

# **STATE WATER RESOURCES CONTROL BOARD**

## **BOARD MEETING MINUTES**

**WEDNESDAY, JULY 17-18, 2024**

Copies of the resolutions and water quality/water rights orders can be obtained by calling (916) 341-5600 or downloading from our website at [http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/](http://www.waterboards.ca.gov/board_decisions/adopted_orders/).

**WEDNESDAY, JULY 17, 2024**

### **CALL TO ORDER**

Chair Joaquin Esquivel called the meeting to order on Wednesday, July 17, 2024, at 11:30 a.m. with a physical meeting at 8334 Rainbow Avenue, Kings Beach, CA 96143. Maps of planned activity was available. The Board recessed at 11:40 a.m. to reconvene at the U.C. Davis Tahoe Environmental Research Center at 1:00 p.m.

### **BOARD MEMBERS PRESENT**

Chair E. Joaquin Esquivel; Vice Chair Dorene D'Adamo; Member Sean Maguire; Member Nichole Morgan (joined at 1:00 p.m. at the U.C. Davis Tahoe Environmental Research Center)

### **BOARD BUSINESS**

1. Welcome
2. Overview of Lake Tahoe Environmental Research (1:00 p.m.).

STAFF OF THE U.C. DAVIS TAHOE ENVIRONMENTAL RESEARCH CENTER (TERC) – TERC staff provided an overview of the center and its major, multidisciplinary research efforts. The presentation included overviews of the watershed, native fish, aquatic invasive species, and emerging issues such as microplastics. The tour included presentations by chemists in the labs working on nutrient and microplastic sampling and analysis, as well as an opportunity to conduct real-time depth sampling of various parameters, collection of zooplankton in the water column, and use of Secchi disk on a U.C. Davis research vessel. The activity concluded at 4:30 p.m.

## **THURSDAY, JULY 18, 2024**

### **CALL TO ORDER**

Chair Joaquin Esquivel called the meeting to order on Thursday, July 18, 2024, at 9:01 a.m. with a physical meeting at the Lahontan Regional Water Quality Control Board Annex Office, Hearing Room, 971 Silver Dollar Avenue, South Lake Tahoe, CA 96150.

### **BOARD MEMBERS PRESENT**

Chair E. Joaquin Esquivel; Vice Chair Dorene D'Adamo; Member Sean Maguire; Member Laurel Firestone; Member Nichole Morgan

### **STAFF PRESENT**

Eric Oppenheimer, Executive Director; Michael A.M Lauffer, Chief Counsel; Jonathan Bishop, Chief Deputy Director; Karen Mogus Chief Deputy Director; Director of Enforcement Yvonne West; Deputy Director Phil Crader; Deputy Director Joe Karkoski; Director for Public Participation Adriana Renteria; Director of Legislative Affairs Candace Cotton; Director of Office of Research Planning and Performance James Nachbaur, Deputy Director Kathy Owen; Assistant Deputy Director Andrew Altevogt; Director of Office of Sustainable Groundwater Management Sam Boland-Brian; Program Manager Jessica Bean; Assistant Deputy Director Eric Lau

### **MEMBERS OF THE PUBLIC PRESENT**

Jared Voskuhl, CASA

### **ANNOUNCEMENTS**

- *Introductions and instructions for emergency evacuation were provided.*
- *More detailed meeting minutes will be prepared for this meeting and posted online.*

### **BOARD MEETING**

***Public comments on agenda items will be limited to 5 minutes or otherwise at the discretion of the Board Chair***

## **PUBLIC FORUM**

***(Approximately 30 minutes at the beginning of Board Meeting and any remaining speakers at the call of the Chair)***

Any member of the public may address and ask questions of the Board relating to any matter within the State Water Resources Control Board's jurisdiction provided the matter is not on the agenda or pending before the State Water Board or any California Regional Water Quality Control Board.

### **No Action Taken**

#### ***Commenters***

*None*

## **BOARD BUSINESS**

### 3. Welcome

LAHONTAN WATER BOARD EXECUTIVE OFFICER – Welcome to the Lahontan Region by Acting Executive Officer Ben Letton. Making good progress on meeting targets of Lake Tahoe sediment total maximum daily load (TMDL). Third year of collecting data on efficacy of non-physical control measures in the Tahoe Keys. Also making progress on aquatic invasive species and microplastics.

CHAIR ESQUIVEL – Welcome to everyone and thanks taking the time come up here. Appreciate creating this space to recap where we are. Opportunity to recognize what has been accomplished in the last year and what will be bubbling up before the Board over the next year. There are no decisions being made. This is an opportunity to highlight where we are.

### 4. Review of State Water Board Priorities

EXECUTIVE DIRECTOR OPPENHEIMER – Appreciated the visit with TERC and how it gave the Board an opportunity to appreciate the diversity of water resources within the state. Tahoe has new challenges since he worked in the basin back in the 1990s. It is a good setting for the Board to discuss evolving issues and where the Board will devote its priorities over the next year. Discussed the [handout](#) showing progress on completed items from the [2024 Strategic Work Plan](#). Will use that handout to receive feedback from Board Members.

DIRECTOR NACHBAUR – Documents have been posted and distributed. First document shows the items already completed or expected to be completed in

2024. The second part of that document shows the items the staff expect will be added to the strategic work plan later this year through a public process

EXECUTIVE DIRECTOR OPPENHEIMER – The Board has accomplished a lot in the last six months. We have a new Office of Sustainable Groundwater Management to implement the Sustainable Groundwater Management Act (SGMA). The Board staff did an exemplary job preparing its analysis of the three basins with Kern still to come. The recently issued temporary restraining order is a frustration, but Board is coloring within the lines established by SGMA and doing tremendous technical work. Hex chrome completed in the last six months, and the new maximum contaminant level (MCL) will protect millions of Californians. Completing water use efficiency and conservation was a huge lift with tremendous public process. The process worked with substantial public engagement and adaptation based on concerns raised by the public. The regulations will shape urban water management over the next fifteen years and lead to a more resilient California water system.

CHAIR ESQUIVEL – The process does work. And really appreciate how the Office of Public Participation can help plus up the work of the programs to ensure public engagement and transparent decision making. Whether its SGMA, hex chrome, or conservation it is the process that makes the Board a strong public entity for public decision-making. Want the public process to be open and evolutionary. Ultimately helps bring the trust we need to help.

MEMBER MORGAN – Still have concerns about process to help ensure better outcomes in the futures.

EXECUTIVE DIRECTOR OPPENHEIMER – A lot of work still to do on the Bay-Delta Plan, but staff made huge progress this past year with release of the staff report and then the hearings and workshops, including the voluntary agreement workshop. Hopeful that the program of implementation language will be out in the fall. The Bay-Delta Plan update can help bring some certainty to the system.

CHIEF DEPUTY DIRECTOR MOGUS – Going to go over the progress at the Division of Financial Assistance (DFA) and Division of Water Quality (DWQ). The work at DFA is amazing and makes so many of the state's drinking water and water quality projects possible. More than \$2 billion in drinking and wastewater infrastructure in the last year. Deputy Director Karkoski has done a wonderful job refining processes in order to accomplish even more. Also seeing policy changes to help refine how we get money out the door.

MEMBER MAGUIRE – DFA team has done an incredible job and kudos to them. However, we need to think about ways to leverage and tell that story more successfully across the state. The Board really needs to figure out how to

more consistently tell this financial success story in the face of much that still needs to be done.

CHAIR ESQUIVEL – Can be tough to digest at the end of the year, and so looking toward more permanent dashboard so the story is told on an on-going basis. Need additional support for the communication shop and DFA.

VICE CHAIR D'ADAMO – Completely agree and need to think about how to better integrate this storytelling into the legislative process.

EXECUTIVE DIRECTOR OPPENHEIMER – SAFER is another area that is a crucial priority for the Board. There's been a greater Executive Team focus over the last year. SAFER dashboard shows 900,000 people who have safe water now that did not five years ago. Need to tell that story to the Legislature.

CHIEF DEPUTY DIRECTOR MOGUS – High priority petitions include our success from the Central Coast Agricultural order, which has triggered a lot of additional work around the agricultural discharge expert panel. The staff is on track to get that panel convened by end of the year or early 2025, which will be important to move to enforceable nitrate limits. Similarly, working on peer review of CV-SALTs.

MEMBER FIRESTONE – Curious to see how the Board's direction from the Central Coast Agricultural Order and the Board's direction to consider AB 2108 equity issues will be addressed moving forward in precedential orders.

CHIEF COUNSEL LAUFFER – OCC has heard the Board's direction and as the public sees future orders going out, including the upcoming dairy order, the public will see additional checkpoints and processes to address environmental justice issues.

CHIEF DEPUTY DIRECTOR MOGUS – Wildfire general order is a major focus of DWQ work. The order has been a long time coming and is designed to reduce and mitigate risks as well as deal with wildfire response and recovery. It has been an intense process with the regional water boards and regulated entities.

DEPUTY DIRECTOR CRADER – The order will also streamline a number of processes to allow better tailoring of the regulatory response.

CHIEF DEPUTY DIRECTOR MOGUS – The order was released on June 28 with a public workshop on July 23. Public comment closes on August 30 with the goal being for the Board to adopt by the end of the calendar year. The order attempts to right-size the regulations, but it will take a substantial amount of work.

Want to call out the municipal stormwater cost of compliance effort, because it shows how the Board is sensitive to receiving common information. Want to be able to come to the Board and for the public to understand what the regulatory requirements will cost for the state as a whole. Proud of the process to test the system in real time with the municipalities.

CHIEF DEPUTY DIRECTOR BISHOP – When we project priorities, we always have some challenges and do not always correctly project the workload involved. The tribal beneficial uses effort is an example. There has been a lot of effort associated with tribal beneficial uses, but a consideration for the Board is whether they should now move to a starred item. Because we'll need to re-direct resources if we want to expedite the processes for designating beneficial uses. Time and effort complement one another. The regional water boards do not necessarily support the State Water Board making broadscale designation.

EXECUTIVE DIRECTOR OPPENHEIMER – Corresponds to item 4.1.2 in the strategic plan and the executive team has been spending starred level effort on tribal beneficial uses recently.

CHIEF COUNSEL LAUFFER – One way to look at it is that the executive team has been spending star level, high priority effort, but should the executive team now formally denominate it as a high priority item so we re-direct and commit the staff to getting the activity across the finish line.

CHAIR ESQUIVEL – It is absolutely a high priority, but need to focus on figuring out what the right path forward is to assist the regions and expedite designations.

VICE CHAIR D'ADAMO – It is a priority for me, but still not clear what the proposed pathway and action is. May be better to see how a designation (like Mono Lake) proceeds before deciding on the ultimate path. Is there anything we can do on Tribal Ecological Knowledge (TEK) to facilitate the tribes and regions. Also concerns about how new designations interface with other beneficial uses.

CHIEF DEPUTY DIRECTOR BISHOP – Each designation has some complications, so may have a challenge with broadscale, simplified designations. We can probably develop templates and processes for engagement, consultation, and implementation. That may be the more likely direction, but should we re-direct resources at this time to get process information in place within the next year.

MEMBER MORGAN – Some concern about how information is being asked? Original system was set up to preclude tribes, so trying to navigate within that system is creating challenges that seems to impede recognizing the tribes'

rights and uses. Trying to find that right balance of information we receive. Do not want to go with status quo.

MEMBER FIRESTONE – Absolutely a highest priority item. Need to find a path forward and these actions cut across many silos. Needs a lot more effort, and we should give it the star to complete that work.

CHIEF DEPUTY DIRECTOR BISHOP – We are narrowing in on a pathway, but it will require more staff commitment to implement that pathway.

MEMBER FIRESTONE – Need to recognize that the effort with the tribes will take time, and we cannot expect a one-size-fits-all approach. We need to put in the resources and time to do this.

MEMBER MAGUIRE – Concern that tribes are not happy with the pace, but need to recognize what we are getting ourselves into. Need to finesse the overlap between water quality and water rights. Interested in finding out more about the Mono Lake process. Support this becoming a higher priority. What would come off as a result of this? How would we get the additional work done?

CHIEF DEPUTY DIRECTOR BISHOP – The discussion for today was to determine whether we should be looking for where to reprioritize. It is both important to the Board and hard. The Board will need to work to set up approaches to work with the tribes in a more wholistic way, but maybe it means that the Board does not take on designations. Working to make the path clearer. In the next six months we will work to move forward on the path.

MEMBER FIRESTONE – System is problematic as Member Morgan pointed out, so may need to consider how the Legislature can be brought into the process.

CHIEF DEPUTY DIRECTOR BISHOP – We are narrowing in on a pathway, but it will require more staff commitment to implement that path.

CHAIR ESQUIVEL – Important that as we move forward we acknowledge the interactions between the uses and water quality and water rights. Do not want to over promise because we need to be able to implement and deliver.

EXECUTIVE DIRECTOR OPPENHEIMER – Had flagged instream flows as an area of future work. Already flagged in the strategic workplan as prioritizing environmental documentation for the streams for which the Board has received recommendations from another agency.

CHIEF DEPUTY DIRECTOR BISHOP – Instream flows may not be positioned for immediate action, but there will be a lot of pieces and resources that need to drop into place first.

VICE CHAIR D'ADAMO – Any one of these actions is huge, but anything we do elsewhere and deploy tools can have implications for other proceedings, such as the Bay-Delta Plan. Need to be strategic as we move forward with any instream flows. Finish one before moving onto the next.

MEMBER MAGUIRE – There are many things driving instream flows and some overlap (Bay-Delta, emergency regulations, 401 certs). Need to focus on the bigger projects like the Bay-Delta Plan. Thinking about how this ties into larger watershed efforts like gauging and metering.

CHIEF DEPUTY DIRECTOR BISHOP – Bay-Delta is a big, broad brush, and smaller projects can have a tailored instream flow science that can create incremental improvements. Those can also advance the larger scientific knowledge.

CHAIR ESQUIVEL – Should not abandon smaller projects, including things like voluntary dedications and 1707s so we are constantly improving conditions in the system. We need to be making progress wherever we can.

VICE CHAIR D'ADAMO– These are complementary actions so no concerns with gauging and dedications.

MEMBER FIRESTONE – Important that we continue working with different teams, such as Scott/Shasta where there was a huge tribal and environmental justice concern. The system we have is hard to work in, and we need to pursue multiple actions. We need to take serious concerns that major river systems go dry in a non-drought year. Concern that none of our tools are adequate in the face of climate change and increasing pressure on our system. But the water right system does not seem to support effective enforcement actions.

EXECUTIVE DIRECTOR OPPENHEIMER – This is why we bring the Board together and why staff sometimes have a challenge because the members each have different perspectives.

MEMBER MAGUIRE – Also we need to recognize that this occurs in the context of a larger state family of agencies.

EXECUTIVE DIRECTOR OPPENHEIMER – Now going to hear from the various deputy directors to flag priorities and provide status reports for their major programs.

MEMBER FIRESTONE – Before we go to that staff overviews, when we think about the Racial Equity Action Plan can we better improve the process for penalty money for going to environmental justice communities. Want a better and more intentional mechanism that is incorporated with the regional water boards. Perhaps we can drive a clearer process for cleanup and abatement



purposes to benefit environmental justice areas. Hope we can work through a potential pathway that incorporates regional water board and board member concern.

MEMBER MORGAN – Determining the precise availability of money in the Cleanup and Abatement Account (CAA) has been challenging.

DEPUTY DIRECTOR KARKOSKI – CAA currently has about \$20 million that is unspoken for, but there are discussions about potential programs in the future. \$20 million is both a lot and very little for the problems. Historically used for emergencies, and some set asides for Leviathan and aquatic invasive organisms around the state. Looking at trends with the Office of Enforcement to track penalties and supplemental environmental projects. Depending on where the Board wants to go, maybe there becomes more intentionality to CAA expenditures.

MEMBER MORGAN – We had a general idea of the amount, but it was always some concern that the amount was too low in reserve in case there truly was an emergency. The general solicitations have not been occurring because the amount of money is relatively low to ensure we can respond to emergencies and fund solicitations.

MEMBER FIRESTONE – Even assuming the \$20 million is correct, setting aside \$5 million for communities around the state could make a huge difference while leaving \$15 million for emergencies. Just to provide a sense for future discussions, we have used CAA funds for CV-SALTS and agricultural discharge programs, but not to help communities that bear the brunt of pollution. So look for a more intentional, systemic program. Try to find a strategy that would work for regions, communities, and emergencies.

MEMBER MORGAN – Prior Boards have made commitments so need to figure out what is there and hasn't been committed. Need to think through those concerns.

CHIEF DEPUTY BISHOP – Need to solve the problem of the money returning to the impacted communities or the Legislature will solve it for us. Used to spend a lot of money on fire response, and now it comes from other sources via the Office of Emergency Services (OES) and CalRecycle. Historically used for some bottled water, but that's moved around a lot. We will need to try to resolve it ourselves.

DIRECTOR WEST – We have seen a renewed interest in the regions trying to do community-benefit supplemental environmental projects (SEPs). Total of \$1.6 million in 2021. Climbed to \$2.1 million in 2022. Over \$4 million in 2023, with \$3.8 million to disadvantaged communities. Maybe we can find a way to be more efficient getting smaller amounts of money to these communities.

Takes a lot of time to negotiate these smaller projects, and sometimes the projects simply fall off and are not completed. That means the money goes back into the CAA. Regions like these projects, but they just take a lot of enforcement resources.

DEPUTY DIRECTOR KARKOSKI – Suggest that this discussion get teed up for a Board Member discussion at a Board Meeting in the near future.

EXECUTIVE DIRECTOR OPPENHEIMER – Shares concerns of Member Morgan and supports a more streamlined and transparent process. And may need to have a focused Water Boards Chair discussion.

CHAIR ESQUIVEL – It is our account of last resort, so important to manage it prudently.

MEMBER FIRESTONE – Need to build on work in Safe and Affordable Funding for Equity and Resilience (SAFER) to figure out where to address domestic wells generally to advance SAFER objectives. Spend next six months to a year to clarify funding roles with domestic wells and state smalls.

MEMBER MAGUIRE – Thinking about emerging issues we need to think about evolving nutrient issues in some of the coastal areas and the cost and time necessary to come into compliance with these evolving standards. Need to consider whether to look harder at the compliance schedule policy and whether coordinated watershed approaches can solve the problem.

JARED VOSKUHL (CASA) – Had attended the San Francisco Bay Water Board nutrient permit adoption meeting and the timeline is simply too short. So the realization was that the runway was too short. Some consideration about whether multi-benefit projects could take longer time, with higher benefits.

CHIEF COUNSEL LAUFFER – The State Water Board will need to wait and see whether there is an active petition filed on the San Francisco Bay Water Board permit. If there is no active petition, DWQ, the San Francisco Bay Water Board, and the Office of Chief Counsel can begin discussions about available options to deal with these challenges.

MEMBER D'ADAMO – Want to flag that the Administrative Hearings Office (AHO) is overwhelmed. May need to look at ways to create some efficiencies for the AHO.

CHIEF COUNSEL LAUFFER – AHO has a lot on its table, but it really only gets before the Board on discrete hearing items. It may be worth an information item to lay out the larger workload, effort, staffing, and additional resources that have come to AHO.

VICE CHAIR D'ADAMO – The water quality petition process should look to how to more efficiently process these petitions and improve accountability to the Board.

CHAIR ESQUIVEL – Support more transparency round the water quality petition process.

### **Division of Drinking Water**

ASSISTANT DEPUTY DIRECTOR ALTEVOGT – SAFER progress has been substantial but there is a long way to go. Hex Chrome is complete and simply waiting for Office of Administrative Law approval. The Division of Drinking Water (DDW) is also working on drought drinking water responses from Priority 3.1.2. Still have some systems who have not gotten information into the data sets. Contemplating modifications to SAFER to align the strategic workplan to SAFER goals and tweaking what is going on with domestic wells and SAFER.

CHAIR ESQUIVEL – WaterTAP system is important and want a better sense of where that is among our data projects.

DEPUTY DIRECTOR OWEN – Proceeding with the project and need to get through stage gate 4 to get California Department of Technology approval to bring a contractor on board. Proceeding in a stepwise fashion with phased funding.

ASSISTANT DEPUTY DIRECTOR ALTEVOGT – It will be an important program to get the drinking water data systems into the modern age.

MEMBER FIRESTONE – Goals for SAFER have been around public water systems, and appreciate that staff recognizes the need to move on to state smalls and domestic wells. Need to think about broadening our thoughts to emergency response and resilience. Need to have more concrete goals around at-risk systems (including SB 552 but beyond drought). Need to stop systems from failing if we want to get ahead of the workload.

ASSISTANT DEPUTY DIRECTOR ALTEVOGT – SAFER staff recognizes we need to do more on technical, managerial, financial (TMF) capacity for at-risk water systems. Currently do not have a lot of authority or data around TMF.

### **Division of Financial Assistance**

DEPUTY DIRECTOR KARKOSKI – Have an upcoming water affordability item that will come before the Board. Looking at the state revolving fund policies to include new criteria related to affordability. Seeing additional asks for emerging contaminant and PFAS funding. Site Cleanup Subaccount Program

(SCAP) has reached a point where it appears it will be more normalized moving forward. Orphan Site Cleanup funds are supporting resolution of stalled-case initiatives. Working on DFA process improvements, but it is no longer the highest priority because the major improvements have been implemented. Focus on implementation while continuing to look for smaller adjustments.

MEMBER FIRESTONE – Think additional reporting out on the process improvements would help tell the DFA story and contextualize it. Thinks both Board Members and the public would benefit.

DEPUTY DIRECTOR KARKOSKI – DFA is using the scoring process to help manage expectations for applicants about whether their projects will likely be fundable. It creates greater certainty. Looking for more opportunities to better signal to potential applicants earlier in the process. Also helps manage our staff workload.

MEMBER MAGUIRE – The SRF policies are important tools for setting expectations for parties and survive beyond the individual budget years. Any interest in elevating to a priority.

DEPUTY DIRECTOR KARKOSKI – Already a DFA priority that has been socialized at the various advisory groups. Would likely come to the Board after the intended use plans (IUPs) later this summer. Would expect to brief members in the fall before any releases. The idea would be to identify some programmatic areas that could be streamlined in SRF policy updates.

MEMBER MAGUIRE – IUPs are continuous so it will be important to address these in SRF policy updates to gain the necessary efficiencies.

JARED VOSKUHL (CASA) – The Environmental Finance Group recommendations took some time, but that monthly dialogue has been very helpful to CASA members. The process has therefore been very productive.

CHAIR ESQUIVEL – DFA has done a huge job, and we have not even mentioned arrearages with nearly a billion moving through the program.

MEMBER FIRESTONE – How is the conservation program going to be implemented now that the regulations have been adopted.

*[15-minute break from 11:20-11:35 a.m.]*

### **Office of Research Planning and Performance**

DIRECTOR NACHBAUR – Completed the handoff of SGMA. Beginning in 2025, ORPP is going to shift from adoption of the water conservation regulation to

the implementation of the regulation. Climate resolution will be another key endeavor as ORPP develops bandwidth.

MEMBER FIRESTONE – How are the conservation regulations going to be coordinated with DDW and technical assistance to smaller drinking water suppliers?

EXECUTIVE DIRECTOR OPPENHEIMER – Still thinking about how implementation and enforcement will proceed, but we will continue to use the five ORPP staff. Water loss efficiency moved from ORPP to DDW when the implementation occurred.

MEMBER FIRESTONE – Interested to see how DFA may be able to support technical assistance for disadvantaged communities with respect to conservation. It is a different population of water systems than we usually provide technical assistance to. Can we use SRF funds and set aside to provide some expertise for these systems?

EXECUTIVE DIRECTOR OPPENHEIMER – Suggest that ORPP take an initial step to identify the suppliers that may need technical assistance and general guidance and tips to implement.

VICE CHAIR D'ADAMO – Larger systems have indicated that they are willing to help smaller suppliers.

MEMBER MAGUIRE– There are other organizations that are prepared to step up and assist with best practices. We want to make sure our efforts are coordinated.

MEMBER FIRESTONE – Look for whether there are specialized non-profits that we could partner with.

VICE CHAIR D'ADAMO – Partnership of the San Joaquin Valley may be a valuable partner and may be the ORPP team can provide them a briefing. And look for similar organizations elsewhere, like in the Coachella Valley.

MEMBER MORGAN – There are groups down south already working to identify approaches and sharing information.

DIRECTOR NACHBAUR – Lots of on-going activity to complete the regulatory package, update the website, and be available to answer questions as implementation begins.

CHAIR ESQUIVEL – As ORPP begins work on the climate resolution, it may be valuable to look for international community partners, as we have with Denmark.

MEMBER MAGUIRE – Thinking about climate change, we should also look to what other western states are doing. So as the resolution moves forward, it will be helpful to know what others are doing.

MEMBER MORGAN – Is there an opportunity for a climate workshop hearing from international partners like Denmark? Perhaps around the resolution or in advance of the resolution to help frame ideas.

#### Division of **Water Quality**

DEPUTY DIRECTOR CRADER – Irrigated lands expert panel notice released on May 13 with draft questions and asking for data that staff should consider. Currently working on a contract to facilitate the panel. There is significant overlap with items that Chief Deputy Director Mogus identified. Working extensively on the gaps left by the *Sackett* decision. Worked closely with the U.S. Army Corps of Engineers to develop a process for mapping where the Corps is not involved. Still working to identify whether wetland project applications have decreased because of the economy or whether people are not coming to the Board for permits.

CHAIR ESQUIVEL – What tools do we have for finding projects that should have state permits?

DEPUTY DIRECTOR CRADER – Mostly it is anonymous calls and staff investigation.

DIRECTOR WEST – The Office of Enforcement and regions received positions in the budget for post-*Sackett* implementation. Will include new permitting authority and new enforcement authority. Doing additional training. So far have not used tools like we have from cannabis, but will begin to look for tools such as aerial photography to identify fill activities. Need to report back to the Legislature on implementation in one year. This will include looking for data from in the field as well as additional technology challenges. Upcoming virtual training will include this.

CHIEF DEPUTY DIRECTOR BISHOP – Year two of the budget change proposal (BCP) was supposed to deal with statewide stormwater, and we do not yet have a path forward to deal with that.

MEMBER MORGAN – Can the upcoming training be justified as mission critical so that it can proceed in-person?

DIRECTOR WEST – May be willing to consider in-person, however, not sure about flexibility.

MEMBER MORGAN – There is a lot of value to the in-person enforcement training. It is critical that OE be able to conduct it in-person. Has there been a good example of a post-*Sackett* water of the state enforcement case?

DIRECTOR WEST – Not yet, but I am sure we will find it.

DEPUTY DIRECTOR CRADER – Twenty-five to sixty-five percent of the waters that the Corps used to permit will no longer be covered under the Clean Water Act. Working to develop state orders to cover these gaps. Challenge comes from needing to get CEQA completed as well as the fact that regional water board executive officers cannot issue waste discharge requirements because of non-delegation language in the Porter-Cologne Water Quality Control Act.

Priority 3.2.4 developing new water supplies has had DWQ look to identify new recycled water projects and desal projects that could meet those goals. This has included convening the strike team for recycled water projects. In December 2023 the Board released a report on brackish water and ocean desal siting.

Priority for 3.5.1 working toward a draft report on site-specific objectives for zinc and copper in November 2024. That item would go before the Board at a workshop in December 2024.

CHIEF DEPUTY DIRECTOR BISHOP – Priority 3.5.1 will bring a slightly different project to the Board than some wastewater agencies now want.

DEPUTY DIRECTOR CRADER – Not proposing to add any new priority projects.

MEMBER FIRESTONE – Many of the DWQ priorities have relationships to nutrients. Would be helpful to have a concrete perspective of what can be done in the nutrient space over the next year. So with next year's strategic workplan and priority exercise it would be helpful to see immediately achievable activities.

CHIEF DEPUTY DIRECTOR MOGUS – Already have a charter on ocean acidification with discrete, upcoming actions. In the biostimulatory world, DWQ is likely to come to the Board soon to help scope out what can be accomplished more immediately.

MEMBER FIRESTONE – Whenever we have projects that cut across divisions, like constituents of emerging concerns (DDW/WQ) and harmful algal blooms (HABS) (DWQ/Division of Water Rights (DWR)/Office of Information Management and Analysis (OIMA)) it would be helpful to know how the Divisions are working together and in tension.

CHIEF DEPUTY DIRECTOR MOGUS – The Exec team will work to figure out how to present to the Board these cross-cutting approaches, because often the Board only hears from one of the programs.

MEMBER FIRESTONE – Tribes have a keen interest in HABS so staff are trying to synthesize how these work together. California Environmental Quality Act (CEQA) documentation is a challenge, even in these areas. Understand that Office of Planning and Researching is using new technologies to expedite. Are there ways to connect with others to look at those activities?

DEPUTY DIRECTOR CRADER – Recognition and coordination on specific projects is occurring. Work closely with other agencies and take advantage of expediting that is available under cutting green tape initiatives and legislation.

CHIEF COUNSEL LAUFFER – One challenge is that efforts to expedite CEQA focus on discrete infrastructure and water supply projects. The Water Boards work to streamline those and take advantage of statutory streamlining and exceptions. However, our regulatory work does not have a lot of analogues so we cannot draw upon a large body of CEQA documents to expedite our own regulatory planning and general order documents.

MEMBER MAGUIRE – Work by the State Water Board often creates follow-on work for the regions. That then results in trade-offs the regions need to make. Is there an opportunity to change our OIMA reporting so we can better assess the workload the State Water Board is creating for the regions and then capture in the performance report to see how the regions are doing in implementing this workload and at what cost.

CHIEF DEPUTY DIRECTOR BISHOP – That's a good idea and we may need to reboot the performance report in order to figure out whether we are tracking the right things and measuring forward progress.

### **Division of Water Rights**

ASSISTANT DEPUTY DIRECTOR BEAN – Skipping past fishery protections, we are thinking about whether changes may be appropriate for the Clear Lake Hitch reporting. Priority 2.1.14 (Mono Lake) will be the subject of upcoming rollout of UCLA modeling and briefing for Board Members. Making substantial progress on Mono Lake-related issues. Priority 3.1.1 (Water Right Modernization) remains on track for the telemetry project with the 2026 pilot project being in the Russian River. Currently engaging with interested persons in the Russian River and looking to install meters and gauges. Working to refine SB88 measuring and reporting regulations, including alternate compliance plans. Hope to have a new PowerBI graphic detailing information on compliance. Continuing updates on modeling and tools for the



Bay-Delta watershed. And continuing enforcement, including on-going investigation of Merced River issues.

Priority 4.3.1 (Modernizing Water Rights) – digitization has been proceeding and passed 250,000 pages scanned and filed into the system. Currently processing at 20,000 pages a week. Ingesting 7 million pages plus an additional 4 million pages from SharePoint and an additional 100,000 records per year being loaded into SharePoint.

EXECUTIVE DIRECTOR OPPENHEIMER – Priority 3.6.1 and 3.6.2 are continuing to move forward. The Bay-Delta Plan will be out in the fall and for Priority 3.6.2 the AHO is processing and handling. For the Bay-Delta Plan, still hoping to land for Board consideration in the second quarter of 2025. Important to continue hitting milestones.

CHAIR ESQUIVEL – Really appreciate all the work being done in DWR and kudos to the Division of Information Technology (DIT) and DWR for undertaking such huge efforts and successes to date for water right modernization and digitization.

MEMBER FIRESTONE – Know the Board has thoughts on potential legislative reform and modernization. As we are thinking about next steps in implementation, it will be important to refine legislative proposals.

EXECUTIVE DIRECTOR OPPENHEIMER – Modernization is about having the technical and regulatory tools to implement the current system.

MEMBER MAGUIRE – It is momentous how much is going on in the water right and Bay-Delta space right now. The amount of public interest and engagement is extraordinary.

EXECUTIVE DIRECTOR OPPENHEIMER – There is a lot of risk to the schedule, but it is doable and landable.

MEMBER FIRESTONE – Bay-Delta and the AHO proceedings present a lot of challenges not only for our staff, but also for the interested persons and tribes engaging in those proceedings.

### **Office of Sustainable Groundwater Management**

DIRECTOR BOLAND-BRIAN – Humbling presenting the accomplishments of ORPP, which previously oversaw SGMA. OSGM has been aggressively implementing Priority 3.1.1 with the detailed staff reports for each of the six basins, considering the reasoning and providing a pathway for the basins to exit the State Water Board probationary process. With six basins, there will be differences between them and some are making significant improvements to

their groundwater sustainability plans. Three basins took significant action after the initial probationary action this spring. Also striving to integrate tribal engagement and the racial equity action plan into each of these basin reports. There is a possibility of seven more basins arriving from DWR in the winter. No recommendations for changes to Priority 3.1.1.

CHIEF DEPUTY BISHOP – If he had strategically planned the SGMA basin assessments, it would look close to where we are. We have one probationary basin and two basins working really hard to avoid probation and a potential good actor in another basin. Helps strength credibility of the State Water Board. Need to be careful not to trip on ourselves, and need to be prepared to pivot and change direction where it is justified.

VICE CHAIR D'ADAMO – Really appreciate the way OSGM has moved forward with the basin considerations and the clear willingness not to proceed to probationary designation where the data warrant it. Big credit to the OSGM for being open and building trust.

CHIEF DEPUTY BISHOP – There is a potential for an additional seven basins and that is before the Department of Water Resources (Department) begins its 2025 reviews. The latter may require the Department to resolve some previously unresolved issues which could substantially add to our workload. Staff will explore opportunities to avoid the Department sending basins our way if small adjustments are made.

MEMBER FIRESTONE – The Board may need to think about how some of the issues interface with the State Water Board's surface water rights authority. Have those discussions been occurring?

DIRECTOR BOLAND-BRIAN – The Division of Water Rights and OSGM have been coordinating and attempting to provide high-level feedback to the Department.

MEMBER FIRESTONE – Very concerned that there will be disconnects between the Department and our high priority concerns.

ASSISTANT DEPUTY DIRECTOR BEAN – The Division of Water Rights does have a person assigned to coordinate with the Department and OSGM on these issues.

MEMBER MAGUIRE – This underscores the importance of the state providing clear and early guidance to the groundwater sustainability agencies.

DIRECTOR BOLAND-BRIAN – The Department has significant challenges, and it is hard to get these guidance documents out.

VICE CHAIR D'ADAMO – It will be helpful to get early briefings from the OSGM staff on how to prioritize and what is expected from the Department.

CHIEF DEPUTY DIRECTOR BISHOP – Just a reminder that designating a basin as probationary creates its own workstream after the designation. In addition, we will begin assessing implementation, in particular dry well mitigation, which will require additional work. That means the second tranche could be slower than the first tranche. May need to identify the mitigation plans that work better than others. Ideally the State Water Board would never need to develop an interim plan.

DEPUTY DIRECTOR KARKOSKI – Returning to dry well mitigation, we are continuing to fund hauled water. Need to be sensitive to looking at the funding side to ensure we are not sending contrary incentives to what OSGM is saying on dry well mitigation.

CHIEF DEPUTY DIRECTOR BISHOP – Also coordinating with SAFER to look at the basins the Department has approved to ensure they align with concerns we see in the SAFER program. So there will need to be coordination DFA, SAFER, and OSGM.

MEMBER FIRESTONE – Anything OCC can say about the temporary restraining order?

CHIEF COUNSEL LAUFFER – Provided a brief overview of the *Kings County Farm Bureau v. State Water Resources Control Board* litigation, the temporary restraining order, and next steps in the litigation until the August preliminary injunction hearing.

### **Office of Enforcement**

DIRECTOR WEST – Gearing up to implement the *Sackett* BCP. Expecting increasing workload from the U.S. Supreme Court decision. Working to update the Enforcement Policy, which comes off the Strategic Workplan. Still working on the Water Rights Enforcement Policy. Cannabis Enforcement Program received additional enforcement resources this year. Working to implement the new program report. Heavily focused on illegal cultivation and increased focus on the water right enforcement aspects of illegal cannabis operations. Also highlighted work in Priority 4.2.2 to track enforcement metrics in collaboration with OIMA, specifically concerning inspection reports. Also looking at targets for regional water boards' mandatory minimum penalties to avoid the penalty action getting stale.

There have also been unexpected actions that have required a re-direction of OE resources. For example, the Big Basin Water Basin water system had failing drinking water and wastewater systems, and OE worked with DDW and

the regional water board staff to get a receivership of both the drinking water and wastewater system. Also became involved in the first water shutoff protection act enforcement action by the Attorney General's Office, which required building out new expertise.

Finally, building out enforcement capacity within the regions, and the Lahontan Water Board settled a significant action with Teichert over a roundabout being built in Truckee. The \$500,000 settlement was split between a Trout Creek restoration SEP and the CAA.

### **Office of Public Participation**

DIRECTOR RENTERIA – OPP distributed the second iteration of our racial equity staff survey, which showed an increased awareness of racial equity actions at the Water Boards. There is also a desire in the survey responses to expand our racial equity work and training. Working with new staff to expand workforce equity and inclusion across the entire life cycle of employees from recruitment to retention to improve our culture.

Currently working on a language access guidance document. Expanding language access with an on-demand phone translation service.

Also developing tribal consultation protocols to expand our efforts on tribal consultation. The protocols are designed to clarify our process and expectations because our processes have diverged somewhat. Protocols will likely come before the Board in early 2025.

Final guidance document is to look toward potential disparate impacts analysis building on draft guidance to better assess equity impacts from Board actions.

Once documents are in place, OPP will work on a coordinated training to cover the new guidance documents. Later this fall, the State will unveil a standard tribal outreach training module. Hopefully can use that training for additional Water Board staff.

Welcoming Equity in the Workplace training kickoff occurred early this work. Used the return to office events as an opportunity to push this out to all supervisors and managers.

Train the trainer is ongoing, but looking to adjust it with guidance documents coming out.

MEMBER MORGAN – Curious to hear more about the workforce retention modules.

DIRECTOR RENTERIA – We are early in the process but will be briefing Board Members in the coming months.

DIRECTOR NACHBAUR – OPP and ORPP are coordinating training efforts on racial equity and return to office. More than 900 staff have completed the basic equity coursework. Also coordinating with CalEPA, but the Water Boards training is more targeted to our specific programs. Advancing the water leadership program. The racial equity advisory committee is helping develop competencies and ensuring training helps advance competencies. Trying to track the efficacy of the various training programs, and tracking the evaluations by participants to see whether the mix of on-demand and live training is working.

MEMBER MORGAN – Would racial equity training be better situated in OPP, rather than split between ORPP and OPP.

EXECUTIVE DIRECTOR OPPENHEIMER – It is a fair question, but ORPP has historically handled all the training and it has also retained a dedicated racial equity trainer to advance the racial equity initiatives. Recognizes it creates some chain of command issues. But will sit down with OPP, ORPP, and OIMA to figure out the best approach.

MEMBER MORGAN – Racial equity is different than some of our traditional training programs, and so should look at whether it should all be situated in one shop, such as OPP.

DIRECTOR NACHBAUR – We have lots of different models for training, and we will support to figure out the best here.

CHAIR ESQUIVEL – Greatly appreciates the leadership from Director Renteria and especially in the tribal space. OPP training has been valuable and recognized by tribal representatives.

MEMBER FIRESTONE – Concerned with our workforce development strategy and specifically in the tribal space. Feels like we have not been successful in hiring tribal representatives into our OPP team or elsewhere among the state teams.

DIRECTOR RENTERIA – OPP has had challenges recruiting for its tribal positions both because of classifications.

### **Office of Legislative Affairs**

DIRECTOR COTTON – Appreciating coming in during legislative recess. Still getting caught up, but eager to hear questions and work with Board Members and senior staff.

## **Division of Information Technology**

DEPUTY DIRECTOR OWEN – UPWARD and WaterTAP are moving forward and are huge endeavors. Prepared to work with DWQ on *Sackett* database. Expecting a good result from the Department of Military evaluation of security of the Water Boards information technology systems and practices. Many ongoing initiatives for security and shifting everyone over to OneDrive.

CHAIR ESQUIVEL – Appreciate the challenges DIT faces and appreciate the efforts to consolidate information systems within the Water Boards' space.

MEMBER MORGAN – As the member moved through the various programs, she found it helpful to be out in the field and better connected to the program. Is there any ability for DIT to have its staff shadow program out in the field to get a better understanding of the programs activities and needs.

DEPUTY DIRECTOR OWEN – Feels that DIT has started doing that and it was something they worked with on the SAFER program.

MEMBER MORGAN – Has there been any consideration for accounting to have a ticketing system for tracking requests?

ASSISTANT DEPUTY DIRECTOR LAU – DAS was pursuing an option via contract to pursue that, but it was temporarily held up by budget letters. Now moving forward again.

## **Division of Administrative Services**

ASSISTANT DEPUTY DIRECTOR LAU – State Controllers Office has placed a new emphasis on timely financial reporting. As a result, DAS is needing to devote additional resources to meet these deadlines. And hope to meet those deadlines this year, which is a huge change from past years.

## **Office of Chief Counsel**

CHIEF COUNSEL LAUFFER – OCC attorneys support all the priorities for each of the programs and so our priorities are covered in the prior discussions and the Board's priorities. There is a lot going on that is starting to spread OCC thin. No longer able to staff multiple attorneys on each key program. This will create some challenges moving forward, especially with looming retirements.

Quick overview of three recent supreme court administrative law decisions and potential impact on the Water Boards. Top line is that it the decisions (*Loper Bright v. Raimondo*, *Corner Post v. Board of Governors*, and *Jarkesy v. SEC*) will create uncertainty at the federal regulatory level, especially when it comes to judicial review of the federal agencies' regulatory decisions. That

will mean additional pressure on the Water Boards and bring instability for state programs that rely on cooperation with federal counterparts and implementing federal regulations.

Fundamentally, though, *Loper-Bright* and *Corner Post* involve questions of judicial review of federal agencies under the federal administrative procedures act by federal courts. California courts already have articulated their own standards for state court review of state administrative decisions. The Water Boards already abide by those decisions. And even though the Supreme Court's decisions will allow more facial challenges to federal regulations (*Corner Post*) and less deferential review (*Loper Bright*), that does not mean federal regulations will necessarily be ruled invalid. It just means that there could be greater instability and uncertainty in the outcome of judicial challenges. In addition, because many federal regulations are subject to review in any of the U.S. District Courts, it will encourage additional forum shopping.

As for *Jarkesy* the constitutional right to jury trial at the heart of the case has not been found to apply to state civil proceedings. There is controlling California Supreme Court precedent on this. As a result, the Water Boards expect to see respondents argue in administrative civil liability proceedings that they are entitled to a jury trial. That will take additional work to respond to. But the courts have already dealt with this issue and found that it does not have merit. In addition, the U.S. Supreme Court did not overturn its prior decisions upholding administrative civil liabilities, imposed without a jury trial, when the liabilities flow from statutory public rights created by Congress. The Water Boards various administrative civil liability statutes are based on protecting public rights created by the Legislature.

CHAIR ESQUIVEL – Any other pending matters before the Supreme Court?

CHIEF COUNSEL LAUFFER – *San Francisco v. EPA* raises challenging issues on backstop provisions of NPDES permits that require compliance with water quality standards generally. The decision is being briefed currently in the U.S. Supreme Court. The permit was issued jointly by U.S. EPA Region IX and the San Francisco Bay Water Board. The current challenge is only against U.S. EPA, but it could have significant consequences for NDPEs permits generally, including those issued by all the Water Boards, many states, and U.S. EPA.

### **Public Comment**

JARED VOSKUHL (CASA): Question about *Loper Bright* and where it implicates state agency judicial review. Also nutrients have side-stream movement to the atmosphere. Similarly there are issues with reverse osmosis concentrate and what can you do with it. CASA's engineering partners want to understand

what the State Water Board is thinking on those issues. Also notes that the Board is doing good, transparent work and appreciates the collaborative environment.

CHIEF COUNSEL LAUFFER – Briefly discussed that the Water Boards’ decisions occur under state law and *Loper Bright* will not directly implicate judicial review of those state agency decisions even when they interface with federal law. The answer may be different for state programs that are affirmatively delegated by a federal agency and where the state agency actions are taken pursuant to federal law and subject to federal judicial review. The Water Boards do not have any such programs, though.

### **Closing**

CHAIR ESQUIVEL – A lot of progress and good discussion today. Thank you everyone.

MEMBER MAGUIRE – This has been a great opportunity to share, and maybe in the future we can use this platform for a discussion on liaison roles and leads.

VICE CHAIR D’ADAMO – Feels great about where the Board is right now.

MEMBER MORGAN – Valuable discussion and appreciate all the work going on across the Water Board’s divisions and offices.

## **ADJOURNMENT**

The Board adjourned at 2:35 p.m.