  
17 Sustainable Agriculture Collaborative, and we work along  
18 side environmental justice communities, as well as small  
19 and minority operated farms producing low input and no  
20 input practices on their farms, producing fresh fruits  
21 and vegetable for the food desert here in Fresno County.

22 We understand deeply the complexity of the  
23 issue at hand, of course, and thanks to Dr. Harter from  
24 UC Davis for providing such an objective overview of the  
25 variety of source contaminants and the widespread

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1 pervasiveness of the issue, and we can assume, of  
2 course, no one here wants to create the crisis that we  
3 have here facing communities across the valley, but we  
4 believe our confusion and maybe lack of information  
5 can't hinder government from engaging the acute health  
6 concerns presented by community residents here today.  
7 And carried historic concentrations of over application.

8           The argument -- I wanted to provide a little  
9 bit of nuance to an argument raised a few times here  
10 regarding the impact of the regulation on small scale  
11 and diversified farmers, and that is true that there is  
12 an additional administrative burden; however, we believe  
13 that's something that needs to be addressed and  
14 processed. That this regulatory problem is something  
15 that you're hard pressed --

16           CHAIR MARCUS: Can you speak a little slower?

17           JANAKI JAGANNATH: Sure. I'll try to go a  
18 little bit slower. We'll be hard pressed to find a  
19 small farmer of ethnic minority background not committed  
20 to protecting the groundwater resources or in making the  
21 information public, especially when it comes to  
22 protecting the resources that they and their children  
23 rely on.

24           Particularly, I thought it was interesting  
25 Mr. Scott of the African American Farmers Association,

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1 that's a pillar of our community and somebody we work  
2 with closely, was too respectful to mention he doesn't  
3 use any nitrogen fertilizer, no nitrogen fertilizer on  
4 his farm at all.

5 CHAIR MARCUS: He's like a folklore in Northern  
6 California.

7 JANAKI JAGANNATH: Truly.

8 There's no doubt frustration for many growers  
9 that they did not overfertilize their land to get a crop  
10 and are frustrated about having to pay the price of that  
11 historic fertilizer use, both farmworkers and small  
12 scale farmworkers who live on their ground suffer the  
13 impacts on their health and of this nitrate loading on  
14 the aquifer.

15 In conclusion, we just wanted to mention if  
16 this coalition model is to work, there has to be good  
17 outreach and education with the minority farmer  
18 community so this nuance that they add to the  
19 agricultural landscape is really honored and considered  
20 and that everybody of course has the right to know  
21 what's in their drinking water, and we hope that this  
22 additional -- the enforcement activity may be perhaps  
23 related to groundwater conditions for drinking water on  
24 farms is something that people will have access to funds  
25 to make sure they're able to comply with that and that

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1 shouldn't be a hindrance to moving forward with the  
2 regulation that we support.

3 CHAIR MARCUS: Thank you very much.

4 Mr. Conant, followed by Julia Alonso, followed  
5 by Robert Kunde.

6 ERNEST CONANT: Good afternoon, madam chairman  
7 and members of the board. Thank you very much for  
8 coming to Fresno. Ernest Conant, we represent the Kern  
9 Watershed Coalition. I'll be very brief. I was going  
10 to bring up several procedural issues that have been  
11 address by others, for the most part, Bill Thomas and  
12 Mr. Cardella. I won't repeat those.

13 Obviously, as Mr. Thomas said, we have a  
14 separate appeal pending with respect to our order. That  
15 needs to be addressed how that's going to be resolved.  
16 There's, as Mr. Thomas indicated, various procedural  
17 questions particularly in light of presidential language  
18 on Page 8 and as Mr. Cardella indicated, that needs to  
19 somehow be modified.

20 There are unique circumstances and conditions  
21 up and down the valley. Certainly, within the State of  
22 California, and I think you have acknowledged a few  
23 minutes ago that that needs to be addressed.

24 Another issue that has come up is we don't  
25 believe the existing environmental economic analysis that

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1 was done, supports the revised order that the staff has  
2 put out. If the revised order the staff put out is not  
3 adopted and at issue is avoided, absent that, we think  
4 that additional environmental analysis and economic  
5 analysis is going to have to be done. The statement in  
6 the draft that there's going to be no significant  
7 increase in costs is simply not supported by the facts  
8 as borne out by some of the testimony here today.

9           Lastly, I'll point out and emphasize, which I  
10 think a number of people have said that the requirement  
11 for field-level data and that being made public is going  
12 to disrupt the process and the progress that's been made  
13 by the coalitions. I think you have heard a lot about  
14 that from farmers and the people that are administering  
15 the program. I think that's pretty clear that's  
16 certainly not the direction to go to achieve compliance  
17 with the act, and at the same time, move towards  
18 providing clean drinking water to those who need it.  
19 Thank you very much.

20           CHAIR MARCUS: Thank you. Come back. You have  
21 a question.

22           ERNEST CONANT: Sure.

23           BOARD MEMBER DORENE D'ADAMO: I would just  
24 invite you and others to comment on the issue of the  
25 economic analysis. I appreciate what you just said that

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1 if staff revises its proposal, perhaps there won't a  
2 need to have additional economic analysis, but I would  
3 invite you to comment on the standard. At what point do  
4 you think it would trigger an additional economic  
5 analysis?

6 ERNEST CONANT: That's difficult for me to say  
7 off the top of my head standing here, but there was an  
8 analysis done for the initial program, and again, there  
9 also is a CEQA analysis done. There were bookends  
10 relative to that analysis. It appears that the proposal  
11 that has been put out simply does not fall within those  
12 bookends. This particular program that is in the draft  
13 was not evaluated. Where you draw that line is a  
14 difficult line to draw. Clearly, it would seem that the  
15 proposal does not meet that standard.

16 BOARD MEMBER DORENE D'ADAMO: Thank you.

17 ERNEST CONANT: Any other questions?

18 CHAIR MARCUS: Don't you love the person being  
19 with a conversation? You have to stand longer.

20 BOARD MEMBER STEVEN MOORE: Yes, and this is  
21 pretty classic for the State Water Board versus the  
22 regional boards to be grappling with how much precedence  
23 or have you thought about this other appeal and are we  
24 being consistent, versus allowing the regional  
25 flexibility. This is not unfamiliar territory for us in

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1 trying to grapple with this. I would just also, as  
2 Board Member D'Adamo suggested, to make sure in your  
3 comments, to consider those issues.

4 Also, and I'm sure you're doing this, it would  
5 be important to distill those elements of your appeal on  
6 the other order and vis-à-vis what we're considering  
7 here, because we really don't want to take a lot of  
8 bites at the apple. Mr. Cardella's comment is we need  
9 to be able to take these up on individual merits.

10 At a certain point, there's a real lack of  
11 efficiency for the overall irrigated lands regulatory  
12 program to have multiple, multiple orders. That  
13 concerns me. So I want us all to contribute to the  
14 maximum efficiency of this process in having appropriate  
15 precedent with respect to -- you can help us, I think,  
16 in terms of distilling what issues we're not taking up  
17 here because this isn't just going to end in the next  
18 couple of months. I think we owe it to the regulated  
19 community in California, in general, to really get up  
20 and resolve a lot of these issues through this  
21 proceeding.

22 Any comments that you have?

23 ERNEST CONANT: We can touch on that in our  
24 comments, but the dilemma that we have is the record in  
25 our proceeding is not in this proceeding. We put in

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1 extensive testimony and information relative to our  
2 order, which is not part of this proceeding. Whatever  
3 is done here, at this proceeding on East San Joaquin,  
4 it's very important that the language be clarified that  
5 this -- the presidential language be clarified because  
6 there are unique circumstances between the north end of  
7 this valley and the south end, not to mention other  
8 areas of the state that don't even know about this  
9 program yet. So I think that's important.

10 The other aspect is whatever is done with the  
11 subsequent orders, through some kind of a further remand  
12 to the Regional Board, if that were done, it has -- the  
13 process has to be established through the Regional Board  
14 to ensure that due process occurs so that we have an  
15 opportunity to comment on the revised order if there was  
16 one. In light of the circumstances that are unique to  
17 our area. So I don't think there is an easy fix,  
18 notwithstanding the efficiencies you would like to see,  
19 Mr. Moore. There's a process we have to go through.

20 CHAIR MARCUS: I'm sure we'll be talking that  
21 one through. Yep. I'm not going to play lawyer today,  
22 even though I am one. Not even on TV, and in this kind  
23 of thing.

24 Julia Alonso, followed by Mr. Kunde, followed  
25 by Christina Beckstead.

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1 JULIA ALONSO: Good afternoon, my name is Julia  
2 Alonso, and I come from a small community, Cantua Creek,  
3 in Fresno County. Thank you, the state, for coming, the  
4 State Water Board, as well as anyone else that has now  
5 stayed to listen to us. Thank you.

6 I want you to know we have a big issue in our  
7 community. Around the year 2009, approaching our  
8 water -- our well that we depended on had to be shut  
9 down because it exceeded the maximum level of  
10 contaminant for nitrates that the state permits. Since  
11 then, we have had to rely upon surface water of the  
12 canal.

13 We also have to rely on the State Water Board  
14 to support us in providing safe drinking water through  
15 bottled water program. We thank you for that. Since  
16 then, we have been advocating. The county wanted to  
17 increase our water rate by more than \$40. Currently,  
18 right now, we're paying \$74 with the state subsidy, but  
19 the state wanted to increase to another \$40.

20 We were able to advocate, organize our  
21 community, collect signatures from the residents, to be  
22 able to stop that high increase. So we are able to pay  
23 our water, but it's still contaminated. As the previous  
24 well treatment, but the previous well, as you know, is  
25 one of the reasons it was contaminated was the

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1 fertilizers found in the water.

2 She wanted to give information about the  
3 residents. 99 percent who live in the community are  
4 farmworkers. So work closely with many of the farmers  
5 here and they rely on each other. She wanted to make  
6 that very clear.

7 CHAIR MARCUS: Thank you very much. Thank you  
8 both.

9 Hello, Mr. Kunde, followed by Ms. Beckstead,  
10 followed by David Cory.

11 ROBERT KUNDE: My name is Robert Kunde. I'm  
12 the engineer manager in the Maricopa Water Storage  
13 District in Kern County. I'm a registered professional  
14 engineer and have over 30 years of professional  
15 experience in managing surface and groundwater for  
16 irrigation and on farmland.

17 As an engineer, I'm interested in effectiveness  
18 and efficiency in proper risk management. I would like  
19 to touch on those projects with respect to this proposed  
20 regulation.

21 First, though, I would echo -- I found myself  
22 almost in total agreement with the comments of the  
23 expert panel based on my own experience. It is rare  
24 that I find myself in agreement with the Regional Water  
25 Quality Control Board with respect to implementing these

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1 matters. In fact, their comments on these orders, I  
2 find myself in large agreement with as well in that I  
3 feel it would be counter productive in achieving the  
4 means of this goal.

5 The purpose of the program is to improve or  
6 stabilize or sustain groundwater quality. It is not a  
7 cleanup program, much as that would benefit many of the  
8 rural residents who have been impacted by nitrogen  
9 issues in the valley. We are dealing largely with  
10 legacy issues. You have heard other speakers comment  
11 that practices today are much different than they used  
12 to be.

13 So the point I would like to touch on is the  
14 presidential nature encompassed in the proposal. Our  
15 concern in Kern, and Wheeler Ridge in Kern County, these  
16 matters may be presidential for upcoming areas that was  
17 referenced. It his important to reference one size does  
18 not fit all. The physical circumstances are  
19 dramatically different throughout the valley.

20 I would like to use Wheeler Ridge Maricopa  
21 Water Storage District as an example. There's about 100  
22 square miles -- 150 square miles of land within Wheeler  
23 Ridge that is irrigated ag, out of 280 square miles.  
24 That's a lot of land, about 100,000 acres.

25 Water levels in Wheeler Ridge vary from 100

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1 feet to a thousand feet, typically in the 4- to 600  
2 range in depth to water, which is a long way when it  
3 comes to the issue of whether nitrate contamination is a  
4 real threat in those areas.

5 Although it's not before this board, extensive  
6 testimony on this matter was provided to the Regional  
7 Board for the Kern program, specifically noting a bunch  
8 of the research related to nitrogen contamination was  
9 really focused on water tables that were within 50 feet  
10 of ground source. We have in the case of Wheeler Ridge,  
11 and I do not know the conditions in the San Joaquin, I'm  
12 guessing they are significantly shallower, cases where  
13 farmers in Wheeler Ridge adopted numerous best  
14 management practices.

15 Mr. Lindsay is a farmer within Wheeler Ridge.  
16 His water cost has gone up because our prices are  
17 higher. They have almost universally adopted low-volume  
18 irrigation methods and have low risk of contamination  
19 issues because of depth to groundwater, and because of  
20 the very high cost, market incentives are to make  
21 maximum use of the water resource, not to waste natural  
22 flow of nitrogen.

23 So the question is for these regulations, would  
24 they be effective or efficient? Wheeler Ridge for  
25 growers have already implemented many of the best

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1 management practices for whom the legacy practices for  
2 nitrate practices are decades old. The answer is likely  
3 not. So the question is should these regulations then  
4 apply, even to those growers, which would be reasonably  
5 characterized as low vulnerability? It seems to me as  
6 though they should not.

7 The additional burden of regulatory compliance  
8 should not fall on everyone equally, but on those in  
9 those areas that are actually in a high vulnerabilities  
10 and where some improvement in practices may actually  
11 have some practical future affect.

12 I have run out of time. I appreciate you  
13 coming to Fresno, so I don't have to drive to Sacramento  
14 from Bakersfield.

15 CHAIR MARCUS: Thank you very much.

16 Ms. Beckstead, followed by Mr. Cory, followed  
17 by Raquel Sanchez. I think we'll go four more, and then  
18 we'll take a short break.

19 Ms. Beckstead.

20 CHRISTINA BECKSTEAD: Good afternoon.

21 Christina Beckstead, Madera County Farm Bureau. I  
22 apologize if I'm a little all over the place. I did not  
23 intend to speak today, but after hearing some of the  
24 comments and being requested by a grower that had to  
25 leave to share their story, I am here.

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1 Just a few points I would like to reiterate and  
2 something to keep in mind, the San Joaquin Valley faces  
3 some of the most stringent regulations across the board.  
4 This is another layer that our members feel is  
5 unnecessary at this point. As far as the domestic well  
6 sampling, something to also keep in mind with that is  
7 that the drought has caused a lot of these concentration  
8 levels to rise.

9 These are not problems that are coming down now  
10 because of the current practices. These are  
11 practices -- this is occurring because of practices that  
12 happened many years ago. The fact the San Joaquin  
13 Valley does not have the water to help dilute some of  
14 that is causing some of the concentration levels to go  
15 up.

16 Also, under the domestic well sampling, a lot  
17 of our members have leases, have long-term leases, and  
18 they don't have access to the domestic wells on that  
19 property. I wanted to point that out as far as for  
20 testing purposes.

21 The health department in many counties, I know  
22 in Madera, at one point was involved with the testing of  
23 that and the monitoring of that. I know a lot of other  
24 counties do that. Let them do their job.

25 As far as the publicizing of information, our

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1 members feel all this is going to do is create a hit  
2 list as a lot of other people in the room have  
3 mentioned. They don't want their information being made  
4 public. Obviously, there's a lot of people up and down  
5 the state that are out for their own personal gain, and  
6 just being able to access that online is going to make  
7 things a little more difficult for them.

8 As far as reporting requirements go, this is  
9 where the story comes into play. The new reporting  
10 requirements or the additional reporting requirements  
11 are going to make things more difficult, as well as more  
12 inaccurate. I have a member that chose to not join the  
13 coalition initially because he felt he could do it. A  
14 farm of 1200 acres and are completely capable farmers  
15 and went through the process, and the state told him,  
16 "You're not doing it right." At the end of the day,  
17 they got a bill for about \$300,000. Even though they  
18 were doing what they were asked to do, they still, per  
19 the state standards, were not meeting that requirement.  
20 So they were forced to join the coalition.

21 With the proposed order, you're going to be  
22 taking a lot of the small guys that can't afford to hire  
23 a CCA, a PCA, and don't necessarily understand the  
24 requirements that are being asked of them. You're  
25 setting them up to fail. They are going to leave the

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1 coalition and find other ways around this or find  
2 another way to afford to be able to do it. So -- by  
3 doing away with the coalitions -- not necessarily doing  
4 away with the coalitions but now because of the  
5 inaccuracies you're going to get from farmers going away  
6 from coalitions, you're taking that part of the  
7 coalition away where the coalition is more capable of  
8 explaining and reporting that information. I think  
9 that's very necessary for them.

10 I just want to point out it seems like the  
11 state, with all the new regulations, including the SGMA  
12 regulations that we're getting ready to deal with, the  
13 state is setting all of agriculture to fail up -- set  
14 the -- setting us all up to fail. Sorry.

15 CHAIR MARCUS: You know that's not the intent,  
16 but I recognize everything is hitting all at once. It  
17 happened in the '90s as well. It sometimes happens.

18 BOARD MEMBER DORENE D'ADAMO: I have a  
19 question. You mentioned something about well testing  
20 program.

21 THE WITNESS: Yes.

22 BOARD MEMBER DORENE D'ADAMO: In Madera County.

23 THE WITNESS: Yes.

24 BOARD MEMBER DORENE D'ADAMO: Can you provide  
25 additional information on that?

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1 CHRISTINA BECKSTEAD: I do not have information  
2 on that but in talking to members, they have told me  
3 historically, Madera County, that the health department  
4 would require reporting from them. So they would fill  
5 out a report. I don't know that it's active currently,  
6 but it has been in the past. I know there are other  
7 counties that do have -- their county is actually  
8 following up with that. There are monitoring going in  
9 place within the health departments as some of the other  
10 speakers today mentioned.

11 CHAIR MARCUS: This is the reason why the state  
12 is moving more into this arena is the fact that counties  
13 just have not been doing it. Someone has got to do it.

14 BOARD MEMBER DORENE D'ADAMO: Right. To the  
15 extent there is a program or was a program, if you can  
16 provide that in written comments and anything that the  
17 farm bureau would be willing to do to work with the  
18 counties, I think there's been a lot of comment today  
19 about, you know, this might not necessarily be the right  
20 place for a drinking water testing program or at least a  
21 component of it, but in the meantime, because those  
22 other efforts have not yet yielded the fruit that we  
23 would have liked to have seen, you know, it's unartful,  
24 but as you have heard from the communities that are  
25 suffering, there needs to be some type of -- there

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1 likely needs to be some type of testing program. I  
2 would just encourage you and other farm bureaus. If  
3 this is something you're interested in seeing through a  
4 different type of program, like a county program. I  
5 would encourage you to work with your counties.

6 CHRISTINA BECKSTEAD: We are. I'm building a  
7 relationship. I'm new to Farm Bureau of Madera, but we  
8 are building a relationship with the county to get maybe  
9 some of the dormant programs up and running again.

10 It's just difficult for the farmers. They  
11 don't have access. These are long-term leases that they  
12 have. They don't have access to the drinking wells  
13 there. You're going to penalize them because they can't  
14 test them or because they can't provide you with the  
15 data or the information that's there. If the county is  
16 supposed to be doing that, the county should be doing  
17 that.

18 Maybe the state needs to talk to the counties.  
19 Even though the farm bureau is doing an effort to do  
20 something, or some of these other entities are making  
21 their effort to get dormant programs going, the state  
22 needs to come down and say, "You need to do your job."

23 BOARD MEMBER DORENE D'ADAMO: Absolutely.  
24 There have been efforts along those lines as well.  
25 Let's work together on it.

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1 CHRISTINA BECKSTEAD: Absolutely.

2 BOARD MEMBER DORENE D'ADAMO: Thanks.

3 CHRISTINA BECKSTEAD: Thank you.

4 CHAIR MARCUS: Thank you.

5 Mr. Cory, followed by Ms. Sanchez, Raquel

6 Sanchez, followed by Erasto Teran from Agua.

7 DAVID CORY: My name is David Cory. I'm a  
8 farmer and also a water quality self-proclaimed regional  
9 board groupy. One of my biggest concerns when I got up  
10 here --

11 CHAIR MARCUS: You're an all-around helpful  
12 guy.

13 DAVID CORY: I was most concerned I would get  
14 up here and say, Chair Longley, members of the board,  
15 because it was ingrained in my being. I got through the  
16 Marcus part. I think the rest should be downplayed.

17 We have heard from a lot of growers today about  
18 their frustration, their mistrust, the uncertainty of  
19 this whole program. I understand that frustration. I  
20 share it as well from running our own family farm. It's  
21 an enormous burden on an individual relatively small  
22 grower.

23 I farm with my aunt. We're the entire  
24 administrative part of the farm. To figure out how to  
25 do all of these things from water quality, to air

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1 quality, to heat issues, I could list them on and on and  
2 on. It's really difficult to get them all.

3 Each regulatory body comes up with very  
4 prescriptive methods that make sense within the silo  
5 that they're dealing with, but when you -- the  
6 cumulative burden of that on growers is enormous. When  
7 you're actually in the trenches trying to deal with  
8 this, you realize you actually can't fully comply with  
9 all of it because you can't fully understand all of it,  
10 as much as you want to do that. So this issue of  
11 frustration and mistrust is real. It's felt across the  
12 entire Central Valley.

13 When you look at the goals of this program,  
14 of -- initially, it's really to make sure that growers  
15 are farming in a way that's protective of groundwater  
16 quality. That's really what we're talking about here.  
17 The issue of dealing with providing safe, affordable  
18 drinking water is a tangent to that.

19 It really -- this program isn't going to result  
20 in that, not in the short one, not in the time we need  
21 to provide that drinking water. That's more of a  
22 CV-SALTS issue, and we're working very hard on a  
23 difficult problem there.

24 When you look at this Irrigated Lands Program  
25 of ensuring that growers farm with an eye toward

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1 groundwater quality, we need to get the growers to  
2 embrace the program. That's the first step in this  
3 whole thing. Given the mistrust and the frustration  
4 that's there, you need to take that into account and  
5 craft this program in a way that brings them into it.

6 If you were talking about the nuances of this  
7 policy issue versus that when we were adopting the  
8 program to begin with, there would be different  
9 arguments. Today, as a coalition leader, we have gone  
10 out and sold this program, told the growers what we  
11 expect of them, and put a lot of time and effort  
12 educating them as to what they need to do. They started  
13 filling out the farms. They're starting to learn how to  
14 do that. They need the time to understand that and sort  
15 of get more certain that this isn't a trap.

16 We really are trying to solve problems. Making  
17 changes in this program midstream will disrupt that  
18 progress we're making. The progress we made on surface  
19 water quality issues. The groundwater is much more  
20 difficult. When we get into the woods of the CV-SALTS  
21 world, it's very confusing. From a basic level, where  
22 we are right now, let's keep it simple. Let's keep the  
23 message simple to our growers so even a grower like  
24 myself can understand what it is we have to do. We have  
25 seen the forms for the first time. Let's keep those

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1 forms the same.

2           Also, when it comes to the high- and  
3 low-vulnerability distinctions, I think that's huge from  
4 a grower's perspective. When you're asking a grower to  
5 have an added regulatory burden of having farm  
6 evaluation -- of doing the summary reports and  
7 certifications, when there's not a water quality issue  
8 that's tied to that for their farm, it's hard for them  
9 to understand why are we doing this? Why do I endure  
10 this regulatory burden when I can't see the connection?  
11 I can't explain it.

12           So those vulnerability distinctions give me the  
13 tools as a coalition lead to explain to myself as a  
14 farmer why we need to do what we need to do. There's  
15 some distinctions there. Again, I want to point out we  
16 don't see that the current order is perfect by far. You  
17 can ask Adam of that. For us to be here advocating on  
18 the side of the Regional Board is kind of offsetting for  
19 me to be doing that. Not intuitive.

20           CHAIR MARCUS: This is just a careful  
21 conspiracy to push you all into the arms of the Central  
22 Valley board. Very clever. Very Machiavellian.

23           DAVID CORY: I have seen that. I have seen  
24 that.

25           We went through this and the Regional Board

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1 process. The give and take of coming to a middle  
2 ground, we think it's far more restrictive, more  
3 regulatory burden than the middle. We're here now. I  
4 think right now, we need stability. If you are going to  
5 make changes, you should have compelling reasons to do  
6 that. I don't know if you have any questions.

7 BOARD MEMBER FRANCES SPIVY-WEBER: I have one  
8 question. Because a number of people have spoken to the  
9 overlapping responsibilities that go with the program  
10 and you have mentioned it yourself, SGMA is not in our  
11 jurisdiction, per se, but that's another groundwater  
12 monitoring effort that the farmers are going to have to  
13 endure. And so it would be very helpful, and I don't  
14 know that you do it in this -- in your written responses  
15 to this order, but perhaps separately, give some  
16 guidance as to how we might pursue less -- more building  
17 on what is being done in different pots, building sort  
18 of one pot that can serve several, several purposes. I  
19 know we can't do everything, but we should be able to do  
20 more than we are.

21 DAVID CORY: I understand the question. Within  
22 the CV-SALTS world, and I won't put that hat on.

23 BOARD MEMBER FRANCES SPIVY-WEBER: CV-SALTS,  
24 SGMA --

25 DAVID CORY: SGMA and CV-SALTS, our effort on

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1 CV-SALTS, they're similar and may have some symmetry in  
2 there in certain areas they're likely to fit together.  
3 Other areas, they might not. In terms of implementation  
4 of the programs, I think they could fit together. I'll  
5 give that some thought.

6 Again, just appreciate you trying to -- I'm  
7 glad you came down here. I heard all the growers -- I  
8 think the growers in Sacramento did an excellent job as  
9 well. Think about it in terms of trying to induce the  
10 growers to embrace this program because it's a big  
11 burden for a grower, personally, and from someone who  
12 tries to lead them in the coalition. Thank you.

13 CHAIR MARCUS: Thank you.

14 Next, we'll have Raquel Sanchez, followed by  
15 Erasto Teran. We will take a short break and come back  
16 with Dr. Longley and the South San Joaquin Coalition.

17 Ms. Sanchez, thank you for joining us.

18 RAQUEL SANCHEZ: Thank you for being here to  
19 hear us. We have also been impacted. We feel the need  
20 to buy bottled water for our drinking water source. I  
21 live in the city of Tulare, which has also had to close  
22 a well due to nitrate issues.

23 I'm here today in support of greater regulation  
24 of nitrates because it's for the benefit of everybody.  
25 I'm not here against the farmers today. I'm here to see

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1 that everyone has access to safe drinking water.

2 As many people commented today, they made a  
3 sacrifice of a full day to be here today. That applies  
4 equally to all of us. We all have things -- priorities  
5 in our lives, outside of this hearing today, but we came  
6 to have our voices heard. Thank you, and we hope you  
7 take the step in helping us with regulation of nitrates.  
8 Thank you.

9 ERASTO TERAN: My name is Erasto Teran.  
10 Welcome to the valley. Very good that you come to  
11 Fresno, to the Central Valley. I'm a property owner.  
12 (Unintelligible). One of the things is my property  
13 surrounding -- you hear the good today. Let's make --  
14 let's take into consideration about the communities  
15 disadvantaged that they live in a very poor sanitations  
16 like -- Seville, Cutler and Orosi is part of you, part  
17 of what you work in this case.

18 It's part and so sad still people carrying  
19 water in their bathroom. There's wells there working,  
20 but most of them don't. So the only thing I can tell  
21 you is you can see and that the real world right now.  
22 We're in 2016, we're really, really getting the  
23 environment, the ground. In two or three years, we not  
24 going to have the water that we have. So we have to  
25 take care of it, and the water we can take care of right

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1 now, it would be great if we had additions.

2 Let's make the right decision, and like I said,  
3 you heard the good, the bad today. Think about what is  
4 the best for the communities. Thank you. Welcome to  
5 the valley.

6 CHAIR MARCUS: Thank you, very, very much.

7 All right. We'll now take a ten-minute break.  
8 Come back with Dr. Longley and the South San Joaquin.  
9 We're back at 3:50.

10 (Recess taken)

11 CHAIR MARCUS: All right. I know you all have  
12 been conversing and working it out, solving all of these  
13 issues. We'll have joint comments from everybody, all  
14 in agreement.

15 Dr. Longley, thank you very kindly for waiting  
16 until the end.

17 DR. KARL LONGLEY: Yes, ma'am. I guess I  
18 should say good late afternoon, Chair Marcus, board  
19 members, and members of the staff. This is both the  
20 4th -- I guess it was May 4th, and the day of important  
21 events as far as the coalitions are concerned. And I  
22 need to warn you that being a professor, I'm programmed  
23 for 50 minutes.

24 CHAIR MARCUS: I told Courtney to go ahead and  
25 set the clock, but I wouldn't be too cruel with you.

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1 DR. KARL LONGLEY: I have written my comments.

2 I'll try to stick to them.

3 What's happened during the day is I made other  
4 notes, based upon what I heard today that I would like  
5 to discuss with you. I can keep those short. I'm not  
6 say -- it says I have a minute and a half or two and a  
7 half minutes left. I better get going.

8 As stated before this board on May 4th, by Bob  
9 Schneider, my fellow Central Valley Water Board member,  
10 the process involving the East San Joaquin general order  
11 in the final form has been underway for about a decade  
12 and a half. During this time, stakeholders and board  
13 members have considered the mere addition of various  
14 parts of the issues that you have been faced with today  
15 and in the previous hearing and before that as you  
16 contemplated this.

17 Out of this process evolved a product, East San  
18 Joaquin general order that we, the Central Valley Water  
19 Board, deemed to be a program that resulted in the  
20 needed protection for water quality, the necessary  
21 feedback for the public, the growers, and for staff to  
22 provide the necessary program oversight. Also, very  
23 importantly, grower trust in the Irrigated Lands Program  
24 process that includes participation in CV-SALTS.  
25 Leading to critical basin plan amendments. These are

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1 linked so closely together that one of the last things I  
2 want to see happen in this world is the CV-SALTS process  
3 jeopardized. It is so critical.

4 The draft -- East San Joaquin general order as  
5 drafted causes me concern and may possibly result in  
6 dissolution of coalitions. That would result in the  
7 requirement for up to 34,000 individual growers  
8 enrolling under the individual general waste discharge  
9 requirements. Certainly, overwhelming our resources and  
10 creating a situation, I think, which is not sustainable.

11 Also, resulting in increased workload required  
12 by Region National Board to handle reports and increased  
13 data and data analysis that established regulatory  
14 thresholds required by the draft general order.

15 Another issue is the A and R ratio, which was  
16 established as a proxy in the draft order, determined  
17 that water quality is protected and establishing a  
18 difficult approach with considerable variance through a  
19 correlation of service activities with soil profile  
20 variables to determine if groundwater quality is being  
21 protected.

22 This, as a correlation, is difficult and  
23 imperfect in many areas of the Central Valley due to in  
24 large number of the crops we have that no data has been  
25 developed. Also due to the lack of basic -- other

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1 background information that must be developed through  
2 research if this approach is to be more useful.

3 We also have concern over the diversion of  
4 Central Valley Water Board resources conflicts and  
5 requirements in the draft order, is significant  
6 potential increase in the number of individual grower  
7 and enrollances as I mentioned earlier, and use of the  
8 proxy I just mentioned; however, the draft order, while  
9 it fails to fully incorporate the irrigation management  
10 component, it is in a very important part, I think, of  
11 the draft order.

12 Properly implementing the irrigation component  
13 of the -- now the INMP, results in water applied in  
14 uniformity coefficient metrics that are, first of all,  
15 reasonably accurately determined, and secondly are  
16 strongly related to nutrient transport in the soil  
17 column. Another important part of this, of course, is  
18 what was mentioned earlier is the soil health. Healthy  
19 soil is going to give you more organic, is going to give  
20 you better retention, but this is an example of a BMP.  
21 I'm going to come back to BMPs as they are part of the  
22 original order.

23 Certainly, this edition of counting for applied  
24 water and its fate are in terms that ensure protection  
25 for water quality. It is not only an important

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1 improvement over the general order, but it is an  
2 essential element of this general order.

3 I also believe that the Central Valley Water  
4 Board fell short in describing the Central Valley Water  
5 Board data and compliance process. The Central Valley  
6 Water Board's audit process for ensuring accuracy in the  
7 data collection process and the performance of BMPs that  
8 are part of the management practice effective in this  
9 program, certainly is not described in sufficient  
10 detail.

11 We do this routinely for any of our programs.  
12 Maybe it had just gotten too routine. It's not spelled  
13 out. Towards this end, certainly, I know the East San  
14 Joaquin Coalition, I think they approached members of  
15 your staff and possibly board members on an audit --  
16 template for an audit process they're putting together.  
17 I think that that -- I think we have to spell out so we  
18 can both be held accountable so the public can see what  
19 we are going -- so you certainly know that what we're  
20 doing in so far as overseeing the process. It makes it  
21 easier not only to see it, but then to talk about it,  
22 what improvements can be made, maybe what we're doing is  
23 unnecessary, all the parts of it as we evolve the  
24 process as we go down the road.

25 So I think that, you know, the correct

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1 implementation. I did have an end conclusion, but I  
2 have a few more points. In conclusion of the irrigation  
3 component and --

4 CHAIR MARCUS: You can't trick me and say "in  
5 conclusion" halfway through your talk.

6 DR. KARL LONGLEY: I know.

7 As I described integration is essential to  
8 ensure verifiable, and I think that's the important part  
9 we have to remember. It has to be verifiable. We go in  
10 front of a judge, we have to be able to verify what  
11 we're doing. Essentially -- we certainly want it to be  
12 verifiable to the public, but they are essential to  
13 ensure verifiable irrigated lands programs for the East  
14 San Joaquin Coalition.

15 Now, first of all, there's a number of things  
16 that I heard talked about today. One is the audit  
17 process. I just described what you can expect on that.  
18 Certainly, you're going to have a submittal. They have  
19 been talking to the Regional Board. We're very  
20 optimistic we're going to produce a product there that  
21 certainly will be a good starting point at the very  
22 least.

23 Secondly, the level playing field issue.

24 CHAIR MARCUS: I was going to ask you about  
25 that. Thanks.

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1 DR. KARL LONGLEY: We have about, of the 34- to  
2 35,000 growers out there, we have about 15 percent that  
3 are unaccountable. I am being told that about 30  
4 percent of the resources that we have for the Irrigated  
5 Lands Program are being spent on finding out who these  
6 folks are.

7 We have taken some regulatory actions in that  
8 area, some of them pretty severe. When they were first  
9 bringing them up, the ACL's, these are ACL's that I  
10 asked come to the board. I thought that we needed to  
11 really stress the importance of the program and  
12 membership in the program. So the board itself has been  
13 dealing with all of them in the very beginning. From  
14 time to time, I expect we will be, again, seeing ACLs of  
15 this sort in front of us. Certainly, staff can take  
16 care of many of those now, I think. The assistant  
17 executive officers can issue the ACL.

18 CHAIR MARCUS: Right.

19 DR. KARL LONGLEY: The well testing issue, this  
20 is a program that this issue really causes me  
21 unbelievable concern, something I have been involved  
22 with for a long time. We talk about well testing, and  
23 we really need to look at a wholistic program. The  
24 nitrate issue is a very significant issue, but quite  
25 frankly, as most recently pointed out in a recent USGS

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1 report as part of the GAMA program, I understand, the  
2 health risks in this valley, the nitrate and drinking  
3 water are outweighed by what's basically uranium and  
4 arsenic.

5 I'm being told because some water is anoxic and  
6 some is not, typically we you find nitrate. You won't  
7 find arsenic and vice versa. I don't want to see people  
8 giving tests for just nitrate because you may have  
9 something a lot worse in your water.

10 When I say "wholistic," let's back up to the  
11 governor's task force that addressed the disadvantaged  
12 community drinking water issue, I should say. Two  
13 issues were left on the table and not addressed. One  
14 had to do with constitutional issues, and the other had  
15 to do with fiscal requirements, financial requirements.

16 I think that we have to start at the very  
17 beginning and address this program wholistically. I'll  
18 give you some examples. We have not looked at elsewhere  
19 in the US where we have rural drinking water programs,  
20 Iowa, South Dakota, and some of those states in the  
21 midwest because of poor quality groundwater, have put in  
22 rural drinking water programs that address the water for  
23 anybody who is drinking the water within a particular  
24 area that program services.

25 We haven't looked at that to see if that fits

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1 here. I think we need to strengthen the Division of  
2 Drinking Water's hands, and this may take legislative  
3 action to be able to tell a water system when its water  
4 is improper -- is dangerous, and that they need to find  
5 a new water source, giving us more tools to create --  
6 bringing the number of small communities together to  
7 form one district, if you will, or one drinking water  
8 service, both from administrative standpoint so we can  
9 more effectively and more cheaply deliver that water.  
10 There's a lot of tools we need to develop that we're not  
11 developing.

12 To go around and test wells is fine, but it  
13 doesn't solve the very basic problem. People can't  
14 afford to pay for it on the way we're doing it.  
15 Gentleman was here from Lanier. Lanier was given a lot  
16 of money to put in a number of years ago, a new water  
17 system for their arsenic. Cindy Forbes can tell you all  
18 about it. It was online for two or three months,  
19 offline, couldn't afford it.

20 So those are my comments on water. I think  
21 there needs to be a separate process. It's so  
22 important, separate stand-alone process to address the  
23 water, the drinking water issue for rural areas.

24 Then the bit on checklists. I'm a pilot. I  
25 know people that fly that kick the tires, light the

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1 fire, and take off, are bound to crash pretty soon. I  
2 rely extensively on checklists. We need more definition  
3 before we throw checklist out the door.

4 That takes me to BMP, my last topic, which are  
5 part of the management practice --

6 CHAIR MARCUS: You better be careful. She's  
7 starting to harrumph because you said "finally" again.  
8 She's counting your finallies.

9 DR. KARL LONGLEY: I told you 50 minutes.

10 CHAIR MARCUS: We respect your role.

11 DR. KARL LONGLEY: I'm trying to stay well  
12 under that. The management practice is affecting this  
13 program. The example I gave of being able to determine  
14 how much water you put on the field and being able to  
15 measure that and looking at uniformity coefficient, that  
16 is a BMP, quite frankly, that can be verified.

17 CHAIR MARCUS: Uh-huh.

18 DR. KARL LONGLEY: Those are the type that I  
19 would look to to being the effective BMPs as part of the  
20 program that we would use to verify whether or not the  
21 program was effectively protecting groundwater.

22 That did it. I'm sorry I didn't say within  
23 three minutes.

24 CHAIR MARCUS: Thank you very much. Thank you  
25 for being so kind as to let all of the growers go ahead

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1 of you.

2 DR. KARL LONGLEY: I was staying the whole day  
3 anyway.

4 BOARD MEMBER TAM DODUC: Tam Doduc, board  
5 member. I saved my one question for the Regional Board,  
6 and it's either to you, Chair Longley, or your assistant  
7 executive officer sitting in the audience.

8 At the workshop in Sacramento, I had an  
9 exchange with your executive officer, Pamela, regarding  
10 the issue of field-level data and access to that data,  
11 currently, under the current permit, under the current  
12 Regional Water Board oversight of that permit. I just  
13 want to make sure that I understand correctly the  
14 information that I was given.

15 This was, when I asked your executive officer,  
16 was during her presentation, and I asked currently the  
17 field-level data that is being maintained by the  
18 coalition, whether there is public access to that data.  
19 My understanding of her answer is that the Regional  
20 Water Board, upon request, say through Public Request  
21 Act, would request that field-level data from the  
22 coalition and make that information public. That was my  
23 understanding, but I wanted to make sure it is indeed  
24 correct and that is indeed the current practice and the  
25 current understanding of the Regional Board.

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1 THE WITNESS: That's been my understanding;

2 however --

3 BOARD MEMBER TAM DODUC: You've got your lawyer  
4 there.

5 DR. KARL LONGLEY: They're standing real close  
6 to me.

7 BOARD MEMBER TAM DODUC: You notice I asked of  
8 you or assistant executive officer who is an engineer.  
9 Not an attorney.

10 CHAIR MARCUS: We're not going to get into the  
11 attorney versus engineer.

12 KEITH FREITAS: The answer is no, it doesn't.

13 DR. KARL LONGLEY: I understand through public  
14 records request that might be possible; however, I also  
15 know, I'm being informed that, I think, it's an  
16 appellate level decision; is that correct? Yeah. There  
17 is. There may be some law to that that we need to look  
18 into before we go any farther.

19 BOARD MEMBER TAM DODUC: I would appreciate a  
20 clarification at some point through the written comment  
21 or some other format in terms of making sure I fully  
22 understand that aspect of the current process and the  
23 current permit.

24 DR. KARL LONGLEY: Certainly the board has that  
25 data, it's in the public realm. If the board doesn't

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1 have that data, it's not in the public realm.

2 BOARD MEMBER TAM DODUC: I understand that.

3 That's not the exchange I had with your executive  
4 officer in terms of whether or not the Regional Board  
5 would solicit that data upon request. I don't mean to  
6 put you on the spot right now. I'm flagging it as an  
7 issue.

8 DR. KARL LONGLEY: We will get you a written  
9 response to that.

10 BOARD MEMBER TAM DODUC: Thank you.

11 DR. KARL LONGLEY: I say that knowing that we  
12 will. I know who will write it.

13 CHAIR MARCUS: That's important. People will  
14 have --

15 DR. KARL LONGLEY: Any other questions? Thank  
16 you.

17 CHAIR MARCUS: Thanks very much for your time.

18 Mr. Creamer, thank you ever so much for being  
19 willing to go last. I'm looking forward to the  
20 discussion you said Mr. Dickey would be talking about  
21 the MPEP in particular. That hasn't come up that much  
22 today, although it comes up in the ex-parte and duly  
23 reported conversations that we have with parties. I'm  
24 looking forward to hearing your take and explanation of  
25 that.

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1 CASEY CREAMER: Good afternoon, Chair Marcus  
2 and members of the board. Casey Creamer, the  
3 coordinator of the Kings River Water Quality Coalition  
4 and serve as the coordinator for the Southern San  
5 Joaquin Water Quality Coalition. Southern San Joaquin  
6 Water Coalition is seven coalition groups and operate  
7 under one single order of the Tulare Lake Basin.

8 They're a little bit different than the rest of  
9 the orders, which were individually based on coalition.  
10 We get together, we work collaboratively to address  
11 implementation issues of the current order. We have  
12 gotten together collaboratively and will to work on the  
13 management practice evaluation program. We see that as  
14 a central component of the current orders and work  
15 collaboratively for what we see as a solution to the  
16 drinking water issue or start of the solution is the  
17 CV-SALTS process.

18 With that, I'm going to close up the end and  
19 turn it over. First let me introduce to my left is  
20 Dr. John Dickey. He serves as the technical lead  
21 consultant. Him and his team have extensive experience  
22 in the water quality agronomy regulatory process,  
23 especially big projects. This is a big issue. So we  
24 are very lucky to get Dr. Dickey.

25 To my far left is John Schaap, who is a

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1 technical consultant for the Kern River Watershed  
2 Coalition Authority and VP of Provost and Pritchard.  
3 This John is going to talk about the MPEP program, and  
4 the John on the left is going to talk about some of the  
5 complexities with the Tulare Lake Basin, and hopefully  
6 get to John Dickey who will talk about with that  
7 complexity, how we look at solutions and move forward.  
8 I'll close at the end.

9 John.

10 JOHN SCHAAP: All right. John Schaap.

11 CHAIR MARCUS: Both John.

12 JOHN SCHAAP: John Schaap with Provost and  
13 Pritchard Consulting Group. I'm an agricultural and  
14 civil engineer and working with the Kern River Watershed  
15 Coalition Authority since about 2011.

16 So as Casey mentioned, I'm going to start with  
17 talking about the complexity of the cropping systems we  
18 have in the Tulare Lake Basin. As you heard already, we  
19 have about 250 crops that are grown in the Central  
20 Valley, and when you look at the possible combinations  
21 of crops by management practices, by site conditions,  
22 there's literally thousands of those. When you consider  
23 all the crops and all the different management practices  
24 and site conditions that are out there. It's a  
25 formidable task that we have.

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1 I also want to speak a little bit to the  
2 hydrology in the Tulare Lake Basin as has been mentioned  
3 already, the Kern River watershed did a fair amount of  
4 technical work and put that in the record. We  
5 characterize the average depths in some of the different  
6 sub-basins, based off of spring 2010 data. It ranged  
7 from about 80 some foot on average over the whole Kings  
8 Basin to, you know, Kern was on the deeper groundwater  
9 end of the spectrum with 265 foot on average over the  
10 whole sub-basin.

11 With that brings a consideration for the  
12 transit time from the surface to groundwater. We did  
13 some analysis on that. Just to give you some  
14 perspective, you know, we looked at a couple of specific  
15 cropping situations with, you know, the deep percolation  
16 involved with that irrigation efficiencies that can be  
17 achieved and the depth to groundwater. It can range,  
18 even in Kern, from about ten years transit time, to up  
19 to 600 years. So that's just a little bit of  
20 perspective.

21 Overall --

22 CHAIR MARCUS: Can I ask a question on that,  
23 that's just maybe stating the obvious and knowing just  
24 enough about Kern geology to be dangerous, where  
25 drinking water wells tend to go are different from where

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1 a big ag well tends to go for economics. We don't  
2 have -- you're not talking major city.

3 Is this also one of those issues where the  
4 groundwater is so low in most places it's not affecting  
5 drinking water supplies? It's just ag supplies, or is  
6 that overly simplistic in some areas?

7 JOHN SCHAAP: There was a lot of discussion on  
8 this. I think all we can really say with certainty is  
9 with added depth to groundwater, just increase transit  
10 time. I don't think I can give you any certainty that  
11 it will never get there. Again, I think as Mr. Kunde  
12 pointed out earlier, most of the studies that have been  
13 done on relatively shallow groundwater, that's actually  
14 also in one of our expert reports. So there are a lot  
15 of questions. We're not really sure about the level of  
16 attenuation that we get as water goes through these  
17 deeper strata. Especially these longer travel times.

18 Again, this travel time, especially,  
19 contributes to temporal and spatial disconnect between  
20 the activities on the surface and what's observed in  
21 groundwater. It can also, for that factor and a number  
22 of other factors, contribute to a real significant  
23 signal to noise ratio.

24 I know that a lot of these things were  
25 discussed even in the Sacramento workshop. We really

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1 appreciate how the regional boards Sacramento  
2 presentation reflects a lot of our prior testimony and  
3 technical work that is in the Tulare Lake Basin record.  
4 It really appears the Regional Board has a much better  
5 appreciation for the complexity of the situation.

6 I know Dr. Karl Longley was just talking about  
7 some of that just a couple of minutes ago. I think we  
8 all have a much better understanding of the challenge of  
9 this irrigated lands regulatory program, both in  
10 monitoring and compliance and in achieving long-term  
11 groundwater improvements.

12 This complexity of dealing with all of this is  
13 further compounded by this A over R variability. There  
14 have been a number of people talking about that today  
15 and some of the limitations that go with that and  
16 legitimate reasons why that may vary. I'm.

17 Not going to delve too much into a lot of  
18 these. Being the end of the day, you have heard a lot  
19 of these things. Some key points and a lot of these  
20 came from the state board expert panel report. Some  
21 definite opinions that we agree with.

22 It's very important, I believe, particularly in  
23 light of this A over R ratio of variability to be doing  
24 things based off of multiple years data and to really  
25 developing the information that we need. That's going

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1 to take some time. That's something that people have  
2 spoken to as well.

3 There's the social aspect of all of this. We  
4 need to have a positive grower participation, just to  
5 bring everybody along with us. It's starting slowly.  
6 Coalitions have described the process as we have gone  
7 through, and we have to make that attainable and take  
8 meaningful steps. It's difficult, and the State Board  
9 expert panel talked about this in their report. They  
10 didn't advocate for a point source regulatory approach  
11 for this. This is a whole different animal, but  
12 instead, let's use this data that we're going to collect  
13 for education, and then later on once we have a firm  
14 handle on things, we can talk more about enforcement.

15 So far, especially in Kern, we have achieved a  
16 high participation rate in our coalition based on the  
17 current structure. I fear that the proposed changes may  
18 take some of this away. I think we have somewhat of an  
19 implied contract where any changes that come to pass,  
20 could lead to a reassessment of how growers are going to  
21 comply with the irrigated lands regulatory program.

22 Bottom line, we're learning to live with the  
23 current order. It was a big culture change for a lot of  
24 people, but I would urge you to give us time to work on  
25 what's already been set before us and allow us to make

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1 some progress. There will be much work to be done on  
2 nitrogen coefficients and education outreach. In time,  
3 we can make progress on that and revisit, if necessary,  
4 several years down the road.

5 Again, the coalitions are committed to making  
6 progress. We just have very serious concerns that the  
7 draft order may jeopardize that progress.

8 CHAIR MARCUS: Thank you. Dr. Dickey, please.

9 DR. JOHN DICKEY: Thank you very much.

10 As Dr. Longley said that the impact program is  
11 maybe the least detailed part of the order, and our team  
12 of agronomists, soil scientists, hydrogeologists, etc.,  
13 has been working on the first requirement that's stated  
14 in the order with respect to the impact, and that is to  
15 produce a work plan.

16 In a sense, the strategy, at least implicit in  
17 the order, is to recognize that nobody has ever done an  
18 impact before. Somebody has to figure out how to do it.  
19 We don't have time to do it now. So it's the job of the  
20 coalitions to detail what that impact would be. Then we  
21 get to decide whether or not that program proposed is  
22 responsive and would have to reject the work plan. The  
23 last ten months, that's what we have been doing, putting  
24 together a work plan.

25 What I'll describe, is the gist of our work

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1 plan and a couple of other items. The management -- the  
2 impact, complements other components of the Region 5  
3 irrigated lands general order. We talked about nitrogen  
4 reporting and farm evaluations. These are not part of  
5 the impact. They're different. So it complements those  
6 pieces and provides something else.

7 It contains most of the actions that actually  
8 protect water quality, along with the most rigorous  
9 performance demonstrations that are in the order. This  
10 is where we go beyond simple metrics that might indicate  
11 a problem, and go through the steps that are required to  
12 actually solve a problem.

13 The impact I have been reminded by staff, and  
14 we recognize is not all about nitrate. It's meant to be  
15 a generalized tool for other pollutants as well. For  
16 the moment, it's a lot about nitrate. I'll lean on that  
17 as we go.

18 Seven coalitions representing about 1.5 -- 1.85  
19 million acres of irrigated land south of Fresno are  
20 implementing a joint work plan as provided in the order.  
21 They are able, but not required, to work together. That  
22 has been extensively discussed with State and Regional  
23 Board staffs and with technical partners at NRCS, CDFA,  
24 University of California, CSU, etc. We recognize that  
25 there are a lot of resources out there, and we want to

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1 leverage them all.

2 We have also reached out to other irrigated  
3 lands coalitions in the dairy industry to exchange ideas  
4 and promote consistent approaches. Several impact  
5 activities combined to deliver what is needed. This is  
6 not just one thing. First, we will compile known  
7 protective practices, relate them to circumstances where  
8 they can and should be applied, and then reach out to  
9 our membership to raise levels of awareness,  
10 understanding, and implementation. This is the most  
11 practical way to rapidly reduce the mass nitrate  
12 leaching from agricultural group zones.

13 At the same time, we'll prioritize groups of  
14 crop soil and groundwater conditions, focusing on  
15 situations with the greatest potential to improve  
16 groundwater quality protection. We will identify  
17 weaknesses in existing knowledge and barriers to  
18 practice adoption and then develop tests and verify new  
19 protective practices.

20 Our coalition members farm in diverse  
21 environmental and management settings. Ranging from  
22 growers serving a local market on limited acreage with  
23 multiple vegetable crops per year. We heard some of  
24 that from Sam today and Mr. Lee. To extensive plantings  
25 of drip irrigated vines and fruit and nut trees.

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1 Almost 80 percent of our growers farm less than  
2 160 acres, although we are required to assess  
3 performance across the entirety of this area, we could  
4 not conceive of a soil and groundwater sampling program  
5 that, by itself, would produce such an assessment.

6 Fortunately, the USDA and EPA have invested  
7 years and millions of dollars in modeling tools when  
8 properly calibrated can be used more efficiently to  
9 assess environmental affects of farming and the  
10 influence of projected changes in management. When I  
11 say more "efficiently," I mean more efficiently than  
12 measuring one field after the next and then hoping to  
13 extrapolate that to the landscape some other way.

14 In this way, we can understand what is  
15 happening at the field and the landscape scales as  
16 required by the orders. The orders are explicit that we  
17 must assess not only the amount of nitrate leaving our  
18 root zones now, but how it would be changed and how it  
19 changes over time.

20 We have developed initial model runs that will  
21 be refined over time. Farm evaluations in nitrogen  
22 summary reports provide management information to us.  
23 The farm evaluation tells us where protective practices  
24 are in use. The nitrogen summary report allows us to  
25 relate nitrogen applied by growers and removed by crops

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1 to other management crop and soil information in our  
2 diverse land escapes. Together with monitoring data  
3 from focus field surveys and calibrated modeling  
4 results, these provide the feedback we need to assess  
5 and document progress in protecting groundwater quality.

6 So in summary, the impact is about  
7 understanding how we influence groundwater now and how  
8 that changes going forward. Understanding how we can  
9 make that better. What have we already got on the shelf  
10 that's perhaps not as widespread as it should be in  
11 terms of protective practices. Where are our knowledge  
12 gaps and what do we need to do to close them? We act to  
13 close them, and move that into our outreach program, and  
14 finally, document how we're performing.

15 So that's really kind of a summary statement on  
16 the impact. A couple of related points I would like to  
17 make, if I may. One with respect to the vulnerability  
18 areas how they affect the impact. The impact is  
19 required for high-vulnerability areas, but the results  
20 are to be applied throughout the area.

21 So this boils down to extending, to focusing  
22 the evaluation on the high-vulnerability areas, but  
23 extending outreach and the results to the entire area  
24 regarding vulnerability. That's practically how we're  
25 approaching it at this time.

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1 Now something even less related on nitrogen  
2 reporting, it's come up a number of times today, but  
3 it's been debated quite a bit but not quantified at the  
4 scale of the Central Valley. There's simple questions.  
5 How many reports are we talking about? So I looked into  
6 that because I was curious. So in the current order,  
7 each crop is required to be reported at the township  
8 level. This comes to about 9,000, give or take,  
9 individual sampling reports, about one per irrigated  
10 square mile or 36 per irrigated township. That doesn't  
11 mean part of the township is irrigated, that means a  
12 township of which all the area is irrigated.

13 Each of these would show the distribution and  
14 the outliers for an average of 10 to 20 fields. If you  
15 add up the fields and divide by townships, that's what  
16 it comes to. It depends how you classify crops. If you  
17 classify crops a little more generally, it could be  
18 less. It could be less than 9,000, but it's thousands  
19 in any way of reports.

20 In the draft order, data for each of 100- to  
21 175,000 or so fields are reported as context free  
22 points, generating about 10 or 20 times the number of  
23 reports as in the current order. So I just wanted to  
24 kind of provide some numbers for that.

25 I guess that wraps up my presentation. Thank

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1 you for listening.

2 CHAIR MARCUS: Thanks. Can I ask a question?  
3 Go back to MPEP, and your explanation was helpful in  
4 terms of the intention and the -- what's your sense of  
5 time frame on that? I'm hearing a decade. That -- in  
6 the long run, these things are hard. We heard about  
7 Germany and the like, but there's a tension between  
8 that, the fact that folks have been talking about this  
9 program for decades and were fine -- the rubber is  
10 finally starting to hit the road, and I hear folks  
11 saying we're finally getting it together, don't blow it  
12 up, this is good and a way to go.

13 I'm hearing that, and then the question -- but  
14 the question of rigger and time frame, even within a  
15 context of farmer talking to farmer, which I happen to  
16 like a lot, that still seems a little vague to me.  
17 Putting on my hat as if I'm a communion member and  
18 clearly this is not the only thing, and we have  
19 demonstrated a lot of work at the state level.

20 A lot of people in this room have been leaders  
21 in getting us there on all sides, the grower side and  
22 the other side. There are a lot of decisions yet to be  
23 made in this state about what we're going to do to  
24 figure out how to help folks get clean water. In the  
25 meantime, we do have under Porter-Cologne, a need to

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1 protect the degradation of water and show we're making  
2 progress. That is part of what staff is struggling  
3 with. The time frame would be helpful. My thinking  
4 about how concrete it is.

5 DR. JOHN DICKEY: As part of our work plan, we  
6 struggle with schedule to try and come up with where all  
7 these actions fit on the calendar. It is specified that  
8 at least a version of the program needs to be complete  
9 within about six years from the time the work plan is  
10 approved. That gives you an idea. The work plan itself  
11 needs to be produced within about two years from the  
12 time the guard is approved. That's out of the order. I  
13 recognize that's not particularly helpful. That's  
14 something to hang your hat on.

15 So the way I see this is -- I think the  
16 coalitions have been extremely supportive of this sort  
17 of approach. As I mentioned, the impact is one thing.  
18 You can't get the whole job done with one thing. It's  
19 not that simple.

20 CHAIR MARCUS: Sure.

21 DR. JOHN DICKEY: So it ends up being a number  
22 of things. Then you can structure those as you would an  
23 investment portfolio where you're spreading risk and  
24 things like that and return. In this case, we're trying  
25 to spread our energies among things that give us a lot

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1 of impact, as much as we can in the near term, but not  
2 ignore the things we need to do to get to the  
3 underlying -- we don't want to put all our energy into  
4 short term and say we didn't hit the goal line. Darn,  
5 what do we do now?

6 CHAIR MARCUS: The outlier work at the  
7 beginning of the bans, wait, Whisker and Box graphs --  
8 Box and Whisker graphs?

9 DR. JOHN DICKEY: Those are indicators of kind  
10 of relative performance. The impact tends to be more  
11 rigorous. The cool thing over A over Y, you only need  
12 two numbers -- A over R. Pardon me. To figure out  
13 what's happening in nitrogen, I forget who put up the --  
14 I think it was Dr. Mikkelsen, the lovely nitrogen cycle,  
15 you need to look at some of the other things if you  
16 really want to figure out.

17 I'm not saying it's complicated, to make it  
18 hard, but if you need an answer you can rely on, you  
19 need to go deeper. That's what we get to do in the  
20 impact. You get to look at enough of the story to get  
21 prescriptions that growers can apply with confidence so  
22 they are going to get the impact that we anticipate.

23 So we have got -- obviously, it's not the first  
24 day anybody has done any research or extension on  
25 nitrogen fate and transport. We want to use what's

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1 known and get that out. So the time frame on that is  
2 develop the outreach programs this summer. Be out in  
3 front of growers in the fall and winter meetings in 2016  
4 and 2017. We call that early outreach. It's to get  
5 known protective practices inventoried and in front of  
6 the growers ASAP. That's thing one.

7 Complementing that is some prioritization of  
8 where are our knowledge gaps? Where are the places we  
9 don't have protective practices to put out in front of  
10 growers today where we probably need them or where we  
11 have uncertainties that we feel are going to be a  
12 problem in the long term? There, we're reaching out to  
13 our technical partners at the University of California,  
14 etc., and starting in the field research or surveys or  
15 sampling and analysis that will help us close those  
16 gaps. Those feed into the outreach program in future  
17 years.

18 CHAIR MARCUS: That's helpful.

19 Questions?

20 BOARD MEMBER FRANCES SPIVY-WEBER: I have one.  
21 I'm having a difficult time visualizing this MPEP,  
22 because I'm kind of used to reports. It's clearly not a  
23 report. It's a work plan. Is that what you're telling  
24 me?

25 THE WITNESS: There's a report that's due in

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1 six years, but there's a bunch of activity that has to  
2 happen in the next six years, including the impact, so  
3 when we write the report, our colleagues at the Regional  
4 Board read it and think these guys actually delivered.

5 BOARD MEMBER FRANCES SPIVY-WEBER: Really, the  
6 report is most valuable to you for figuring out if  
7 you're kind of on the right track? It's how -- on a  
8 scale of one to ten, how valuable do you see it to the  
9 Regional Board? From a regulatory perspective, it's not  
10 really, is it?

11 DR. JOHN DICKEY: Well, no. The communication  
12 with Regional Board is typical. We have been in  
13 meetings with Regional Board staff a couple of times,  
14 talking about our work plan as we have developed it,  
15 because we don't want to have a work plan that they  
16 don't buy, that doesn't really do it for them.

17 So we value that input, and we plan to keep  
18 that communication regular. I mean, minimum three, four  
19 months type of thing, if we can get their time. They  
20 made it a priority so far.

21 Our idea is that as we make progress, we will  
22 add these informal meetings and make sure we're on the  
23 right track so that when we get to the end and have a  
24 big report, as you say, there shouldn't be anything  
25 surprising in that report. I think it has value.

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1           The report is a place where we structure and  
2   make ourselves accountable to the Regional Board and the  
3   public that we have actually done this work that we were  
4   supposed to do, but we have to do a lot of other things,  
5   too.

6           BOARD MEMBER DORENE D'ADAMO: Thank you for  
7   breathing some life into the MPEP. It's interesting.  
8   If you look at our order, there's just a little  
9   paragraph.

10          DR. JOHN DICKEY: Right. Our draft work  
11   program is about 100 pages. We bumped it up a little  
12   bit.

13          BOARD MEMBER DORENE D'ADAMO: What our staff  
14   did is a red line of the Regional Board's order. So if  
15   that's all you have, it appears to be radio silence.

16          DR. JOHN DICKEY: Right.

17          BOARD MEMBER DORENE D'ADAMO: What I would just  
18   suggest, and I'm going to make some comments at the  
19   conclusion, but what I would just suggest that it seems  
20   to me that we have got the Regional Board order.  
21   There's our staff proposal, and then there's what the  
22   coalitions are doing, which there's been a lot of time  
23   between 2012 and now.

24          The coalitions have evolved and come up with  
25   how do you make this work? So you all know what you're

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1 doing and our feeling -- maybe not real comfortable, but  
2 working in that direction because you're involved in  
3 putting this together.

4 If all you have is a paragraph and a quarterly  
5 report, which we get those quarterly reports -- I get an  
6 annual report, and then I get a newsletter. I always  
7 read those. There's not a lot of information because  
8 you're busy doing other things.

9 Also, you've got to make sure that the  
10 information that you put out is -- can be understood by  
11 a broad audience. I think that's missing is the public  
12 that is very much concerned. There's been a lot of  
13 comments about trust today. So farmers that are telling  
14 us that they trust the coalitions. They want to work  
15 with the coalitions, and we should trust that, but then  
16 there's also the impact of communities.

17 There's an issue of trust there as well. I  
18 think just kind of looking for some common ground, what  
19 appears to be missing that could lead to some common  
20 ground specifically on the MPEP is more robust  
21 reporting, more frequent reporting, not just the  
22 meetings with the regional boards, but some way of  
23 providing an opportunity for the public to learn of the  
24 progress that is going on in between the approval of the  
25 work plan and what happens six years from now. That's a

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1 long time.

2 DR. JOHN DICKEY: Thank you.

3 CHAIR MARCUS: Back to Casey.

4 CASEY CREAMER: It's been a long day... We'll

5 summarize some of the key issues. I really don't think

6 I need to repeat them. What I'm going to do is put out

7 the key issues and talk about how I think and we think

8 we can move forward in a way that meets everybody's

9 needs.

10 The first one is on the data aggregation issue.

11 This is a core component of our program. We have made a

12 lot of progress. I fear that progress will be stopped

13 if we're not able to build some comfort into the current

14 process. I think that the audit system, we were always

15 very aware that the Regional Board was going to come in

16 and do audits, very detailed. It just wasn't written in

17 the order. I think putting parameters around that will

18 help in the transparency issues and build trust on all

19 sides. That would be a recommendation there.

20 The second thing is on the MPEP report, we'll

21 strive as a coalition to get the information from the

22 growers that's needed from them. Make them do the work

23 they need to effectively manage nitrogen, and then only

24 ask the information needed for us to do the job that we

25 need to do for the regulatory program.

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1 In the Central Valley order, from where it was  
2 adopted in 2012 and to a lot of influence from the  
3 expert panel and the task force, they came up with an  
4 MPEP group, we came up with the A over Y work approach.  
5 That's the information from the grower that we need, and  
6 then we can do the assessment over the landscape and  
7 provide accurate and good quality data to the regulatory  
8 agency. I just support the A over Y approach and then  
9 that feedback will go back to growers on the A over R or  
10 however you want to put it, we can do that back to  
11 growers so they can understand better some of the water  
12 quality issues that you see.

13 The third issue is the domestic wells. I  
14 understand on the concern in the drinking water you guys  
15 are all faced with. I think the answer to that is a  
16 more comprehensive approach. We have been talking with  
17 the Regional Board about coordinating groundwater  
18 monitoring. We have the SGMA, the regional  
19 requirements, WDR, oil fields monitoring. There's all  
20 kinds of monitoring programs in place right now.

21 We need to coordinate these programs so they  
22 are efficient and effective. I think maybe we could  
23 have some more discussions and some leadership from the  
24 state drinking water counties, the other WDR and the  
25 coalitions of the other discharge can get together and

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1 come up with a comprehensive program that hopefully gets  
2 us to a better place than where we're currently at now.

3 We're concerned this program saddled only on  
4 only on that is a concern, and Dr. Longley said that if  
5 we only tested for nitrates, it builds a false concern  
6 or false that water is okay when it could be arsenic or  
7 other things that people are drinking. That's more  
8 appropriate in a broader scale program outside of the  
9 purview of the Irrigated Lands Program.

10 The last thing is the drinking water. I know  
11 that's why you're here today, but I just would say to  
12 you that trying to solve the drinking water program --  
13 drinking water issues with the source control program is  
14 not a very effective way to do it. The coalitions, ag  
15 groups, farmers, are all committed to finding ways to  
16 find drinking water solutions. There's been several  
17 processes that have moved forward and none of them have  
18 been successful.

19 I understand the frustration. We have been  
20 dealing with a lot of that in the CV-SALTS groups. I  
21 don't know that everything coming out of there will be  
22 perfect, but it's putting the right people in the room  
23 and talking about these tough issues and trying to come  
24 up with a solution to this issues.

25 I know it's frustrating, but I don't know any

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1 other way to put it than put all the people in the room  
2 and work on those issues together. That will be where I  
3 point you to. If that needs to be expanded a little bit  
4 more, we would be happy to do that.

5 In our opinion, we are concerned about the  
6 drinking water issues as well. We want to see solutions  
7 to that, but we just don't want to think it is in a  
8 source control program.

9 With that, I appreciate your time and  
10 appreciate that you came down to Fresno. I would be  
11 happy to answer any more questions that you have.

12 CHAIR MARCUS: Thank you very much.

13 Darrin?

14 DARRIN POLHEMUS: If I may ask a question?

15 CHAIR MARCUS: Sure.

16 DARRIN POLHEMUS: I think it's to Dr. Dickey.  
17 In the impact program, correct me if I'm wrong, you're  
18 going to develop management practices that you can then  
19 apply at a farm level for people to then address water  
20 quality associated with those types of -- where the  
21 practice may address a water quality issue to that  
22 extent?

23 I carry this to its logical conclusion, and  
24 what I haven't heard anybody say then is if that is the  
25 impact program and you develop practices, does it then

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1 necessarily require a mandated use of practices, or do  
2 you get to the point and say this is a whole list of  
3 practices similar to what exists now or maybe are fine  
4 tuned, but then you're not required to use it? I'm  
5 struggling with what the intent is there.

6 CHAIR MARCUS: Adam may want to answer that  
7 question, too.

8 DR. JOHN DICKEY: So the coalitions don't have  
9 regulatory authority to enforce anybody to do anything.  
10 That answers that question, but that doesn't mean that  
11 it doesn't happen. I just think the mechanism may be a  
12 little bit different.

13 Then I wanted to correct one thing. If the  
14 impact were about developing protective practices, it  
15 would -- I think that's too narrow because there are  
16 protective practices that exist. So I don't think we  
17 need to wait around and develop -- that's the long term  
18 part of the portfolio.

19 It's important to develop, verify, you know,  
20 reduce uncertainty, close the knowledge gaps. That's  
21 fine, but to the extent that there are things that we  
22 know work, we need to make sure those are applied, where  
23 they ought to be applied. Not one-size-fits-all, but  
24 where they're appropriate on the landscape and in the  
25 operation, crops, soil, farm size, that these things are

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1 applied.

2 So we do that through outreach. That's the way  
3 that farming systems have been transformed historically,  
4 you know. You can look at production things like hybrid  
5 corn, short stature rice. These are transformations  
6 that took five, six, ten years, something like that.  
7 You can look at the environmental changes that have  
8 happened in the rice industry in California.

9 CHAIR MARCUS: Rice is an industry --

10 DR. JOHN DICKEY: They're getting herbicides  
11 out of the waterways. Those things took a few years.

12 So I think that we plan on using those same  
13 outreach processes. I don't -- to answer Darrin's  
14 question about compulsory use of practices, I think if  
15 we find that in tracking application of practices, that  
16 it's not happening. Maybe that's something to talk  
17 about. Right now, why don't we just wait and see?  
18 Number one, if we need to benchmark where our growers  
19 are. You often hear that we're not -- there's not near  
20 enough nitrogen going into groundwater as there used to  
21 be. Well, one of the things we have to do to  
22 quantify --

23 CHAIR MARCUS: Document that. There's a lot of  
24 assertion. Again, putting yourself in the shoes of the  
25 local community.

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1 DR. JOHN DICKEY: We don't know, and it may be  
2 true. Let's find out. So that's part of our task.  
3 Then we're going to be tracking through the farm  
4 evaluation, rates of adoption. So I don't know that we  
5 have a problem yet. If we do, I guess we'll have to  
6 cross that bridge.

7 DARRIN POLHEMUS: Then, is it also --

8 CHAIR MARCUS: You're on. Adam wants to add an  
9 answer.

10 DARRIN POLHEMUS: Is it then part of the  
11 impact -- is it connected then to the applied over yield  
12 that you're proposing that you could then -- there has  
13 to be a performance metrics? If someone says they're  
14 doing the practice -- great, they're doing the  
15 practices, but doing it horribly, we know not if it's  
16 protective or not. Is there a linkage to that in your  
17 concepts?

18 DR. JOHN DICKEY: Sure, yes. I just want to  
19 say that what's proposed in the current order is applied  
20 over removed being reported to the Regional Board,  
21 applied over yield is what's reported to the coalitions.  
22 So there's no difference. They're both applied or  
23 removed programs, just going a different way.

24 We have -- we think that -- the impact program  
25 is about understanding practices, but understanding how

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1 they relate to landscape, some of the best resources we  
2 have are all this investment by the coalitions in  
3 collecting nitrogen summary report information field by  
4 field, which we have access to; right? We can use that,  
5 under the current order. Farm evaluation data.

6 So if those programs are working, our model is  
7 to employ those and assess what's happening on the  
8 landscape that way, field by field. Does that -- so  
9 that's our feedback to know what practices are, how they  
10 relate to A over R and mine those data sets to find out  
11 and diagnose whether or not we're getting the  
12 performance we want.

13 Again, we like the A over R for the same reason  
14 you do, that it's simple and something you can have for  
15 every field. You can ask that much data of every  
16 grower. But to dig in and figure out why it's high or  
17 why it's low, you might need to know a few more things.  
18 That's our job.

19 CHAIR MARCUS: All right. Adam, what did you  
20 want to add?

21 ADAM LAPUTZ: Okay. Now we're working.

22 Just -- I wanted to respond really quickly to  
23 some of the exchange we just heard. Our order requires  
24 that the practices found protective under the MPEP being  
25 implemented by growers or the equivalent practice. The

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1 way we envision that working in our program is we have a  
2 coalition-based approach right now.

3 If you're a member of that coalition, you're  
4 basically in good standing with that coalition. You're  
5 implementing the requirements of our order. If a grower  
6 were to say, say we did with the impact we found,  
7 certain practices were -- this suite of practices was  
8 protective, and a grower said, "You know what? I'm not  
9 into that set of practices." Darrin's question is can  
10 we mandate a particular practice? We can't mandate that  
11 they implement that particular practice. That's very  
12 true.

13 What we can do, and the way we want to approach  
14 this is you either -- this is kind of the -- you either  
15 do these practices, or you're not in good standing in  
16 the order. And then you've got to go -- what we would  
17 do is we would remove them from the coalition, and we  
18 would say, "You have to go into the individual order."

19 With that order comes groundwater wells,  
20 systematically determining if your set of practices are  
21 protective of groundwater quality. The -- that's  
22 really -- that's how we would get it at that particular  
23 case.

24 The reality of it is that we can't say, "You do  
25 this practice exactly," but someone if they have an

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1 equivalent practice would work also. The logical  
2 conclusion there is that says how the Regional Board  
3 would key off that situation.

4 With respect to the A over R, A over Y, this  
5 metric, the Regional Board always intended or really  
6 wanted that metric to be used in this program. We knew  
7 going into this that it was going to take many years  
8 before we were able to figure out the trend monitoring,  
9 whether or not there was going to be some improvement,  
10 groundwater quality. So we wanted to get started on  
11 something.

12 The A over R is the first metric we wanted to  
13 get started on. The other one is practices that people  
14 can start implementing right away. Like well protection  
15 and things like that. I wanted to respond on that real  
16 quick and any questions you may have.

17 BOARD MEMBER FRANCES SPIVY: On the things that  
18 can be implemented fairly quickly that don't take six  
19 years, how is the community going to find out that's  
20 happening?

21 ADAM LAPUTZ: There's a couple of mechanisms  
22 with that. Right now, what the coalitions are doing is  
23 groundwater management plans. In those groundwater  
24 management plans, they indicate, just like with surface  
25 water arrangement plan, they indicate the type of

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1 practices they will be working with the growers on.

2 A over R is one of them, obviously. Through  
3 the education component in the program, they would be  
4 reaching out to the program and showing the suites of  
5 practices they should be and can be implementing early  
6 on, versus the impact, which really is the -- you know  
7 as we implement these practices, we don't know exactly  
8 where the A over R should be for every crop type, and we  
9 don't know the suite of practices that's going to be  
10 protective in all circumstances. That's a tough bill,  
11 but we can start doing some things right now.

12 Impact, as time goes on, we'll start to look at  
13 these things. My sense is they're going to be looking  
14 at the big crops first, there are almonds that have  
15 already done some of this work. You're not going to  
16 see -- some of this work has already been done. You're  
17 not going to see many, many years out, a just beginning.  
18 Things have already begun for some of the big crops.  
19 They have already started to pull some of this data  
20 together. We're probably going to see earlier  
21 information than that for the bigger crop types. For  
22 some of the smaller ones, it's going to take some more  
23 time.

24 CHAIR MARCUS: I know we talked about this a  
25 little bit, but can't remember at the moment. How

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1 public is this? Do you have regular show ups at the  
2 board and public session, or is it just folks can go to  
3 a stakeholder meeting if they elect in? I think  
4 Vice-Chair Spivy-Weber's question is more how do people  
5 see that progress if they're community members.

6 ADAM LAPUTZ: There's a couple of cases here we  
7 should talk about. There is a stakeholder meeting.  
8 They can attend the stakeholder meetings. We have  
9 regular ones with generally the environmental justice  
10 and coalitions show up at the stakeholder meetings.  
11 Those are regular.

12 The board meetings, they can come to those, but  
13 with the big ticket work plans, the groundwater  
14 assessment reports, the management practice evaluation  
15 work plan reports, the groundwater quality management  
16 plan reports, all of those, our board requires we post  
17 those on our website and actually get people -- allow  
18 people to comment on those. We consider those comments  
19 when we approve -- when the executive officer approves  
20 those reports.

21 You know, if there is a big issue that comes up  
22 in those comments, we would take that to our board. If  
23 there's something we can't resolve easily or something  
24 really tough, we would take those to our board, also. A  
25 good example of that would be is what we did with the

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1 templates for the nitrogen management plan, a template  
2 and the worksheet template for the nitrogen management.

3 That was something where we posted them, got  
4 public comment from all sorts, and we decided to go to  
5 our board with an information item on those because it  
6 was -- there was a lot of concern, a lot of comments,  
7 and we wanted to have it through that process, and what  
8 came out of that was we went with a -- we kind of a  
9 little bit of a twist, and decided to get A over Y,  
10 applied over yield, and then the coalitions would get  
11 back the removed to the growers because of the  
12 difficulties in calculating that information.

13 That's not reflected in the record and what you  
14 have in front of you today. It's something that was  
15 approved by our executive officer and went through board  
16 information item. Unfortunately, you don't have that  
17 here. That's part of what people have been talking  
18 about is -- so --

19 KEITH FREITAS: As a grower, we rejected that  
20 they sold us on that, the coalition.

21 BOARD MEMBER STEVEN MOORE: One thing, you're  
22 explaining there is a process in what the board would  
23 do. Have you reached that point? I realize the order  
24 is just being implemented, as many have indicated, and  
25 we're just learning -- folks are learning how to

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1 navigate this, but have you reached that point where any  
2 stakeholder process management practices were discussed,  
3 were say rejected or not used. And have you had to  
4 enter into discussions about, "Oh, no, we see," you  
5 know, the record shows this would be appropriate to  
6 implement, and why aren't you implementing it? You  
7 haven't reached the point where you're recommending  
8 action to the board in this MPEP process?

9 THE WITNESS: That's correct. The MPEP hasn't  
10 gotten there yet. With groundwater, it's a little  
11 different. With surface water, this metric that we have  
12 gone through before and been very successful with is  
13 this -- where coalition goes and they figure out a suite  
14 of practices, and go to the growers and say, "Hey,  
15 you're right along the waterway. We have something  
16 hitting this waterway. Here's the type of practices you  
17 need to put in place," and work with them to implement  
18 different practices. And go to test again, and they  
19 find out it's not there. And we're good to go. With  
20 groundwater, it's a little different. That's why we  
21 have to take a little bit more rigorous approach with  
22 the implementation of practices.

23 It really was developed in such a way as to  
24 allow growers to comply with the Irrigated Lands Program  
25 without sinking a series of monitoring wells like almost

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1 every other program we have with groundwater. That's  
2 how we do it; right? You look at upgradient and  
3 downgradient water quality, and say we have a problem.  
4 This program, we came up with this idea.

5 You're right, we haven't done that yet. The  
6 only way to make it work is if they don't implement that  
7 or some equivalent, they have to show they're protective  
8 or they're out of compliance.

9 BOARD MEMBER STEVEN MOORE: I think that was a  
10 good answer to the question you're taking a template  
11 approach, and you have actually gone to the board in the  
12 surface water type arena. So you're taking lessons  
13 learned from that structure and trying to apply them in  
14 the groundwater setting.

15 I think you did provide -- what I was looking  
16 for was some comfort that, "Oh, yeah, the board will do  
17 this," and the communities that are concerned that the  
18 board hasn't taken action.

19 You have heard testimony today that we have our  
20 resource constraints. You are struggling, let's say, in  
21 the minds of some who have testified to follow through  
22 on what the board would do for those who don't file to  
23 be part of coalitions, for instance. We're -- we are  
24 challenged in this area to follow through with what the  
25 board would do.

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1           You have answered the question that you have a  
2   track record in terms of working through surface water  
3   quality challenges, and you would apply something  
4   similar. For what it's worth, I thank you. It gave me  
5   more comfort with that.

6           ADAM LAPUTZ: Thanks.

7           CHAIR MARCUS: More questions?

8           I want to give -- thank you all. This is  
9   exactly what we want from a workshop. Hopefully folks  
10   have come in and done a great job of articulating  
11   concerns and fears and hopes and their pride and all of  
12   those things, but I feel folks have listened to each  
13   other. For us, we have to suspend what we think and ask  
14   questions and hear each one.

15          I want to do a couple of things. Part of the  
16   process is, again, for us to be able to think about it.  
17   Again, we can't -- you'll see us, when we get to  
18   decision time, interacting a lot more with each other.  
19   I think we're listening to each other and the questions  
20   that we ask and taking it in.

21          Then we'll work with staff as we do in ones and  
22   twos and download what we heard and have discussion and  
23   figure out where to go next. Some folks have suggested  
24   another workshop on certain issues to really focus on in  
25   Sacramento. We may do that, or we may come out with a

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1 draft. Or we may reach out and ask questions.

2 We're in the ex-parte process under the  
3 legislation passed a few years ago where we can actually  
4 talk with people, but people have to report the  
5 substance of that conversation. It has to be posted for  
6 everyone to see. That's a bit of what happens next.

7 I do want to give my colleagues a chance to say  
8 anything we want to say now, here. Also, the staff, you  
9 all could ask questions throughout. You finally took us  
10 up on that. I tried to not try and either disagree or  
11 educate or explain to each speaker what is in the order  
12 or what your intention is just in the manner of time.

13 Ms. Wadhwani went through quickly in her  
14 slides, it's not in the slide, but in the conversation  
15 on the slide, some of the things that you had heard. I  
16 don't want you to put in the position of saying --  
17 having to recite what you heard today, but if there are  
18 any points that came up that you wanted to clarify, you  
19 don't have to. But for the world where people are a  
20 little confused about what we're doing or what you're  
21 proposing, happy to let you do that.

22 DARRIN POLHEMUS: Darrin Polhemus. I think we  
23 can pretty much sum it up by -- there was a lot of good  
24 comments, like you said. There was a lot for us to  
25 think about and digest. Of course we want to talk with

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1 the board members on what they're thinking as well. I  
2 don't have anything expressly today that strikes me that  
3 hasn't been covered.

4 CHAIR MARCUS: Great.

5 Board members, anything? Dee Dee, you said you  
6 had a number of things you wanted to lay out. I'll let  
7 you start.

8 BOARD MEMBER DORENE D'ADAMO: First of all,  
9 thank you all for dedicating the entire day to be with  
10 us. I got a lot out of this. This was really helpful.  
11 Once we have the opportunity to ask some questions, I  
12 really feel like I learned quite a bit more about what's  
13 going on out in the field.

14 What's frustrating for me about this process,  
15 and I don't think we're necessarily stuck with it, I  
16 feel that we are at a point, especially with some of the  
17 other processes that are going on, with CV-SALTS, with  
18 SGMA, with some of the other things in the legislature,  
19 trying to get drinking water to communities that are  
20 going without and people working together, you know, to  
21 that end.

22 What's missing in this process is a  
23 collaboration. You know, just the very nature of it,  
24 there's a petition that's filed, staff comes up with a  
25 proposal, and then we have one side and then another

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1 side. I don't think it necessarily has to be that way,  
2 especially with the groups that are working so well  
3 together.

4 Again, I go to CV-SALTS periodically, and I see  
5 some really good dialog going on. I have a request for  
6 you all and those who are not here, hopefully we can get  
7 the word out to my request. I would hope you could use  
8 the time between now and the close of public comment to  
9 put together a joint proposal, to the extent that you  
10 can.

11 Maybe you can't agree on everything, but I do  
12 think there's quite a lot of common ground. I think it  
13 would be -- thank you, Dr. Longley, for talking about  
14 what's in the order and what's not in the order, and  
15 some of the things that you're doing anyway or that you  
16 would be willing to commit to.

17 I know there was a discussion last time and  
18 allusions to it today about the coalitions assuming  
19 there would be some type of an auditing program. There  
20 have been a number of things discussed that are not in  
21 the current order that the Regional Board and the  
22 coalitions would probably agree to anyway.

23 I would love it if you could sit down with the  
24 community representatives and share those thoughts with  
25 them and see what they have to say. The MPEP is a very

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1 good example. I feel like we keep going back to the  
2 word of trust; right? The coalitions, the farmers are  
3 saying trust us, we have spent all this time on this  
4 program. Give us a chance.

5 The communities are frustrated because, you  
6 know, they have been asking for help for a long time and  
7 feeling that the program as it is, they don't trust the  
8 program. Sitting here talking about what you're doing,  
9 I feel like I'm trusting a little bit more. Can you put  
10 that down? Can you put that down in writing? Can you  
11 make additional commitments on outreach and reporting  
12 back that will give the communities an opportunity to  
13 understand more about what you're doing? I think that  
14 will help to build trust.

15 I know it's maybe a long shot, but I would like  
16 to see you all give it a shot to see if you can come up  
17 with a joint proposal, because what's going to make this  
18 work, just as we're talking about for the coalitions and  
19 best management practices, what's going to make that  
20 work is local interaction with the coalition and what's  
21 going to make the overall program work is the local  
22 interaction with the coalitions and the community.

23 Of course, we need to be involved, but I don't  
24 think we need to be involved as much if that formula  
25 will work with the coalitions working more with the

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1 impacted communities. So that's my request. Hopefully,  
2 we'll see something more in a couple of weeks.

3 BOARD MEMBER FRANCES SPIVY-WEBER: The only  
4 thing I would add to that is to expand on the community  
5 engagement. I think just as farmers like to hear from  
6 farmers about what's working and what isn't working,  
7 community members like to hear from community leaders  
8 about what is happening to their communities, both  
9 positive and negative.

10 What we heard in the earlier hearing in  
11 Sacramento is largely a regulatory approach to dealing  
12 with problems, but I think we have seen here there may  
13 be some opportunities for communicating process that's  
14 being made on a regular basis, not in six years. That's  
15 too long, but more frequently, and perhaps some  
16 community leaders can be conduits of information to  
17 communities that will help build this kind of trust on  
18 the community side.

19 A statement I heard yesterday with the Central  
20 Valley Community Foundation, and they had -- they get  
21 funding from a lot of different sources, and fund  
22 different kinds of community groups. Sometimes there's  
23 an opportunity to get philanthropic monies for these  
24 kinds of outreach activities as well, if that will help.  
25 I'm going to pursue that.

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1 BOARD MEMBER STEVEN MOORE: I don't have a  
2 whole lot to add. I want to thank everyone for coming  
3 all day long today. Those left, many who traveled far  
4 and took time out of their work days to share their  
5 perspectives. Also, Board Member D'Adamo's comments  
6 resonate with me. I see that there's a lot going on,  
7 and thanks to Board Member Spivy-Weber for pointing out  
8 the performance of how the messages convey.

9 It's clear farmers trust farmers. Community  
10 leaders trust community leaders. There's some of us  
11 that need to play a role of bridging those areas. I  
12 recognize the functionality of the existing order, but I  
13 just ask everyone to recognize that through the petition  
14 process, we are not only trying to reconcile petition  
15 comments, but also lots of other things that are going  
16 on in this state, the law, litigation results that we  
17 have to incorporate. And so as the chair pointed out,  
18 we're not making this up out of whole cloth. We're  
19 really trying to serve the regional boards, not just  
20 this region, but the other boards that have agricultural  
21 regulatory programs. And there is a benefit to the  
22 State Board coming in and coming up with some  
23 presidential work because it creates a certainty.  
24 That's what a lot of you are struggling with the moving  
25 target with an order issued and then a petition process

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1 and some new requirements that could come out of that.

2 So I just ask you to participate in this  
3 process and hope I communicated what our intent is to  
4 reconcile the different issues going on around the state  
5 and add value, build on what you have learned here in  
6 implementing the order, build on what we have learned in  
7 the central coast, implementing this order, and taking  
8 it to the next level of excellence. That involves some  
9 of the comments I said earlier about designing the  
10 program so that, you know, as the State Water Board  
11 structure and the regional boards institutionally can  
12 have good customer service for you, to be responsive to  
13 you, and so we have to work hard to figure out what's  
14 the right amount of work, what's the right touch in  
15 terms of accountability and reporting.

16 The ag panel said coalitions are very  
17 important. That resonated with us early on. Today I  
18 thought we saw a lot of good examples, the same in  
19 Sacramento, how this can be a functional system. Let's  
20 think about now, as we provide comments, how can we  
21 strengthen that system in terms of trust the public will  
22 have in it? I.

23 Don't really have much to add. I encourage any  
24 kind of joint work crossing the divide, seeing what we  
25 have in common, and also ideas of dealing with the

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1 .drinking water issue. It's appropriate in this context.

2           Thanks everyone for your patience and your  
3 work. Thanks to the staff for preparing for this and  
4 looking forward to your comments in writing.

5           BOARD MEMBER TAN DUDOC: I want to add my  
6 thanks to everyone not only for attending, taking time  
7 from your daily responsibility to be here and to stay  
8 with us and to all of those who are, I'm sure, glued to  
9 your computer screen watching the webcast as well, thank  
10 you for that. But thank you for the tone of your  
11 comments today in your participation, the collaborative,  
12 the productive participating. That, I think, really  
13 helped us, or at least helped me. I think all my  
14 colleagues, too, in better understanding the challenges  
15 that you face, but also the challenges that we all face  
16 in trying to tackle these problems together.

17           I want to thank my colleagues. Hearing your  
18 comments and hearing some of your questions, I think  
19 gave me a piece of assurance that we are pretty much all  
20 on a similar -- in terms of what we open to achieve from  
21 this, which is better accountability, better  
22 transparency, better collaboration, and in the end, just  
23 better outcomes through this program.

24           It's not that I doubted that, but it was good  
25 to hear other comments asked today, questions asked

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1 today, and the comments made that we are very much. We  
2 may have different perspective and different areas of  
3 focus, but we share common goals.

4 I certainly concur with Board Member D'Adamo's  
5 comment. I think I made that request at the workshop in  
6 Sacramento, that there be some collaborative cooperation  
7 among the state corner, especially involving the  
8 communities impacted, in working out the details with  
9 respect to audits and some of the other proposals being  
10 made.

11 I certainly concur, and I certainly support  
12 them and look forward to seeing whatever proposal that  
13 comes out of it, but my one feedback to staff is we  
14 don't wait for that to happen. If there is consensus  
15 among the stakeholders and propose something, I think  
16 that's wonderful, but I think we also, or you should be,  
17 prepared to think about what sort of auditing, what sort  
18 of measures we could include in this order to strengthen  
19 that process.

20 I, too, was also very glad to hear from  
21 Dr. Longley today in terms of what the Regional Board is  
22 thinking in terms of that aspect. If we do get  
23 comments, especially consensus-based comments on that,  
24 definitely, that would be good. If not, I would  
25 think -- I would expect to hear from staff some

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1 recommendation with respect to that.

2 I would encourage you, if you haven't, to also  
3 reach out to Greg Gearheart of the Office of Information  
4 Management and Assessment. Is that the correct name?  
5 Mr. Gearheart is starting a process -- has started a  
6 process called the data dive.

7 Through that process, what he's trying to do is  
8 engage the stakeholders in looking at the data that's  
9 being collected and how do we best analyze and use that  
10 data? How did we build upon innovation in the private  
11 sector to better -- do a better job ourselves at  
12 understanding the data and make sure the data we collect  
13 is useful and is being put to use.

14 So perhaps there's an avenue there we haven't  
15 explored in terms of a collaboration with his effort. I  
16 certainly would encourage you to think about those kind  
17 of metrics that could be incorporated into an audit, and  
18 I'll push even further and suggest, as you know, one of  
19 my favorite pet projects is a performance report. Think  
20 about how a performance report from the Irrigated Lands  
21 Program might look, especially say for this coalition,  
22 what sort of measures should be tracked or analyzed to  
23 assure, not just the Regional Board and State Board, but  
24 all the stakeholders involved, the growers expecting so  
25 much time and energy and effort into this, as well as

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1 the communities that are impacted that don't feel like  
2 they have enough information upon which to trust this  
3 process.

4 What sort of measures or performance report  
5 could be developed to provide everyone with that  
6 information in a -- again, addressing the  
7 accountability, transparency, and effectiveness issue  
8 that we are all concurring with.

9 CHAIR MARCUS: Thanks. I have said a lot  
10 through the day. I won't say it all again. I'm ready  
11 to wrap up. At the moment, a lot of issues raised that  
12 were raised on May 4th. Some new ones with a twist.  
13 Some barely touched on today that were big parts of the  
14 4th and others.

15 So having the second conversation, in addition  
16 to the location, again, was helpful in thinking about  
17 everything from vulnerability to precedent to ratios to  
18 reporting, etc. I think the key on this one is there's  
19 theory and practice. Sometimes something sounds great  
20 in theory, but in practice, it doesn't get you there. I  
21 think I heard that from numerous angles and parties.

22 We talked a lot about trust. I thought Board  
23 Member D'Adamo raised it directly, and my other  
24 colleagues have raised it as well, there's the issue of  
25 trust. It's one of those trust but verify kind of

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1 things. It's not personal. It's about how to have a  
2 system that can give you the assurance that you're going  
3 to get somewhere and the fee sources like nonpoints are  
4 a lot harder than point source, but one of the things  
5 staff is trying to deal with, we have to be clearer how  
6 we show we're making progress in nonpoint. That's what  
7 I think folks are struggling with, to give folks the  
8 confidence that it's not just another series of steps.

9 Then the drinking water issue looms on all of  
10 us. I have to say a lot of progress has happened on a  
11 lot of fronts, there's not some place that's going to  
12 solve it all. It's going to be a bunch of puzzle  
13 pieces, and it is something there's been a lot of talk  
14 about, wonderful talk, but not as much action as  
15 communities needs. Hopefully folks will step up. I  
16 know there's efforts to really be not just in word sync,  
17 but in an alliance to do things that buy us the time and  
18 get us the assurance. I think until we see more of  
19 that, there's going to be a clash of worlds. It's  
20 totally understandable.

21 Hopefully, today, part of the sensitivity that  
22 we heard from most of the folks are ag, obviously, that  
23 are living in the same places but also to the folks  
24 concerned about water quality, but also the very  
25 repeatedly off-cited support for ag from community

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1 groups is something we can build on and try and figure  
2 out how to articulate something that gives folks  
3 confidence that will continue. And that water quality,  
4 that folks are drinking and showering in, bathing their  
5 kids and worried about their kids about, is going to get  
6 better. There's a movement potential here of sorts.

7 Thank you. Very thoughtful people. I wish --  
8 I wouldn't make somebody listen to an entire day, but if  
9 I were going to tell people how to be effective in  
10 coming and speaking before a group, I would ask them to  
11 watch what you all did today. As a former organizer who  
12 wouldn't take clients who wanted to insult  
13 decision-makers or other stakeholders, you all get an A.  
14 Thank you very much. You really -- we rarely see that.

15 It made the trip well worth it for that alone,  
16 in addition to the really important conversation that we  
17 had, which is, again, just another step along the way.

18 I want to thank the court reporter, you have  
19 been fabulous. I want to thank the sound expert. I  
20 really want to thank the interpreters and apologize my  
21 junior high school Spanish isn't up to the task. I  
22 don't speak Spanish in California beyond being able to  
23 understand half of what somebody says. So we can all  
24 work on communicating on every front possible.

25 With that, I'm going to adjourn or recess this

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1 workshop and resume our official public hearing bright  
2 and early tomorrow morning in Sacramento with a  
3 different set of agenda items. Thanks and look forward  
4 to see you all again next time.  
5 (5:20 p.m.)  
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1 STATE OF CALIFORNIA )  
2 COUNTY OF FRESNO ) ss.

3

4

5 I, Bree Mervin, a Certified Shorthand Reporter  
6 for the State of California, hereby certify that I was  
7 present and reported in stenotypy all the proceedings in  
8 the foregoing-entitled matter; and I further certify  
9 that the foregoing is a full, true, and correct  
10 statement of such proceedings and a full, true, and  
11 correct transcript of my stenotype notes thereof.

12 Dated at Visalia, California, on Friday,  
13 May 27, 2016.

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Bree Mervin, CSR No. 13057

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**Attachment B**

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Deputy Clerk

Exempt from filing fees pursuant to  
 Government Code section 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

15 **PROTECTORES DEL AGUA**  
 16 **SUBTERRÁNEA, a California**  
**unincorporated association,**

Petitioner,

v.

19 **STATE WATER RESOURCES CONTROL**  
 20 **BOARD, a California State Agency,**

Respondent,

23 **CENTRAL VALLEY REGIONAL WATER**  
**QUALITY CONTROL BOARD, et al.,**

Real Parties in Interest,

25 **SAN JOAQUIN COUNTY RESOURCE**  
 26 **CONSERVATION DISTRICT, et al.,**

Intervenors.

Case No. 34-2018-80002852  
 (Consolidated for purposes of trial with Case  
 Nos. 34-2018-80002851, 34-2018-80002853)

**RESPONDENT STATE WATER**  
**RESOURCES CONTROL BOARD, AND**  
**REAL PARTY IN INTEREST CENTRAL**  
**VALLEY REGIONAL WATER**  
**QUALITY CONTROL BOARD'S BRIEF**

Date: June 19, 2020  
 Time: 9:00 a.m.  
 Dept: 27  
 Judge: Hon. Steven M. Gevercer  
 Action Filed: March 28, 2018

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**INTRODUCTION**

Petitioner Protectores del Agua Subterránea (Protectores) challenges an order (the Order) issued by the State Water Resources Control Board (State Water Board), which reviews and amends waste discharge requirements issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board).

The Order regulates waste discharges into ground and surface water from irrigated lands in the Eastern San Joaquin River Watershed in order to protect water quality. The Order accomplishes this goal by setting performance standards that growers must meet and requiring management plans growers must implement in order to minimize the discharge of wastes and protect water quality. In addition to the required management plans, the Order includes a comprehensive suite of monitoring requirements that will provide the Central Valley Regional Water Quality Control Board with the information it needs to determine whether the necessary actions are being taken to protect water quality.

Among other requirements, the Order must comply with State Water Board Resolution No. 68-16, Statement of Policy with Respect to Maintaining High Quality of Waters in California (the “antidegradation policy”). The antidegradation policy applies when an order, such as the Order, authorizes waste discharges into high quality waters of the state. The antidegradation policy does not prohibit the discharge of waste into such high quality waters. Instead, it authorizes a State or regional water board to allow the discharge of waste into high quality waters if it makes specified findings. These findings include a finding that the discharge of waste is “consistent with the maximum benefit to the people of the State.”

Protectores argues that the State Water Board improperly applied the antidegradation policy and, in particular, failed to make findings sufficient to show that the permitted discharges were consistent with the maximum benefit to the people of the State. The State Water Board and Central Valley Water Board dispute this contention. The Order contains a full and complete antidegradation policy analysis, which makes each of the required findings under the law. Protectores’ Petition for Writ of Mandate should be denied.

## LEGAL BACKGROUND

### I. PORTER-COLOGNE WATER QUALITY CONTROL ACT

California's Porter-Cologne Water Quality Control Act (Porter-Cologne) (Wat. Code, § 13000 et seq.) was enacted in 1969. Its goal is "to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (Wat. Code, § 13000.)

Porter-Cologne designates the State Water Board and nine regional Water Quality Control Boards as the principal state agencies with primary responsibility for coordination and control of water quality in the state of California. (Wat. Code, §§ 13001, 13200.) The regional water boards "formulate and adopt water quality control plans for all areas within [a] region" (Wat. Code, § 13240). The water quality control plans, called "basin plans," designate beneficial uses of the waters of the state within the region, identify water quality objectives to protect those beneficial uses, and adopt implementation policies to attain the water quality objectives. (Wat. Code, § 13240 et seq.) One way the regional water boards implement the basin plans is through the adoption of waste discharge requirements. (Wat. Code, § 13263, subd. (a).)

### II. WASTE DISCHARGE REQUIREMENTS

Waste discharge requirements are, in essence, a permit issued by a regional water board to discharge waste under certain conditions that are intended to reduce and prevent pollution and nuisance and protect the beneficial uses of the waters of the state. This process begins when a discharger files a report of waste discharge. (Wat. Code, §§ 13260, 13263.) Waste discharge requirements can contain any number of conditions, including effluent or receiving water limitations, treatment standards, monitoring requirements, and a compliance schedule. (*Id.*, § 13263.) However, regional water boards cannot specify the design, location, type of construction or particular manner in which compliance may be had with the requirements. (*Id.*, § 13360.)

Waste discharge requirements can be issued to individual dischargers, but the Porter-Cologne Act also authorizes the regional water boards to issue general waste discharge requirements to an entire group of dischargers when the discharges are produced by the same or

1 similar types of operations, involve the same or similar types of wastes, require the same or  
 2 similar treatment standards, and are more appropriately regulated under general rather than  
 3 individual waste discharge requirements. (Wat. Code, § 13263, subd. (i).)

4 Waste discharge requirements must implement applicable basin plans and must conform to  
 5 water quality policies, including the state antidegradation policy. (Wat. Code, §§ 13140, 13240,  
 6 13263; *Asociacion de Gente Unida por el Agua v. Central valley Regional Water Quality Control*  
 7 *Bd.* (2012) 210 Cal.App.4th 1255, 1263 (*AGUA*).)

### 8 **III. THE ANTIDEGRADATION POLICY**

9 The State Water Board adopted the antidegradation policy in 1968. It establishes the State  
 10 Water Board's policy to "maintain[] to the maximum extent possible" high quality waters within  
 11 the state. (SWBESJ817.<sup>1</sup>)

12 The antidegradation policy applies only to "high quality waters" – defined as waters where  
 13 "the existing quality of water is better than the quality established in policies as of the date on  
 14 which such policies become effective." (SWBESJ817.) To determine the baseline water quality  
 15 for purposes of identifying "high quality waters," the State Water Board generally looks to the  
 16 best quality of the water since 1968, the year the antidegradation policy was adopted.  
 17 (SWBESJ9800; *AGUA, supra*, 210 Cal.App.4th at p. 1270; *Monterey Coastkeeper v. State Water*  
 18 *Resources Control Bd.* (2018) 28 Cal.App.5th 342, 350 (*Monterey Coastkeeper*).) If the best  
 19 quality of the water since 1968 is better than the applicable water quality objectives identified in  
 20 the Basin Plan, then the water is considered "high quality water" subject to the antidegradation  
 21 policy. (SWBESJ9893; *AGUA, supra*, 28 Cal.App.5th at p. 350.)

22 The antidegradation policy does not prohibit the discharge of waste into high quality water.  
 23 Instead, it authorizes a regional water board to allow the discharge of waste into high quality  
 24 water if it makes specified findings. These findings are a two step process.

25 <sup>1</sup> The Administrative Record in this matter is divided into two sections. The record before  
 26 the Central Valley Water Board is denoted with the prefix "CVRBESJ." The record of  
 27 proceedings before the State Water Board has the prefix "SWBESJ." The State Water Board had  
 28 the entire record of the Central Valley Water Board proceeding before it when considering and  
 issuing the Order. (SWBESJ9728.) For efficiency and ease of use, citations to the administrative  
 record in this brief omit placeholder 0's preceding the page number. (e.g., citations to  
 SWBESJ009728 are denoted as SWBESJ9728.)

1 The first step is, if a discharge will degrade high quality water, the discharge may be  
2 allowed if the Central Valley Water Board makes findings that any change in water quality (1)  
3 will be consistent with maximum benefit to the people of the State, (2) will not unreasonably  
4 affect present and anticipated beneficial use of such water, and (3) will not result in water quality  
5 less than that prescribed in the Basin Plans. (SWBESJ817.)

6 The second step is that any activities that result in discharges to such high quality waters  
7 use the best practicable treatment or control of the discharge necessary to avoid a pollution or  
8 nuisance and maintain the highest water quality consistent with the maximum benefit to the  
9 people of the State. (SWBESJ817.)

#### 10 **FACTUAL BACKGROUND**

##### 11 **I. THE EASTERN SAN JOAQUIN RIVER WATERSHED**

12 The Eastern San Joaquin River Watershed contains approximately one million acres of  
13 irrigated lands. (SWBESJ9724; SWBESJ9815.) Irrigated lands are agricultural lands irrigated to  
14 produce crops or pasture for commercial purposes, nurseries, and managed wetlands.  
15 (SWBESJ9723.) Agricultural practices on irrigated lands, such as pesticides to control pests,  
16 nitrogen to fertilize crops and irrigation to water crops have the potential to discharge wastes to  
17 ground and/or surface waters. (SWBESJ9724, 9813.) Water quality impacts associated with  
18 irrigated lands are complicated due to ongoing efforts to connect scientific understanding of the  
19 diffuse nature of agricultural runoff into surface water and percolation into groundwater with  
20 technical mechanisms by which to monitor, quantify, and control agricultural nonpoint source  
21 discharges. (SWBESJ9724-9725.)

22 The Central Valley Water Board initially began regulating irrigated lands in 1982 by  
23 adopting a waiver of waste discharge for the full region. This waiver was updated in 2003, and  
24 later in 2006. (SWBESJ9725.) Subsequently, the Central Valley Water Board prepared a  
25 Programmatic Environmental Impact Report under the California Environmental Quality Act  
26 (CEQA) to comprehensively address discharges of waste from irrigated lands to all waters of the  
27 state (PEIR). (SWBESJ9726.) After certification of the PEIR, the Central Valley Water Board  
28

1 conducted multiple stakeholder meetings, reviewed available data analyzing the relationship  
 2 between agricultural practices and water quality impacts, and on December 7, 2012, adopted  
 3 waste discharge requirements for certain irrigated lands in the Eastern San Joaquin River  
 4 Watershed (Regional Board WDRs). (SWBESJ9725-9726.)

## 5 **II. THE ORDER**

6 The Regional Board WDRs identified at least a portion of the waters regulated as being  
 7 “high quality water” subject to the antidegradation policy. (SWBESJ9895-9896.) The Regional  
 8 Board WDRs conducted a full antidegradation analysis for all of the waters regulated, making all  
 9 of the findings required by the antidegradation policy’s two step process. (SWBESJ9890-9903.)

10 The State Water Board reviewed these waste discharge requirements on its own motion,  
 11 and on February 7, 2018, issued Order WQ-2018-0002 (the Order).<sup>2</sup> The Order generally upheld  
 12 the structure and requirements of the Regional Board WDRs but made revisions to the reporting  
 13 of management practice implementation and nitrogen application data, and added a requirement  
 14 to monitor on-farm drinking water wells.<sup>3</sup> The Order upheld the Regional Board WDRs’  
 15 antidegradation analysis and provided statewide guidance, consistent with the approach in the  
 16 Regional Board WDRs, regarding the baseline water quality to determine high quality waters, the  
 17 maximum benefit finding, and the best practicable treatment and control. (SWBESJ9798-97802.)  
 18 The Regional Board WDRs, with redlined edits, were attached to and incorporated into the Order  
 19 as Appendix A.<sup>4</sup> (SWBESJ9810-10026.)

21 <sup>2</sup> The State Water Board and Central Valley Water Board are collectively referred to as  
 22 “the Water Boards.”

23 <sup>3</sup> For a more in-depth discussion of the various requirements set forth in the Order, this  
 24 brief hereby incorporates pp. 8-22 of the State Water Board’s concurrently-filed Respondent’s  
 25 Brief, in the case of *Environmental Law Foundation v. State Water Resources Control Bd.*, Case  
 26 No. 34-2018-80002851 (ELF).

27 <sup>4</sup> Because the State Water Board upheld the antidegradation analysis in the Regional  
 28 Board WDRs, the findings made in the Regional Board WDRs are the relevant findings made to  
 comply with the antidegradation policy. Citations in this brief are to both the findings in the  
 Regional Board WDRs and the Order’s discussion of those findings. As a shorthand, however,  
 this brief refers to the findings in the “Order” inclusive of the revised version of the Regional  
 Board WDRs adopted with the Order, which is attached to that Order as Appendix A. Where the  
 State Water Board added findings specific to revisions to the Regional Board WDRs, those  
 additional findings have been specifically identified in this brief.



## STANDARD OF REVIEW

## ARGUMENT

**A. The Order Contains a Full and Complete Antidegradation Policy Analysis**

After this threshold question is answered in the affirmative, the board is required to make certain findings that would permit the discharge of waste into high quality waters. The required findings are a two-step process: First, the board must find that any change in water quality will be (1) consistent with maximum benefit to the people of the State, (2) will not unreasonably affect present and anticipated beneficial use of such water, and (3) will not result in water quality less than that prescribed in the Basin Plans. And second, the board must find that any activities that result in discharges to such high quality waters use the best practicable treatment or control of the

10

1 discharge necessary to avoid a pollution or nuisance and to maintain the highest water quality  
 2 consistent with the maximum benefit to the people of the State. (SWBESJ817.) The Central  
 3 Valley Water Board in adopting the Regional Board WDRs and the State Water Board in  
 4 adopting the Order that amended the WDRs complied with all of these requirements.  
 5 (SWBESJ9798-9802, 9822, 9890-9903.)

6 To determine the threshold question of whether the antidegradation policy applied to  
 7 waterbodies regulated by the Order, the Water Boards took the most conservative approach  
 8 possible. The antidegradation policy applies only to "high quality waters." These are water  
 9 bodies for which the best quality of the water since 1968 is better than the applicable water  
 10 quality objectives. (SWBESJ9893; *AGUA, supra*, 28 Cal.App.5th at p. 350.) The Order regulates  
 11 discharges from thousands of individual fields to a very large number of water bodies. The Water  
 12 Boards looked to thousands of available data points, which indicated a significant percentage of  
 13 these water bodies were likely already impaired for certain constituents, and thus were not "high  
 14 quality waters" subject to the antidegradation policy. (SWBESJ9895-9896.) Nonetheless,  
 15 because at least some of the waterbodies regulated by the Order were high quality waters, the  
 16 Water Boards applied the antidegradation policy and made the required findings for *all* of the  
 17 water bodies regulated by the Order. (SWBESJ9896, 9800.)

18 Once the Boards determined that the antidegradation policy applied, they were then  
 19 required to make findings that satisfied the antidegradation policy's two-step process. The first  
 20 step requires the Order to contain findings that any change in water quality (1) will be consistent  
 21 with maximum benefit to the people of the State, (2) will not unreasonably affect present and  
 22 anticipated beneficial use of such water, and (3) will not result in water quality less than that  
 23 prescribed in the Basin Plans. (SWBESJ817; *AGUA, supra*, 210 Cal.App.4th at p. 1260.)

24 The Order makes each of the required findings for step 1. It finds that the degradation  
 25 allowed by the Order is consistent with the maximum benefit to the people of the state.  
 26 (SWBESJ9801, 9903.) It finds that the degradation would not unreasonably affect present and  
 27 anticipated beneficial uses of the water. (SWBESJ9822, 9903; see also SWBESJ9798, 9737-  
 28



1 9739, 9906-9907, 9819-9820, 9831.) It finds that any change in water quality would not result in  
2 water less than that prescribed in the Basin Plan. (*Ibid.*)

3 The second step requires the Order to contain findings that any activities that result in  
4 discharges to such high quality waters are required to use the best practicable treatment or control  
5 of the discharge necessary to avoid a pollution or nuisance and to maintain the highest water  
6 quality consistent with the maximum benefit to the people of the State. (SWBESJ817; *AGUA*,  
7 *supra*, 210 Cal.App.4th at p. 1260.) The Order contains all of the findings required by step 2.  
8 (SWBESJ9801-9802, 9896-9903.)

9 **B. The Order Correctly Identifies and Contains the Required Elements of the**  
10 **Antidegradation Policy**

11 Protectores argues that the State Water Board applied the “incorrect legal standard” for the  
12 antidegradation policy because the State Water Board required “different findings and analysis”  
13 in the context of discharges from nonpoint sources as opposed to point sources. (Opening Brief  
14 (OB), p. 14.) Protectores bases this argument on the portion of the Order which states:

15 We recently explained that a traditional antidegradation analysis for a discrete point  
16 source discharge has limited value when considering antidegradation in the context of  
17 storm water discharges from diffuse sources, conveyed through multiple outfalls, with  
18 multiple pollutants impacting multiple water bodies within a region.[] These same  
19 practical considerations also make it inappropriate to apply a discrete point source  
20 discharge approach in the context of a general order regulating both surface water and  
21 groundwater discharges from irrigated agriculture operations across a large landscape.

22 (SWBESJ7977; OB p. 14.) Protectores’ argument misreads the Order.

23 The reference to a “traditional antidegradation analysis for a discrete point source” in the  
24 Order refers not to making the findings required by the antidegradation policy itself<sup>6</sup> – but instead  
25 to the practical real-world data available to the Central Valley Water Board in determining  
26 whether the landscape-based irrigated lands activities regulated under the Regional Board WDRs  
27 discharge waste into high quality waters and are thus subject to the antidegradation policy.

28 The Order cites to another State Water Board Order which notes that a traditional point  
source analysis regarding the presence of high quality waters would ask the board to determine

<sup>6</sup> As described more fully in paragraph A above, the Water Boards concluded that the  
antidegradation policy applied to the Order and made each of the findings required in compliance  
with that policy.

1 whether the highest quality of a water body since 1968 exceeds water quality objectives “for each  
 2 water body-pollutant combination that is applicable.” (SWBESJ2446.) However, when  
 3 considering antidegradation in the context of landscape-based discharges, not only is data for  
 4 each water body and pollutant combination unavailable, even if it existed, it would be of minimal  
 5 use because of the multiple diffuse sources of degradation present in irrigated agriculture. (*Ibid.*)

6 The Order reiterates this practical difference between discharges from discrete sources and  
 7 discharges from operations across a large landscape, noting, “in almost all cases, it will be  
 8 impossible for the regional water boards to establish an accurate numeric baseline for potentially  
 9 hundreds of waterbodies and dozens of waste constituents in an area covered by a general order.”  
 10 (SWBESJ9800; see also, CVRBESJ35965.) This is particularly true with groundwater, where  
 11 wells exhibiting exceedances of water quality standards may not provide the information needed  
 12 to directly link groundwater conditions to land uses in the immediate area because they reflect a  
 13 mixture of waters with wide-ranging spatial and temporal origins. (SWBESJ9747.) The State  
 14 Water Board’s mere acknowledgement of this practical distinction from discharges caused by  
 15 discrete sources, and guidance as to how to use reasonably available data to determine if the  
 16 waters to which waste is being discharged are “high quality waters” does not alter the  
 17 requirements of the antidegradation policy or create a new “legal standard.”

#### 18 **C. The Order Does Not Improperly Distinguish the *AGUA* Decision**

19 Protectores also devotes several pages in its brief arguing that the Order improperly  
 20 distinguished the *AGUA* decision by differentiating between discrete and diffuse sources of  
 21 discharges. (OB, pp. 19-23.) Protectores cites to a footnote in the Order which states:

22 The diffuse, landscape level groundwater discharges regulated under the Eastern San  
 23 Joaquin Agricultural General WDRs are unlike the concentrated discharges from  
 24 dairy retention ponds and corral areas that were the subject of *Asociacion de Gente  
 Unida por el Agua v. Central Valley Water Board*, *supra*, 210 Cal.App.4th 1255.

25 (OB, pp. 19-23; citing SWBESJ9799.) Protectores argues that this statement means that, “[r]ather  
 26 than assess whether the Central Valley Water Board complied with the two-step process required  
 27 by *AGUA*, the State Water Board distinguished the case.” (OB, p. 20.) This is incorrect.

1       The “two-step process required by *AGUA*” which Protectores references is the two-step  
 2       process required by the antidegradation policy itself, whereby the Board must make specified  
 3       findings if a discharge will degrade high quality water. (*AGUA*, supra, 210 Cal.App.4th at p.  
 4       1278.) As described in paragraph A above, the Order contains all of the findings required by that  
 5       two-step process. The footnote Protectores references does not assert that the Order does not  
 6       comply with the *AGUA* decision. Instead, the footnote points to the practical real-world data  
 7       available to the State Water Board in determining whether diffuse sources discharge waste into  
 8       high quality waters. As the sentence prior to the footnote states, these “practical considerations  
 9       also make it inappropriate to apply a discrete point source discharge approach in the context of a  
 10       general order regulating both surface water and groundwater discharges from irrigated agriculture  
 11       operations across a large landscape.”<sup>7</sup> (SWBESJ9799.)

12       This practical distinction, however, means only that the Order used regional data in lieu of  
 13       data “for each water body-pollutant combination that is applicable” to come to the conclusion that  
 14       at least some of the water regulated by the Order was high quality water subject to the  
 15       antidegradation policy. The Order then made the required findings (laid out in the two-step  
 16       process from the antidegradation policy and reiterated in the *AGUA* decision) for all of the water  
 17       bodies regulated by the Order. By pointing out a practical distinction between the *AGUA* case  
 18       and the Order, and then conducting a full antidegradation analysis, the Order did not “improperly  
 19       distinguish” the *AGUA* decision.

## 20       **II. THE ORDER CONTAINS SUFFICIENT FINDINGS FOR STEP 1 OF THE** 21       **ANTIDEGRADATION ANALYSIS**

22       Step 1 of the antidegradation analysis requires the Water Boards to make findings that any  
 23       change in water quality will be consistent with maximum benefit to the people of the State, will  
 24       not unreasonably affect present and anticipated beneficial use of such water, and will not result in

25       <sup>7</sup> As a practical matter, dairy retention ponds and corral areas, such as those at issue in the  
 26       *AGUA* decision, have more concentrated waste discharges than the irrigated agricultural  
 27       discharges regulated by the Order, and could potentially allow a traditional antidegradation  
 28       analysis with monitoring data “for each water body-pollutant combination that is applicable.”  
 (SWBESJ2446.) A similar analysis for the irrigated agriculture regulated by the Order would be  
 practically impossible given current scientific understanding and the data available.  
 (SWBESJ1626-1627.)

1 water quality less than that prescribed by the water quality objectives set forth in the Basin Plans.  
 2 (SWBESJ817; *AGUA*, *supra*, 210 Cal.App.4th at p. 1260.) The Order makes each of the required  
 3 findings for step 1.

4 **A. The Order Contains Appropriate Findings to Show That Limited**  
 5 **Degradation of High Quality Waters As Constrained by the Requirements**  
 6 **of the Order is Consistent with Maximum Benefit to the People of the State**

7 The antidegradation policy permits degradation of high quality water if a board makes  
 8 findings that such degradation is consistent with the “maximum benefit to the people of the state.”  
 9 (SWBESJ817.) The antidegradation policy does not define “maximum benefit to the people of  
 10 the state.” In discussing the maximum benefit finding, the *AGUA* decision references a 1995  
 11 State Water Board guidance memorandum. That memorandum lays out a non-exclusive list of  
 12 factors that the Water Boards may consider in determining whether degradation of water quality  
 13 is consistent with maximum benefit to people of the state. These are (1) past, present, and  
 14 probable beneficial uses of the water; (2) economic and social costs, tangible and intangible, of  
 15 the proposed discharge; (3) environmental aspects of the proposed discharge; (4) the  
 16 implementation of feasible alternative treatment or control methods. (SWBESJ9894;  
 17 CVRBESJ40018-40019.) Protectores uses these factors in its brief to support its position that the  
 18 Order had insufficient findings to support maximum benefit.

19 As a threshold matter, the *AGUA* decision did not state that the above factors are mandatory  
 20 or exclusive, nor did it rely on any of the listed factors in concluding that the maximum benefit  
 21 findings supporting the dairy order were inadequate.<sup>8</sup> (*AGUA*, *supra*, 210 Cal.App.4th at p.  
 22 1279.) Further, by their terms, factors 1 and 4 are already considered in making the findings  
 23 regarding whether the Water Boards’ action will unreasonably impact beneficial uses and whether  
 24 the discharge is controlled by the best practicable treatment or control, respectively.

25 <sup>8</sup> The guidance memorandum in question is an unsigned Question and Answer document  
 26 prepared by a Water Boards’ attorney that summarized some of the State Water Board  
 27 precedential administrative orders addressing antidegradation; however, the four factors  
 28 suggested in the memorandum have no basis in precedential orders. The guidance  
 memorandum’s statement that cost savings to the discharger alone are not adequate justification  
 for finding maximum benefit, also quoted in *AGUA*, is based on State Water Board Order WQ  
 86-17 (Fay).

1 Nevertheless, the Order includes discussion of all of the factors from the guidance memorandum.  
2 These will be discussed in Section IV, *infra*.

3 The Order contains numerous findings supporting its determination that the limited  
4 degradation permitted by the Order is consistent with maximum benefit to the people of the State.  
5 (SWBESJ9903.) These findings include: Central Valley communities depend on irrigated  
6 agriculture for employment, and the State and nation depend on Central Valley agriculture for  
7 food; the Order protects high quality waters relied on by local communities for drinking water  
8 through current practices on irrigated lands; the Order requires irrigated agriculture to achieve and  
9 maintain compliance with water quality objectives, including drinking water standards, protects  
10 beneficial uses, and is designed to detect and address exceedances, if they occur, in accordance  
11 with compliance time schedules; and the Order includes performance standards that would work  
12 to prevent further degradation of surface and groundwater quality. (*Ibid.*) In addition, the Order  
13 contains an iterative process of reviewing data and instituting additional management practices to  
14 assure that the highest water quality consistent with maximum benefit to the people of the state  
15 will be maintained. (SWBESJ9900.)

16 **1. The order properly considers economic and social costs and benefits**  
17 **to the public**

18 Factors a board may consider in making a maximum benefit determination include the  
19 economic and social costs, tangible and intangible, of the proposed discharge compared to the  
20 benefits. (SWBESJ9894; CVRBESJ40019.) With reference to economic costs, both costs to the  
21 discharger and the affected public may be considered. With respect to social costs, consideration  
22 may be given to whether a lower water quality can be abated through reasonable means. In other  
23 words, the lower water quality should not result from inappropriate treatment facilities or less-  
24 than-optimal operation of treatment facilities. (CVRBESJ40019.)

25 The Order considers the benefits of the proposed discharge, noting that Central Valley  
26 communities depend on irrigated agriculture for employment and further that the state depends on  
27 Central Valley irrigated agriculture for food. (SWBESJ9801, 9903.) The finding is based on  
28 extensive evidence in the record. The Order cites to a staff report from the PEIR, which contains

1 a detailed discussion quantifying the employment and agricultural benefits from the agriculture  
 2 industry in the Central Valley. (CVRBESJ35966-35968, 35912-35920) The record also includes  
 3 a technical memorandum that accompanied the PEIR with an economic analysis of the Central  
 4 Valley irrigated lands program, including quantification of total industry output, personal income,  
 5 and employment as measures for the regulatory alternatives considered in the PEIR.  
 6 (CVRBESJ35844-35880.)

7 The Order also considers the economic costs to the dischargers and the public.  
 8 (SWBESJ9822-9823, 9791-9793 [estimated costs of compliance with the Order for dischargers],  
 9 9801, 9903 [estimated community treatment costs].)

10 Finally, the Order considers the social costs of the discharges. (SWBESJ9801, 9903.) In  
 11 the staff report from the PEIR, the Regional Board made an effort to estimate a range of costs that  
 12 communities may be facing in order to obtain safe and reliable drinking water, considering, for  
 13 example, costs for well replacement and associated operation and maintenance.  
 14 (CVRBESJ35950-35954.)

15 Balancing these costs and benefits and based on the evidence in the record, the Order  
 16 concludes, "given that the considerable societal benefits outweigh the costs associated with the  
 17 effects of irrigated agriculture under the Modified General WDRs, any degradation allowed by  
 18 the [Regional Board] WDRs is consistent with the maximum benefit to the people of the state."  
 19 (SWBESJ9801.)

20 **a. The findings regarding the importance of agriculture and**  
 21 **employment are proper under the *AGUA* decision.**

22 Protectores argues that the portion of the Order regarding irrigated agriculture as a source of  
 23 employment or food is a "general statement[] regarding the importance of agriculture...nearly  
 24 identical in character to those rejected by *AGUA*." (OB, p. 16.) This is incorrect.

25 First, the *AGUA* court made no such holding. The *AGUA* court pointed out that a statement  
 26 that the order "will accommodate important economic activities in mostly rural areas of the  
 27 Central Valley Region" *did* identify a benefit to the people of the state, in support of the finding  
 28 that any change in water quality is "consistent with maximum benefit to the people of the State."



1' (*AGUA, supra*, 210 Cal.App.4th at pp. 1279-1280.) The *AGUA* court noted, however, that the  
 2 Central Valley Water Board was also required to make a finding that "the highest water quality  
 3 consistent with maximum benefit to the people of the state will be maintained." (*Ibid.*) The  
 4 *AGUA* court held that the order at issue in that case failed to make *that* finding because the only  
 5 basis for the finding was a statement that the order prohibited any further degradation of  
 6 groundwater, without any mechanism for ensuring that the groundwater would not be further  
 7 degraded. (*Ibid.*) That is not the case here. As further discussed in Section II(B)(1), the Order  
 8 requires appropriate controls and contains multiple monitoring and reporting provisions designed  
 9 to identify when certain management practices are effective or ineffective, and to ensure that  
 10 groundwater quality is being protected. (SWBESJ9903, 9897.)

11 Second, the Order does not simply make a "general statement" regarding the importance of  
 12 agriculture. It identifies agriculture's economic and employment benefits and cites to a staff  
 13 report from the PEIR in support of this statement. (SWBESJ9801, fn. 179.) The cited portions of  
 14 the staff report contain detailed findings regarding agriculture and employment in the Central  
 15 Valley. (CVRBESJ35966-35968.)

16 Protectores also argues that the Central Valley Water Board's reliance on the PEIR for  
 17 purposes of determining the value of agriculture in terms of employment is not "the 'case-by-  
 18 case' 'site specific' analysis required by *AGUA*." (OB, pp. 16-17.) *AGUA* does not support this  
 19 contention. The cited portion of the *AGUA* decision is a quote from the State Water Board's own  
 20 1995 Question and Answers document on the antidegradation policy, which states that a  
 21 maximum benefit determination "is made on a case-by-case basis and is based on considerations  
 22 of reasonableness under the circumstances at the site." (*AGUA, supra*, 210 Cal.App.4th at p.  
 23 1279; CVRBESJ40018.) Protectores cites no authority that states that the level of granularity  
 24 required of the Water Boards in determining the potential benefits of agriculture regulated by the  
 25 Order is greater than that which the Water Boards considered here. As the Order notes, the  
 26 discharges from irrigated agriculture in the region involve similar operations, similar types of  
 27 wastes, similar water quality management practices, a contiguous location, and similar climate  
 28

1 and geology. (SWBESJ9817-9818.) It was well within the Water Boards' authority to consider  
 2 the data within the PEIR as site-specific enough to make this finding.

3 **b. The findings regarding increased treatment costs are supported**  
 4 **by evidence in the record**

5 Protectores also argues that the Order's finding that local communities should not incur any  
 6 additional treatment costs is unsupported by the evidence in the record because the Order also  
 7 notes that testing of on-farm drinking water wells may identify an exceedance of drinking water  
 8 standards. (OB, pp. 17-18.) This argument misreads this portion of the Order.

9 The State Water Board found that local communities should not incur any additional  
 10 treatment costs because the Order contains requirements to address all exceedances of water  
 11 quality objectives, implement best practicable treatment and control where irrigated agricultural  
 12 waste discharges may cause degradation, and establish performance standards that work to  
 13 prevent further degradation of surface and groundwater quality. (SWBESJ9801.)

14 The antidegradation policy concerns only the degradation of high quality waters, i.e. waters  
 15 that are of better quality than the established objectives. The established objectives include  
 16 drinking water standards. (SWBESJ9886.) When a regional board finds that allowing  
 17 degradation is to the maximum benefit of the people of the State, the board is making that finding  
 18 as to lowering the water quality from a level better than the objectives, but the findings can never  
 19 justify lowering the water quality below the objectives. (SWBESJ9894.) In other words, the  
 20 antidegradation policy does not allow for findings that support further degradation of a water  
 21 body that is already at or below the objectives – the objectives are the floor. Where there are  
 22 water bodies with exceedances of the objectives, as is the case in the Central Valley, the  
 23 mechanism for ensuring that discharges contributing to the exceedances are controlled is not the  
 24 antidegradation policy, but requirements under the Water Code. The Order explains this as  
 25 follows: "By its terms, the Antidegradation Policy applies only to waters that are high quality; it  
 26 supplements the Water Code requirements . . . by adding additional antidegradation requirements  
 27 that apply if the receiving waters are considered to be high quality." (SWBESJ9798.)  
 28



1           However, achievement of the objectives need not occur instantaneously. The Order permits  
 2           them to occur on a time schedule. (SWBESJ9735, 9739). A time schedule for compliance with  
 3           water quality requirements is explicitly permitted by Water Code section 13263, which states that  
 4           WDRs “may contain a time schedule subject to revision in the discretion of the [regional] board.”  
 5           (Wat. Code, § 13263, subd. (c).)

6           The Order goes on to note that, “*while dischargers are working to comply with the time*  
 7           *schedule*, if monitoring of drinking water supply wells indicates that [drinking water standards]  
 8           are being exceeded, we expect dischargers that are causing or contributing to the exceedance to  
 9           provide replacement water to the affected population.” (SWBESJ9801, emphasis added.) Thus,  
 10          the finding that the degradation authorized by the Order will not require increased treatment costs  
 11          is not at odds with the acknowledgment that there may be exceedances of drinking water  
 12          standards while dischargers are working to comply with the time schedule set out in the Order.

13                               **c.    Protectores’ contentions regarding the severity and extent of**  
 14                               **the degradation are without merit**

15          Protectores also argues that the Order’s maximum benefit analysis is inadequate because  
 16          the Order failed to consider the severity and extent of water quality reduction. (OB, p. 29.) The  
 17          antidegradation policy itself has no such requirement. Protectores cites the State Water Board’s  
 18          1990 Administrative Procedures Update (1990 APU) for the proposition that the Order must  
 19          make this consideration. (CVRBESJ39937.) The 1990 APU has no regulatory effect and, as staff  
 20          guidance, only applies to the federal NPDES permitting process, which applies only to point  
 21          sources.<sup>9</sup> (CVRBESJ39933; *AGUA, supra*, 210 Cal.App.4th at p. 1270; *Building Industry Assn.*  
 22          *of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 872.)  
 23          The 1990 APU does not apply here. While *AGUA* referenced the 1990 APU on several issues as  
 24          “*instructive*” in the non-NPDES context, *AGUA* did not suggest that compliance with the  
 25          antidegradation policy or with the 1990 APU would have required the regional board to evaluate  
 26

27                               <sup>9</sup> Discharges from agricultural runoff are not from point source discharges. (*Monterey*  
 28                               *Coastkeeper, supra*, 28 Cal.App.5th at p. 348.)

1 the severity and extent of anticipated degradation with the specificity contemplated by  
 2 Protectores. (*AGUA, supra*, 210 Cal.App.4th at p. 1270-1271).<sup>10</sup>

3 The Order clearly explains why making such a consideration would be infeasible if not  
 4 impossible in a nonpoint source context:

5 In almost all cases, it will be impossible for the regional water boards to establish an  
 6 accurate numeric baseline for potentially hundreds of waterbodies and dozens of  
 7 waste constituents in an area covered by a general order. Instead, regional water  
 8 boards must conduct a general assessment of the existing water quality data that is  
 9 reasonably available.

10 (SWBESJ9800.) The Order's maximum benefit analysis did not require consideration of the  
 11 severity and extent of water quality reduction for each of the potentially degraded water bodies,  
 12 nor is there sufficient available data for the Water Boards to make such a finding.

13 **B. The Order Contains Appropriate Findings to Show That Limited  
 14 Degradation As Constrained by the Requirements of the Order Will Not  
 15 Unreasonably Affect Present and Anticipated Beneficial Uses of Such  
 16 Water and Will Not Result in Water Quality Below the Water Quality  
 17 Objectives from the Basin Plan**

18 **1. The order contains appropriate findings regarding past, present and  
 19 probable beneficial uses of water**

20 Protectores argues that the Order fails to consider the past, present, and probable beneficial  
 21 uses of the water at all. (OB, p. 18.) This is incorrect. The Order contains a detailed discussion  
 22 of the past, present and probable future beneficial uses of water.

23 The findings make clear that, one of the reasons the limited degradation permitted by the  
 24 Order is consistent with the maximum benefit of the people of the state is because, "At a  
 25 minimum, this Order requires that irrigated agriculture achieve and maintain compliance with  
 26 water quality objectives and beneficial uses." (SWBESJ9903.)

27 This finding is supported by the sections of the Order on compliance with the Water Code  
 28 and with the Nonpoint Source Policy. The requirements of the antidegradation policy to not

<sup>10</sup> *AGUA* concludes that "the state's antidegradation policy applies to the Regional Board's Order because there is evidence in the record that at least some of the groundwater affected is high quality groundwater." (*AGUA, supra*, 210 Cal.App.4th at p. 1286.) The Order similarly concluded that there was evidence in the record that at least some of the water bodies affected by agricultural discharges were high quality water bodies. As a result, the Order determined that the antidegradation policy applied to the action and proceeded to make the appropriate findings, exactly as dictated by *AGUA*.

1 unreasonably affect beneficial uses, not result in water quality less than the quality specified by  
 2 water quality objectives, and not cause a pollution or nuisance (considered at Step 2) are met  
 3 through compliance with these authorities. (SWBESJ9734, 9798.) The core requirement is the  
 4 receiving water limitations. The receiving water limitations prohibit discharges from causing or  
 5 contributing to exceedances of applicable water quality objectives in the surface water or  
 6 underlying groundwater, from unreasonably affecting applicable beneficial uses, or from causing  
 7 or contributing to a condition of pollution or nuisance. (SWBESJ9831.)

8 The relevant beneficial uses and water quality objectives are identified with reference to the  
 9 Basin Plan. The Order notes:

10 The [Basin Plan] identifies applicable beneficial uses of surface and groundwater  
 11 within the Sacramento River Basin. The Order protects the beneficial uses identified  
 12 in the Basin Plan. Applicable past, present, and probable future beneficial uses of  
 13 Sacramento and San Joaquin River Basin waters were considered by the Central  
 Valley Water Board as part of the Basin Planning process and are reflected in the  
 Basin Plans themselves.

14 (SWBESJ9906; see also SWBESJ9820 [identifying the existing and potential beneficial uses of  
 15 waters in the Eastern San Joaquin River Watershed found in the Basin Plan], 9823-9824 and 9906  
 16 [noting that the past, present, and probable future beneficial uses of water have “been considered  
 17 in the development of this Order”], and 9886 [discussing receiving water limitations].) The Basin  
 18 Plan referenced by the Order contains a detailed description of the beneficial uses for both ground  
 19 and surface waters in the San Joaquin River Basin. (CVRBESJ37041-37049.) It is appropriate  
 20 for the Water Boards to refer to the Basin Plan for consideration of this factor. (*AGUA, supra*,  
 21 210 Cal.App.4th at p. 1279.)

22 Compliance with the receiving water limitations is immediate unless a compliance schedule  
 23 is incorporated into a management plan. (SWBESJ9831, fns. 18-19, 9828.) Compliance is  
 24 achieved through the planning and management practice implementation requirements of the  
 25 permit, with monitoring and reporting required to determine achievement of the receiving water  
 26 limitations or progress toward achievement of the receiving water limitations where there is a  
 27 compliance schedule. The Order contains a detailed explanation as to how it will protect the  
 28 beneficial uses identified in the Basin Plan through the use of various management practices and

1 monitoring and reporting requirements to ensure that management practices are effective.  
 2 (SWBESJ9737-9797, 9896-9903.) The Order thus clearly makes all the required findings in  
 3 support of this factor.

4 Protectores argues that the Order did not properly consider beneficial uses because it “failed  
 5 to estimate the number of communities and households in the ESJ Coalition’s boundaries reliant  
 6 on groundwater for domestic uses, the extent to which the need for municipal and domestic  
 7 supply will likely increase or persist in the future, and the fact that 90% of Central Valley  
 8 communities and households rely primarily on groundwater for domestic use.” (OB, p. 18.)  
 9 Protectores cites no authority for the proposition that the Board must determine these numbers in  
 10 order to consider “past, present and probable beneficial uses of water,” and indeed there is no  
 11 such authority. The Order and the cited portion of the Basin Plan both consider domestic supply  
 12 in their determination of beneficial uses. (SWBESJ9552-9555, 9820, 9886-9887;  
 13 CVRBESJ37041, 37044-37049, 37052, 37056-37063, 37066.) Furthermore, the record before  
 14 the Water Boards indicates that this information was considered. (CVRBESJ35883-35885.) By  
 15 insisting that the Board also determine the number of communities reliant on groundwater for  
 16 domestic uses, Protectores both (1) seeks to read a requirement into the antidegradation policy  
 17 that does not exist and to supplant the Water Boards’ authority to interpret their own policies, and  
 18 (2) ignores the presence of this information in the record before the Water Boards.

19 **2. The Order Contains Mechanisms to Detect and Prevent Exceedances**

20 Protectores argues that the Central Valley Water Board failed to discuss costs to the public  
 21 associated with the degradation permitted by the Order, instead “relying on an illusory  
 22 prohibition” where there is no feedback mechanism to detect or prevent exceedances of the nitrate  
 23 drinking water standard. (OB, pp. 17, 28-29.) As a preliminary matter, despite Protectores’  
 24 contention, the Order does consider costs to the public. (See paragraph (II)(A)(2), *supra*.)

25 With regard to the “illusory prohibition,” Protectores’ attempt to draw an analogy to the  
 26 facts in *AGUA* is flawed. The dairy order reviewed in *AGUA* purported to prohibit degradation.  
 27 That is not the case here. The Order acknowledges that there will be degradation and makes the  
 28 findings to support that degradation. Protectores’ argument regarding exceedances goes instead

1 to whether the Order can ensure that the floor for degradation – the water quality objectives – is  
 2 sufficiently addressed. As a preliminary matter, and as already discussed, the applicable legal  
 3 authorities allow for discharges to continue to cause or contribute to exceedances of water quality  
 4 objectives as long as the permit establishes a schedule for compliance and sets up feedback  
 5 mechanisms to determine if progress toward compliance is being achieved.

6 On this point, Protectores argues further that no feedback mechanism exists because (1) the  
 7 Order does not require field-level groundwater monitoring, (2) it allows anonymous reporting of  
 8 nitrogen fertilizer application, and (3) it “does not contain a limit on nitrogen loading.” (*Id.*)  
 9 Each of Protectores’ contentions that the Order does not have a sufficient feedback mechanism to  
 10 detect exceedances is without merit.

11 **a. The order’s performance standards, monitoring requirements**  
 12 **and reporting requirements are not an “illusory prohibition”**  
 13 **on degradation**

14 The Order does not have an “illusory prohibition” on exceedances of water quality  
 15 objectives. It contains performance standards that growers must meet and plans that growers  
 16 must implement to address degradation from, for example, erosion and sediment control, nutrient  
 17 management (including nitrogen application), pesticide management, and irrigation water  
 18 management. (SWBESJ9897-9899, 9957-9965.) Where growers are causing exceedances of  
 19 water quality objectives, they are required to develop water quality management plans that would  
 20 address the sources of the exceedances and require implementation of practices to manage them.  
 21 (SWBESJ9738, 9789-9790, 9898-9890.) Water quality management plans institute an iterative  
 22 process whereby the effectiveness of any set of practices in minimizing degradation will be  
 23 periodically reevaluated as necessary and/or as more recent and detailed water quality data  
 24 become available. “This iterative process will also ensure that the highest water quality  
 25 consistent with maximum benefit to the people of the state will be maintained.” (SWBESJ9890.)

26 In addition to the required management plans, the Order includes a comprehensive suite of  
 27 monitoring requirements that will provide the Central Valley Water Board with the information it  
 28 needs to determine whether the necessary actions are being taken to protect water quality. To  
 determine whether a degradation trend is occurring, the Order requires surface water monitoring

1 of specific “core” monitoring sites on a rotating basis. For groundwater, a trend monitoring  
2 program is required. (SWBESJ9775-9786, 9900-9901.) All on-farm drinking water wells are  
3 sampled on either a one or five year basis, depending on whether previous exceedances were  
4 detected. (SWBESJ9781-9784.) In addition, growers are required to report field-level nitrogen  
5 application and removal data, which is the most accurate way to determine if excess nitrogen has  
6 the capacity to degrade groundwater. (SWBESJ9759-9766.) “These requirements are aimed to  
7 ensure that all irrigated lands are implementing management practices that minimize degradation,  
8 the effectiveness of such practices is evaluated, and feedback monitoring is conducted to ensure  
9 that degradation is limited.” (SWBESJ9901.)

10 **b. The board’s decision not to require field-level groundwater**  
11 **monitoring was appropriate and based upon scientific evidence**  
12 **that a more accurate method would determine the effectiveness**  
13 **of management practices**

13 Protectores argues that the fact that the Order does not require field-level groundwater  
14 monitoring means that there is not a sufficient feedback mechanism to detect exceedances. This  
15 is incorrect. The Boards appropriately considered the available evidence and determined that  
16 field-level groundwater monitoring would not be the most efficient or effective way to determine  
17 whether management practices lead to a meaningful reduction in the nitrogen that has the  
18 potential to reach groundwater. (SWBESJ9987-9988.) The Order relied upon an Agricultural  
19 Expert Panel in determining that ratio of the nitrogen applied to a field versus the nitrogen  
20 removed from the field (the A/R Ratio) calculated from actual field-level measurements would  
21 most accurately determine the effectiveness of management practices in minimizing nitrate  
22 discharge into groundwater. (SWBESJ9759-9766.) Field-level groundwater quality monitoring,  
23 like that urged by Protectores, “will not provide useful data for purposes of evaluating the  
24 effectiveness of above-ground practices, except in very limited circumstances.” (SWBESJ9786;  
25 see also SWBESJ1626-1630 [“The basis for turning the focus of the recommendations away from  
26 groundwater monitoring stems primarily from the difficulty of correlating sub-surface  
27 contamination to surface practices”].)



**c. The board appropriately permitted anonymous reporting of nitrogen application**

Protectores also argues that the fact that field-level reporting of nitrogen fertilizer application is anonymous means that the Order “does not require the mechanisms to detect or prevent exceedances of the nitrate drinking water standard.” (OB, p. 17.) This is also incorrect. As noted above, field-level reporting of nitrogen applied to a field versus the nitrogen removed from the field is the most accurate way to determine the effectiveness of management practices in minimizing nitrate discharge into groundwater and is an appropriate feedback mechanism. The fact that this data is reported anonymously does not change this conclusion. The field-level data sets are still provided to the Central Valley Water Board – just attached to anonymous identifiers in lieu of grower names. (SWBESJ9797-9798.) This field-level data allows the Central Valley Water Board to verify that Members are implementing additional management practices and that such implementation is leading to either an improved multi-year A/R ratio or improved water quality results. (*Ibid.*) The Central Valley Water Board is also expressly directed to “use the data to confirm that the Third Party is appropriately following up with its Members, including those who are AR data outliers, those failing to implement appropriate management practices.” (SWBESJ9795.) Finally, the Central Valley Water Board may at any time request the names and locations corresponding to the anonymous identifiers, if it determines that the information is necessary for purposes of follow up or enforcement.<sup>11</sup> (SWBESJ9772.)

**d. The board was not required to place limits on nitrogen loading**

Protectores also argues that the Order was required to place a limit on the amount of nitrogen that could be applied at farm level in order to deter or prevent exceedances of the nitrate drinking water standard. (OB, p. 17.) Protectores cites no authority for this proposition, as there is none. The State Water Board appropriately considered available evidence, made required findings, and determined that the Order had sufficient feedback mechanisms to deter or prevent exceedances. (See paragraph (D)(2)(b)(1), *supra.*) Specifically with regard to nitrogen

<sup>11</sup> In support of the contention that anonymous reporting is an appropriate feedback mechanism, this brief hereby incorporates pp. 24-33 of the State Water Board’s concurrently-filed *ELF* Respondent’s Brief.

1 application limits, consistent with the recommendations of the Agricultural Expert Panel, the  
2 State Water Board determined that it was premature to impose limits but directed the Central  
3 Valley Water Board to use data gathered through agricultural permits to develop appropriate  
4 targets. (SWBESJ9765-9766, 9795-9796.)

5 **III. THE ORDER CONTAINS SUFFICIENT FINDINGS FOR STEP 2 OF THE**  
6 **ANTIDegradation ANALYSIS**

7 Step two of the antidegradation analysis requires the Order to contain findings that any  
8 activities that result in discharges to such high quality waters use the best practicable treatment or  
9 control of the discharge necessary to avoid a pollution or nuisance and to maintain the highest  
10 water quality consistent with the maximum benefit to the people of the State. (SWBESJ817;  
11 *AGUA, supra*, 210 Cal.App.4th at p. 1260.)

12 The Order contains multiple findings supporting its determination that the Order uses the  
13 best practicable treatment or control methods, as required by step two of the antidegradation  
14 policy. (SWBESJ9801-9802, 9896-9903.) The Order contains a detailed discussion of the  
15 available treatment and control methods within the section discussing the best practicable  
16 treatment and control (BPTC) methods available to growers to meet the Order's performance  
17 standards. As the Order notes:

18  
19 Due to the numerous commodities being grown on irrigated agricultural lands and  
20 varying geological conditions within the Eastern San Joaquin River Watershed,  
21 identification of a specific technology or treatment device as BPTC or "best efforts"  
22 has not been accomplished. By contrast, there are a variety of technologies that have  
23 been shown to be effective in protecting water quality. For example, Chapter 5 of the  
24 Irrigated Lands Program Existing Conditions Report (ECR) describes that there are  
25 numerous management practices that Members could implement to achieve water  
26 quality protection goals. The Central Valley Water Board recognizes that there is  
27 often site-specific, crop-specific, and regional variability that affects the selection of  
28 appropriate management practices, as well as design constraints and pollution-control  
effectiveness of various practices.

(SWBESJ9896-9897.) The cited portion of the Existing Conditions Report outlines a number of  
management practices that could be utilized as treatment or control methods, broken down by  
region, type of commodity, and discharge. (CVRBESJ34833-34880.)



1        Protectores argues that the Water Boards did not properly consider this portion of the  
 2        analysis because the Order “failed to consider whether placing enforceable limits on nitrogen  
 3        loading would be feasible and better protect groundwater quality.” (OB, p. 19.) Protectores cites  
 4        no authority for its argument that the Water Boards are required to consider limits on nitrogen  
 5        fertilizer application. The Water Boards are only required to consider “best practicable treatment  
 6        or control of the discharge necessary to avoid a pollution or nuisance and to maintain the highest  
 7        water quality consistent with the maximum benefit to the people of the State.” However, even if  
 8        there was such a requirement, the State Water Board considered but rejected as premature the use  
 9        of nitrogen fertilizer application limits based in part on recommendations of the Agricultural  
 10       Expert Panel. (SWBESJ9765-9766, 9795-9796.) The State Water Board found that developing  
 11       the multi-year A/R ratio as a target or limit would require first collecting and studying nitrogen  
 12       application and nitrogen removal data that would be reported under the new permit conditions.  
 13       (SWBESJ9765-9766, 9794-9796.) The State Water Board instead (1) directed the Central Valley  
 14       Water Board to develop acceptable ranges for multi-year A/R ratio target values after three years  
 15       of appropriate data collection (*ibid.*); (2) required the coalitions to follow up with growers who  
 16       are outliers in their multi-year A/R values (SWBESJ9774-9775, 9795, 9843, 9936); and (3) set up  
 17       a process by which groundwater protection targets for nitrogen loading on a township level would  
 18       be developed with participation from environmental justice representatives (SWBESJ9788, 9796,  
 19       9932).

20       The Water Boards considered a wide range of potential management practices that growers  
 21       could utilize as feasible treatment and control methods based upon the unique characteristics of  
 22       their farms.<sup>12</sup> The Order couples these management practices with performance standards and  
 23       monitoring and reporting requirements to ensure that the management practices utilized are  
 24       protective of groundwater quality and that, as data based upon these management practices is  
 25       received, methods can be updated as appropriate. As the State Water Board notes, “not only do  
 26       these requirements represent the present best approach in the view of our Expert Panel, we are not

27       <sup>12</sup> Regional water boards cannot specify the design, location, type of construction or  
 28       particular manner in which compliance may be had with waste discharge requirements. (Wat.  
 Code, § 13360.)

1 aware of any more protective requirements for large scale irrigated agricultural operations  
2 elsewhere.” (SWBESJ9801-9802.)

3 **IV. THE WATER BOARDS WERE NOT REQUIRED TO BUT DID CONSIDER ALL THE**  
4 **FACTORS FROM THE 1995 GUIDANCE MEMORANDUM IN ANALYZING MAXIMUM**  
5 **BENEFIT**

6 As noted in section II(A) above, the Water Boards were not required to consider the four  
7 factors from the 1995 Guidance Memorandum in making a finding as to maximum benefit to the  
8 people of the State. Nevertheless, despite Protectores contentions, the Order includes discussion  
9 of all of the factors. These factors are (1) past, present, and probable beneficial uses of the water;  
10 (2) economic and social costs, tangible and intangible, of the proposed discharge; (3)  
11 environmental aspects of the proposed discharge; (4) the implementation of feasible alternative  
12 treatment or control methods. (SWBESJ9894; CVRBESJ40018-40019.)

13 As detailed in subsection II(B)(1), *supra*, the Order considered factor (1), past, present, and  
14 probable future beneficial uses of the water, and incorporated this consideration into its maximum  
15 benefit finding. As detailed in subsection II(A)(2), *supra*, the Order considered factor (2),  
16 economic and social costs to the public and incorporated this consideration into its maximum  
17 benefit finding. As detailed in subsection III, *supra*, the Order considered factor (4),  
18 implementation of feasible alternative treatment or control methods, and incorporated this  
19 consideration into its maximum benefit finding.

20 The Order also considered factor (3): the “environmental aspects” of the proposed  
21 discharge, including benefits to be achieved by enhanced pollution controls, and incorporated this  
22 consideration into its maximum benefit finding. (SWBESJ9894; CVRBESJ40019.) The  
23 environmental aspects of the proposed discharge from irrigated lands are discussed throughout  
24 the Order – as these environmental aspects are the very subject matter of the Order. (See, e.g.,  
25 SWBESJ9729-9731, 9745 [discussion of Nitrogen Tracking Task Force and other Expert Panels  
26 to determine the components of effective nitrogen tracking and reporting system and the  
27 regulation of irrigated lands], 9750-9754 [discussion of required farm evaluations, identifying  
28 management practices, location of farm, surface water discharge points, and location of wells],  
9755-9765 [discussion of nitrogen management plans, identifying management practices

designed to minimize excess nitrogen application, irrigation practices and crop uptakes], 9875 [discussion of pesticide impacts], 9876 [discussion of nitrate impacts], 9878-9879, 9881-9882, 9754 [discussion of sediment and erosion control practices that may degrade surface waters].)

Protectores argues that the Order does not consider environmental aspects of the proposed discharge because it does not analyze “whether degradation of groundwater will have any impact on hydrologically connected surface water ecosystems and the impacts of overapplication of nitrogen fertilizer on air quality and greenhouse gas emissions.” (OB, pp. 18-19.) Protectores cites no authority for the proposition that these particular issues must be addressed in the Water Boards’ antidegradation findings, and there is none. By insisting that the Board evaluate these particular issues, Protectores again seeks to read a requirement into the antidegradation policy that does not exist and to supplant the State Water Board’s authority to interpret its own policies.<sup>13</sup>

**V. THE STATE WATER BOARD IS ENTITLED TO DEFERENCE IN THE INTERPRETATION OF THE ANTIDEGRADATION POLICY**

Generally, courts extend considerable deference to an administrative agency’s interpretation of its own regulations or the regulatory scheme which the agency implements or enforces. The agency interpretation is entitled to great weight unless unauthorized or clearly erroneous. (*Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1107.) The factors governing the degree of judicial deference to agency interpretations are set forth in *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1 (*Yamaha*). These factors include the court’s assumption that the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion. A court is more likely to defer to an agency’s interpretation of its own regulation, since the agency is likely to be

<sup>13</sup> Even if such a requirement existed, Protectores has, at no point during the administrative process, argued that the State or Regional Board must analyze “hydrologically connected surface water ecosystems” or the “impacts of overapplication of nitrogen fertilizer on air quality and greenhouse gas emissions” when considering the environmental aspects of the proposed discharge. (See SWBESJ11490-11492.) As such, Protectores has failed to exhaust its administrative remedies as to this issue. (*Park Area Neighbors v. Town of Fairfax* (1994) 29 Cal.App.4th 1442, 1447-1449; *Monterey Coastkeeper, supra*, 28 Cal.App.5th at pp. 359-361.)

1 intimately familiar with regulations it authored and sensitive to the practical implications of one  
2 interpretation over another. (See *Yamaha, supra*, 19 Cal.4th at p. 13.)

3 Here, the regulatory scheme being challenged by Protectores is the State Water Board's  
4 own antidegradation policy. (CVRBESJ39931-39932.) Protectores argues that the State Water  
5 Board is not entitled to deference in interpreting its own policy because (1) the policy has not  
6 been consistently or contemporaneously applied and (2) interpretation of the antidegradation  
7 policy does not require particular expertise. (OB, pp. 24-28.) This argument is without merit.

8 **A. The State Water Board Has Consistently and Contemporaneously Applied**  
9 **the Antidegradation Policy.**

10 Protectores argues that the State Water Board has taken an inconsistent position on  
11 interpreting the antidegradation policy that is entitled to no deference, because the State Water  
12 Board "appl[ies] the policy differently in the context of irrigated agriculture." (OB, p. 25.) As  
13 noted in sections I(A)(B) and (C) above, this is factually incorrect. Since its inception, the State  
14 Water Board has interpreted the antidegradation policy consistently. The antidegradation policy  
15 requires the threshold question as to whether an order permits degradation into high quality  
16 waters to be answered affirmatively. It then requires a regional water board to engage in the two  
17 step process, whereby it makes specified findings. The Order has completed all of these required  
18 steps and made the necessary findings. The Order does contain additional guidance on the  
19 practical implications of applying the antidegradation policy to diffuse sources, where the State  
20 Water Board has not previously provided guidance. However, this guidance does not conflict  
21 with or change the overall requirements of the antidegradation policy. (SWBESJ9799 ["The  
22 State Water Board has, to date, provided relatively little specific direction to the regional water  
23 boards on how to apply the Antidegradation Policy to nonpoint sources"].)

24 **B. Interpretation of the Antidegradation Policy in This Context Requires**  
25 **Particular Expertise**

26 Greater deference should be given to an agency's interpretation where "the agency has  
27 expertise and technical knowledge, especially where the legal text to be interpreted is technical,  
28

1 obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.”  
 2 (*Monterey Coastkeeper, supra*, 28 Cal.App.5th at p. 363.) Here, Protectores makes several  
 3 arguments regarding the required findings under the antidegradation policy that require factual  
 4 expertise and technical knowledge, where issues of fact, policy, and discretion are entwined. (See  
 5 OB, p. 18 [determining beneficial uses of water in the Eastern San Joaquin Coalition boundaries];  
 6 pp. 18-19 [environmental aspects of proposed discharges]; p. 19 [feasible alternative treatment  
 7 and control methods]; pp. 28-29 [means to prevent nitrate exceedances]; p. 29 [extent of  
 8 degradation].). As detailed more fully above, each of these arguments involves scientific and  
 9 technical expertise specific to the Water Boards, such as the most effective ways of ensuring  
 10 beneficial uses are protected, the appropriate management practices to limit discharges, and the  
 11 most appropriate way to monitor discharges to ensure exceedances are detected. (See sections II  
 12 (A)(2), (B), III, IV(C).) The Water Boards are entitled to deference for their interpretation of  
 13 these issues.

14 Protectores’ reliance on the *AGUA* decision is misplaced. In *AGUA*, the court held that “the  
 15 question whether the antidegradation policy applies to the Regional Board’s Order does not  
 16 implicate any particular scientific or technical expertise.” (*AGUA, supra*, 210 Cal.App.4th at p.  
 17 1268.) The question of whether the antidegradation policy applies to the Order is not at issue  
 18 here. The Order contains a full antidegradation analysis. Instead, Protectores challenges the  
 19 Water Boards’ scientific and technical findings made in the course of the antidegradation  
 20 analysis. The Water Boards’ findings are entitled to deference.

#### 21 **VI. THE STATE WATER BOARD WAS NOT REQUIRED TO CONDUCT AN UPDATED** 22 **ANTIDEGRADATION ANALYSIS**

23 Lastly, Protectores argues that the State Water Board was required to conduct its own, new  
 24 antidegradation analysis instead of relying on the Central Valley Water Board’s antidegradation  
 25 analysis, because five years had passed since the Central Valley Water Board’s initial analysis  
 26 when the State Water Board issued the Order. (OB, pp. 29-30.)

27 The only authority cited by Protectores for this proposition is the Order’s statement that:  
 28

We note that the irrigated lands regulatory programs across the state will continue to evolve as directed by this order, resulting in substantially more data and an improved understanding about the impacts to water quality and the methods to control those impacts. As the data and our understanding evolves, of course, so too must the regional water boards' analyses of maximum benefit and best practicable treatment or control.

(SBESJ9802.) This statement does not require the State Water Board to redo the antidegradation analysis that has been conducted by the Central Valley Water Board.

First, the statement notes that regulatory programs across the state will continue to evolve *as directed by this order*. It clearly applies to data and understanding about irrigated lands' impacts to water quality that will be generated *as a result of the Order*.

Second, the plain language of this paragraph requires *regional water boards'* analysis of maximum benefit and best practicable treatment and control in the future to take into account the new data and understanding generated by the Order requirements.

Lastly, and most importantly, this argument fundamentally misunderstands the State Water Board's role in reviewing the Central Valley Water Board's action. In reviewing a regional water board action:

The State Water Board may find that the action of the regional board, or the failure of the regional board to act, was appropriate and proper. Upon finding that the action of the regional board, or the failure of the regional board to act, was inappropriate or improper, the State Water Board may direct that the appropriate action be taken by the regional board, refer the matter to another state agency having jurisdiction, take the appropriate action itself, or take any combination of those actions. In taking any action, the State Water Board is vested with all the powers of the regional boards under this division.

(Wat. Code, § 13320, subd. (c).) Here, the State Water Board found that the Central Valley Water Board's antidegradation analysis was appropriate and proper. (SWBESJ9799.) The State Water Board used its review of the Central Valley Water Board's analysis as an opportunity to consider specific nonpoint source antidegradation issues and provide guidance to the other regional boards. (*Ibid.*) Finally, the State Water Board acknowledged that it had added new requirements to the Regional Board WDRs – specifically, use of the multi-year A/R ratio – and found that the new and existing requirements working together satisfied best practicable treatment



1 or control.<sup>14</sup> The State Water Board appropriately exercised its discretion in reviewing the  
2 Central Valley Water Board's waste discharge requirements. No further analysis was required.


3 **CONCLUSION**

4 The Water Boards took the most conservative approach in determining that the  
5 antidegradation policy applied to waters regulated by the Order. The Order contains a full  
6 antidegradation analysis, with each of the findings required by the antidegradation policy.  
7 Protectores' Petition for Writ of Mandate should be denied.

8 Dated: March 11, 2020

Respectfully Submitted,

9  
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11 RANDY L. BARROW  
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12  
13  
14   
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Quality Control Board

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26  
27 <sup>14</sup> The State Water Board stated: "Not only do these requirements represent the best  
28 approach in view of our Expert Panel, we are not aware of any more protective requirements for  
large scale irrigated agricultural operations elsewhere." (SWBESJ9802)

**DECLARATION OF SERVICE BY OVERNIGHT COURIER**

Case Name: **Protectores del Agua Subterránea v State Water Board, et al.**

No.: **34-2018-80002852**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

**On March 11, 2020, I served the attached RESPONDENT STATE WATER RESOURCES CONTROL BOARD, AND REAL PARTY IN INTEREST CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD'S BRIEF** by placing a true copy thereof enclosed in a sealed envelope with the **FEDEX**, addressed as follows:

**SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 11, 2020, at Sacramento, California.

\_\_\_\_\_  
Valerie A. Tamulevich  
Declarant

V. Tamulevich  
Signature

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**SERVICE LIST****Case No. 34-2018-80002851**

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