



# California Regional Water Quality Control Board

## Santa Ana Region



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**Arnold Schwarzenegger**  
Governor

March 12, 2008

Mr. Stuart Drown, Executive Director  
Little Hoover Commission  
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### **GOVERNANCE STRUCTURE REGARDING WATER IN CALIFORNIA AND THE RELATIONSHIP BETWEEN THE STATE WATER RESOURCES CONTROL BOARD AND THE SANTA ANA REGIONAL BOARD**

Dear Mr. Drown:

Thank you for the invitation to testify at the first public hearing of the Little Hoover Commission concerning the respective roles of the State Water Resources Control Board (State Board) and the California Regional Water Quality Control Board, Santa Ana Region. You also expressed interest in the ability of the State Board and the regional boards to meet the challenges of the state's water quality and water supply needs.

Your February 1, 2008 letter indicated that the Commission is interested in learning more about my perspective, as a regional board chair, concerning a number of issues. Following is a re-statement of the areas of interest you identified, as well as my responses.

**1. What are your region's most pressing water quality and water supply issues, and does the state have the appropriate governance structure to properly respond to current and future issues? What changes are needed?**

The most pressing water quality issue in the Santa Ana Region is our adverse salt balance, which is causing the salt levels in the region to slowly increase with time. The region has an adverse salt balance of approximately 600,000 tons of salt per year. To put this into perspective, this is equivalent to a line of dump trucks carrying salt, filling the highway between Riverside and Las Vegas. Although adverse salt balances have historically resulted in the collapse of some civilizations, this is still not considered by many to be of immediate importance, because the threat is not short-term, and there is not a related public health concern. Nonetheless, this is the issue that must be

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addressed to provide water supply and water quality sustainability for the region, as well as many other areas of California.

The Santa Ana Regional Board and its stakeholders have responded to this threat by a watershed-wide, stakeholder-funded effort to collaboratively develop and implement a state-of-the-art salt management plan founded on a strong scientific basis. This enormous undertaking resulted in a complete revision of the region's salt management plan that was approved, without opposition, by the regional board, the State Board and the Office of Administrative Law.

Other pressing water quality issues in the region are similar to those throughout many areas of the state, namely perchlorate contamination from historic defense industry and agricultural operations, groundwater contamination by volatile organic compounds, such as trichloroethylene (TCE), from defense industry and other industrial sources, salt contamination of groundwater as a result of long-term irrigated agricultural and dairy operations, and significant numbers of impaired water bodies requiring the development and implementation of very difficult Total Maximum Daily Load (TMDL) programs.

The answer to the question of whether the state has the proper governance structure in place depends on whether one looks at the structure in light of funding for implementation of all of the responsibilities of the State Board and the regional boards, or whether the structure, independent of funding, is considered.

The theme you will see throughout my comments is that the performance of the current governance structure cannot be effectively evaluated in the absence of adequate program support for that structure.

**2. Should the state board have more authority to hold regional boards accountable for ensuring the protection and improvement of water quality? What is the appropriate relationship?**

Yes. In fact, the regional boards should be held strictly accountable for everything for which they are funded. During the earlier interview conducted by Mark Martin of your staff, with me and with regional board staff, it was pointed out that the regional board has no objections or concerns with being held accountable, as long as that accountability is not for responsibilities for which no funding has been provided. I have been informed that the State Board and the regional boards operate with something like 80 different fund sources, most of which are not available for interchangeable uses, and most of which have very strong limitations for how the funds may be spent. This limits the discretion of the regional boards to respond to various water quality priorities, and causes a good deal of prioritization based on fund sources and their limitations.

Another very significant issue discussed with Mr. Martin was brought to light by an assessment of the regional boards and the State Board by the California Legislative Analyst's Office (LAO), which we suggested he obtain. Although I don't have specific details, it is my understanding that the LAO assessment found that the State Board and the regional boards were funded to address less than one-half of their responsibilities. Whatever the funding level specifics might be, it is clear that the State Board and the regional boards are not fully funded, and they might even be significantly under-funded. However, this is not a criticism. I understand that there might be very important fiscal and budgetary reasons why these agencies cannot be fully funded. The key to answering your question concerning accountability is that the State Board and the regional boards should be held accountable for whatever responsibilities for which they receive funding, but it is absolutely inappropriate to hold an agency accountable for some responsibility for which it is not funded. Further, if agency priorities are dictated to a major degree by funding limitations, then the same concerns with respect to priority-setting accountability, which I described above, apply.

My only suggestion for strengthening the relationship between the State Board and the regions is that legislation might be necessary to make it clear to the regions that Policies developed by the State Board are discretionary only in how those Policies specifically identify discretion. That is, the California Water Code requires the regions to implement Policies developed and adopted by the State Board. Exceptions to implementation should only be enacted when the Policies allow them. This may not always be clear in the regions.

**3. How can the state and regional boards improve consistency, timeliness, and transparency in performing duties such as basin planning, adopting Total Maximum Daily Load projects, and permitting? How can the boards increase revenues or resources to improve performance?**

The answers with respect to consistency, timeliness and transparency all require different assessments.

The existing regional board structure clearly provides for transparency. Transparency is a matter that has been addressed in the Santa Ana Region by the extensive use of a collaborative task-force approach, as referenced in your letter. We feel that a task force process, in which the region's stakeholders may participate, clearly provides for an outstanding level of regulatory and basin planning transparency. Note the salt management plan mentioned earlier. This complicated and scientifically challenging plan could not have been adopted without the outstanding opportunity for participation afforded the region's stakeholders. The level of stakeholder understanding provided by this process is unprecedented.

However, the use of task forces may result in some (apparent) loss of timeliness. That is, to reach the necessary level of consensus for task force implementation, it sometimes takes longer than a strictly command-and-control approach. However, given the consensus typically reached in the task force efforts, with a resultant absence of appeals and petitions, we believe that the stakeholder process is actually more timely to achieve water quality benefits through program implementation.

Consistency is a different matter altogether. When one asks about the lack of "consistency," we must read this as the lack of "appropriate consistency." This is because there are excellent reasons why regional boards sometimes appear to be inconsistent. The water quality issues, hydrology and hydrogeology vary tremendously between one region and the next. The decisions made by the North Coast Regional Board are informed by local conditions that are dramatically different than those in the Santa Ana Region. Different decisions in this context are both expected and appropriate.

There are situations of inappropriate inconsistency, though. When inconsistency is not driven by scientifically-based rationale, then it should be eliminated. For like conditions, it is entirely appropriate and necessary for regional board decisions to be consistent. Consistency can be achieved by a strong leadership role by the State Board through implementation of statewide Policies, which must be implemented by the regional boards. When statewide Policies are not available to address an area of apparent inconsistency, this may be addressed through the direct involvement of staff from different regions working together to eliminate that inconsistency. An example of this approach is a March 17, 2008 meeting between the executive management and program managers for the area wide municipal stormwater program for the Los Angeles, San Diego and Santa Ana Regional Boards. The purpose of this meeting is to work out permit differences between the regions and to achieve as much consistency with the permits as possible.

We often hear about inconsistency between the regions, but sometimes these anecdotal references cannot be substantiated. Testimony concerning reported regional board inconsistency should be challenged to require supporting information that demonstrates that the inconsistency actually is inappropriate, rather than being the result of valid and scientifically supported rationale.

**4. Are there structural issues within regional boards that should be changed, such as the composition of the regions, number of board members, role and duties of the executive officer, etc.?**

I don't believe that it is appropriate for me to comment on the composition of the regions. My experience is limited to the Santa Ana Region.

Changing the number of board members may not solve much, but it should not present increased difficulties, either. Whether there are 5, 7, or 9 board members, quorum difficulties are addressed only through timely appointments.

The roles and duties of the executive officers (EO's) have not been changed appreciably since the regional boards were created. However, I understand that, if we are able to delegate issuance of National Pollutant Discharge Elimination System (NPDES) permits to the EO's, this would eliminate the need for the prohibition on regional board members making ten percent or more of their income from a source that holds an NPDES permit. Given that we now have area wide stormwater permits issued to counties and municipalities, any full-time county supervisor, some city council members and employees of NPDES permit holders are disqualified from serving as regional board members. This severely restricts many good candidates from being appointed to regional boards.

My board members and I do not favor any changes to the reporting structure for EO's, such as reporting to or being hired by the State Board executive director. EO's are at-will employees, serving each of the regional boards. It is difficult for me to imagine how the integrity and autonomy of the regional boards would be served by having a reporting structure in which the EO would report to someone other than the board. This would, in my opinion, just serve to isolate the board from both the regional board staff and the State Board. It could easily be envisioned that an EO who reports to the State Board executive director would be a creature of the State Board, serving their will rather than that of the regional board. We do not know of any other examples of agencies with appointed boards that have executive directors appointed by some mechanism, other than by the board itself.

**5. What are some of the water quality successes and failures in your region? Please explain your board's use of a task force of stakeholders to update your board's basin plan.**

It is difficult to understand exactly what is meant by water quality failures. If you categorize everything that our staff cannot get to because of resource limitations, then there are many "failures." There are enforcement actions that have not yet been completed, there are inspections that have not been made, there are permit revisions that have not been finalized, there are groundwater cleanup projects that our staff has not been able to accomplish. However, I do not believe that we should characterize these as water quality failures. These are, instead, issues that, due to resource limitations, have not yet been addressed.

Our perchlorate problem in Rialto resulting from the long-term use of perchlorate by defense industry and fireworks manufacturing companies has been a challenge that we have not yet fully resolved. Our staff is engaged, along with the State Board Office of

Enforcement and the California Attorney General's Office, in a protracted and exceptionally difficult legal battle with a number of potentially responsible parties. Our first priority was to ensure that the residents of Rialto were being served water that met the standards established by the California Department of Public Health. This goal has been fully accomplished. The challenge for our staff and legal support group continues to be to ensure that the parties responsible for this contamination pay for its remediation. In fact, the portion of the contamination problem that originates from property owned by San Bernardino County (one of two essentially parallel plumes) is currently being remediated under an enforcement order issued to the county by the regional board. Board staff efforts are now focused on achieving this same level of success with the parties responsible for the second plume.

We believe that our greatest water quality success is the complete revision of the board's salt management plan, our complete re-evaluation of all groundwater quality in the region on a triennial basis, the complete update of all groundwater basin and management zone configurations within the region, and the successful implementation of new water quality objectives for basins within the region to accommodate integrated water supply plans, including the recharge of basins with recycled water, such as the Groundwater Replenishment System which recycles 100 million gallons per day in Orange County, and extensive use of groundwater cleanup desalination facilities throughout the region.

Our success with revision of the salt management plan and major portions of the region's basin plan, as well as our cooperative agreement with stakeholders to model all inputs to the groundwater wherever any groundwater recharge is occurring, and numerous TMDL collaborative efforts all can be attributed to the success of our consensus-driven stakeholder process. The so-called task force process has resulted in the generation of significant cutting-edge regulatory science, as well as the development of science necessary to generate TMDLs for very difficult water quality problems.

A good question might be whether the task force approach will work everywhere. It might not. Stakeholders within the region have operated with significant foresight and the vision of sustainability that might not be universally present. The task force process depends on having stakeholders who are willing to invest in programs that do not give them an immediate payback, but which pay long-term water supply reliability dividends, and in the case of TMDLs, those which arise from the best water quality science available. In most every case, the first job of the task force is to agree on the good science necessary to make a decision. Once agreement is reached on the science, then the task force process depends on both the regulated community and the regional board being bound by the results of the implementation of the good science. While some might not have the confidence to live with these results, this has not been the case with our stakeholders. The Santa Ana Board strongly supports the continued implementation of our stakeholder-driven task force process.

Mr. Stuart Drown  
Little Hoover Commission

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I hope this provides you with useful information to inform your process.

Sincerely,

/s/

Carole H. Beswick, Chair  
Santa Ana Regional Water Quality Control Board

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