



State Water Resources Control Board



Tam M. Doduc, Board Chair

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Linda S. Adams

*Secretary for
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Arnold Schwarzenegger

Governor

March 10, 2008

Mr. Stuart Drown
Executive Director
Little Hoover Commission
925 L Street, Suite 805
Sacramento, California 95814

Dear Mr. Drown:

Thank you for the opportunity to participate in the Little Hoover Commission's March 27, 2008 hearing and to share my perspective on the roles of the State Water Resources Control Board (State Water Board) and the nine Regional Water Quality Control Boards (Regional Water Boards).

Since 1967, the Water Boards have worked to preserve, enhance and restore the quality of California's water resources and ensure their proper allocation and efficient use. The complexity of this mission is reflected in the large number of mandated programs, the variation among and within watersheds, and the regulatory agencies that exist throughout the state. The Water Boards will be further challenged in the coming years by changing demographic trends, aging water and wastewater infrastructure, climate change implications, and workforce capacity.

I believe that the fundamental governance framework of the Water Boards is sound; however, we must continually strive to improve and must be open to all operational and structural changes that would enhance our ability to protect California's waters. Through our strategic planning effort, the Water Boards have focused on identifying priorities, setting performance goals, and improving our accountability, transparency and consistency. I welcome the Commission's interest in additional improvements that will contribute to the Water Boards' efficiency and effectiveness.

I understand that my staff has provided you various background documents on Water Board governance and related issues. Therefore, following are brief responses to the questions asked in your letter of February 1, 2008. Some additional details are provided in the enclosures.

California Environmental Protection Agency



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1. Water Issues and Governance Structure

What are the state's most pressing water quality and water supply issues? Does the state have the appropriate governance structure to properly respond to current and future issues? What changes are needed?

California's greatest water challenge has been effectively managing our water resources to ensure healthy ecosystems while meeting the needs of—and mitigating the impacts from—human development and land use. California has 779 surface water bodies that are “impaired,” meaning that they are not meeting water quality objectives to support beneficial uses such as municipal supply for drinking, agricultural supply for crop irrigation, habitat for aquatic life and wildlife, and recreation. Many of our groundwater basins have also been impaired or impacted by saltwater intrusion and waste discharges, making their use for drinking water or for additional storage a particular challenge. We must restore our surface and ground waters, promote sustainable water supplies, and develop a long-term coordinated plan to meet water demands and address climate change impacts. These priority issues and proposed actions are discussed in the Water Boards' January 25, 2008 *Draft Strategic Plan Update 2008-2012*, which is enclosed.

I believe the existing governance structure (discussed in Enclosure 1) provides an appropriate measure of independence, diversity, and flexibility—the necessary attributes of any governance structure for an organization tackling California's enormous water quality and supply challenges. Among the strengths of the current structure are: multiple viewpoints engaged in the decision-making; transparency through public deliberation; and flexibility in responding to water challenges using statewide perspective or region-specific expertise.

The existing governance framework is not without its weaknesses, however. Over the years, various operational and structural changes have been proposed to: remove unnecessary barriers and difficulties in the appointment and confirmation process for Regional Water Board members; improve consistency among and accountability of the Regional Water Boards; and increase efficiency and effectiveness in the administration and operation of the Water Boards' regulatory programs. The Water Boards are assessing the various structural change options that have been proposed.

2. Accountability and Authority

Does the State Board have sufficient accountability measures and authority to ensure that California can protect and improve water quality through the actions of the nine regional boards? Should it have more power to direct the regional boards' actions? What is the appropriate relationship?



Existing law provides the State Water Board considerable authority to oversee the nine Regional Water Boards (discussed in Enclosure 2). However, we do need additional measures to gauge the performance of the State and Regional Water Boards in fulfilling existing requirements. Already, we have initiated this through the strategic planning effort and its emphasis on performance measures.

The Water Boards' intensive strategic planning exercise has as one of its main priorities a focus on improving transparency and accountability "by ensuring that Water Board goals and actions are clear and accessible, by demonstrating and explaining results achieved with respect to the goals and resources available, and by enhancing and improving accessibility of data and information." (*Draft Strategic Plan Update 2008-2012*, January 25, 2008, Priority 6.) A related focus is on enhancing "consistency across the Water Boards to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of the laws, regulations, policies, and procedures." (*Draft Strategic Plan Update 2008-2012*, Priority 7.)

Some of the specific components of the strategic plan include: the creation of an inventory of Water Boards' programs and functions; the implementation of performance-based work plans for Water Boards' programs; the development of a program review process to evaluate Regional Water Board performance; the development of additional policies and procedures for the Regional Water Boards to follow; and the creation of a new process where members of the Regional Water Boards become responsible for reviewing and addressing specific areas of inconsistencies between Regional Water Boards. These performance measures, assessments, and work plans would provide a stronger foundation for using existing authority to manage the Water Boards' distributed governance structure.

Existing state law outlines a relationship between the State and Regional Water Boards that fosters regional decision-making within the confines of overarching state policy. I believe that approach can address California's present and future water quality challenges. To succeed, the relationships between the boards must be strengthened. Enhancing those relationships will provide a shared sense of mission that is already embodied in the law.

The State Water Board also has to exercise strong leadership to develop those bonds. Strong leadership will entail developing more state policies for water quality control, which will provide the contours for Regional Water Boards' actions. These policies can more carefully articulate the water quality goals that all regions should achieve. Strong leadership will mean identifying performance goals we intend to meet and then meeting them. Strong leadership will also mean recognizing that some Regional Water Boards have already solved a problem and that their solutions can provide a model for the state. In this regard, the State and Regional Water Boards will need to further develop our practice of utilizing each other's staffs and experiences.



In the end, the relationship between the Water Boards needs to be more than a mere legal relationship. The relationship must be a strong relationship built on common goals, clear expectations, and shared resources.

3. Improving Consistency, Timeliness and Transparency

How can the State and Regional Boards improve consistency, timeliness, and transparency in performing duties such as basin planning, adopting Total Maximum Daily Load (TMDL) projects, and permitting?

In the *Draft Strategic Plan Update 2008-2012*, Priorities 6 and 7 focus on the goals of improving transparency, accountability and consistency, and Priority 1 includes specific actions to improve TMDL adoption and implementation. Some of the proposed actions are outlined above in response to the question on accountability and authority. Other activities include: the evaluation and streamlining of permitting format and processes by December 2009; the improvement of data systems and public accessibility to water body and facility information; and the implementation of a statewide strategy for TMDL adoption and implementation.

4. Structural Changes

Do structural issues exist 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?

Given the wide diversity in water quality issues throughout the state, the Regional Water Board structure continues to have significant advantages, such as: promoting a high level of comprehension of, and problem-solving for, complex regional water quality issues; setting and responding to regional priorities; and promoting public involvement at the local level. These benefits come with some cost, as the board structure can, at times, be inefficient, inconsistent, and, to some people, unaccountable. Inefficiencies come from the need to identify, appoint, and confirm 86 board members across the nine regions and the State Water Board. Further inefficiencies can be found in the need for certain actions to go to a Regional Water Board and also to the State Water Board for approval, even if they are consistent with all existing state policies and are unopposed. The independence of the Regional Water Boards can make it difficult to ensure consistency across the regions, and not every potential issue can be prospectively addressed through policies the State Water Board adopts. While regional decisions are ultimately subject to review by the State Water Board, the administrative process for review can be time-consuming.



Various proposals have been made regarding changing the composition and number of Regional Water Board members, the roles and duties of the Regional Water Board executive officers, and the oversight authority of the State Water Board. We are currently reviewing all of these options to determine which would be most effective at addressing the structural and governance issues.

5. Strategic Planning

What are your goals for the current strategic planning process and how are you working to embed performance management measures into the 2008-2012 strategic plan?

My principal objective is to establish clear priorities and goals that will hold the Water Boards accountable for measurable outcomes. I want to focus the Water Boards' limited resources, through the strategic plan, on improving what matters most to us—clean surface and ground waters and a more sustainable water supply for future generations. By setting specific goals and targets, we will evaluate the effectiveness of our efforts and make needed changes.

To be successful, these goals and targets must be integrated into our planning, budgeting, and performance assessment processes. Upon finalization of the strategic plan, the Water Boards will work on aligning our resources with our strategic plan priorities and all other ongoing programmatic commitments. Performance targets for our priorities and ongoing commitments will be established that reflect both how we do our work and how our work improves the environment. Performance plans for priority programs will be developed and used to evaluate the effectiveness of our actions in achieving our targets. As a result, I want every person working for the Water Boards to be able to answer the following questions: "What problem is the work that I do intended to solve?" "What outcomes am I trying to achieve?" and "How will I know when I have been successful?"

Thank you again for this opportunity to participate in the Little Hoover Commission's review. As requested, I am including a brief biography as Enclosure 3. Should you have questions or need additional information, please contact me at (916) 341-5611.

Sincerely,



Tam M. Doduc
Board Chair

Enclosures (4)



Enclosure 1: Existing Governance Structure of the Water Boards

State Water Resources Control Board

In 1967 California unified water quality and water rights regulatory responsibilities into the State Water Resources Control Board. California's decision was made after extensive analysis and discussion. Merging the two responsibilities recognized the intimate relationship between water quantity and water quality.

The State Water Board consists of five gubernatorial appointees, subject to senate confirmation, who serve staggered four-years terms. Members of the State Water Board represent the state at large. To ensure a diversity of background and experience, California has established four categories of membership for the State Water Board:

- (1) an attorney qualified in the fields of water supply and water rights;
- (2) a civil engineer qualified in the fields of water supply and water rights;
- (3) a professional engineer experienced in sanitary engineering who is qualified in the field of water quality; and
- (4) a person qualified in water quality.

One of the above must also have some qualification in water supply and water quality related to irrigated agriculture. Finally, there is a fifth member who is not required to have any special experience. The Governor designates which of the five members will serve as chair, and that member serves as chair at the Governor's pleasure.

The State Water Board appoints an executive director who oversees the day-to-day operations of the State Water Board. The limitations on the executive director's power are largely spelled out in delegation resolutions adopted by the State Water Board.

California Regional Water Quality Control Boards

With respect to water quality, California has long-recognized that regional differences in climate, hydrology, and population warrant dividing the State into regions. Presently there are nine Regional Water Boards—North Coast, San Francisco Bay, Central Coast, Los Angeles, Central Valley, Lahontan, Colorado River Basin, Santa Ana, and San Diego. Their responsibility is to protect beneficial uses of water within their respective boundaries.

Each of the nine Regional Water Boards has nine gubernatorial appointees, subject to senate confirmation, who serve staggered four-year terms. The Regional Water Board members must have a connection to the region either by residing or having a principal



place of business within the region. While members must act on behalf of all the people, they are drawn from various backgrounds. These backgrounds are reflected by association with different categories of water use or discharges to water. Current associational categories are for:

- (1) water supply, conservation, and production;
- (2) irrigated agriculture;
- (3) industrial water use;
- (4) city government;
- (5) county government;
- (6) nongovernmental organization associated with recreation, fish, or wildlife;
- (7) two positions for members with special competence in water quality; and
- (8) a member of the public.

The Regional Water Boards select an executive officer, who carries out the day-to-day responsibilities of each Regional Water Board. Many powers of the Regional Water Boards can be exercised by the executive officers. The powers reserved to the Regional Water Boards, themselves, are the power to:

- (1) adopt regulations;
- (2) issue, modify or revoke water quality control plans, water quality objectives, or waste discharge requirements;
- (3) issue, modify, or review any cease and desist order;
- (4) hold a hearing on a water quality control plan; or
- (5) apply to the Attorney General for judicial enforcement.

The Regional Water Boards and their executive officers have primary responsibility for carrying out the federal Clean Water Act and the state's Porter-Cologne Water Quality Control Act within their regional boundaries. Initially, the Regional Water Boards establish water quality control plans for all waters within their region. These plans identify the beneficial uses of water that must be protected. To protect these uses, the plans also specify water quality objectives, which identify the water quality necessary to protect the various beneficial uses. Water quality protection and enhancement in California primarily occurs through cleanup orders, other enforcement orders, and waste discharge requirements issued by the Regional Water Boards. These orders and requirements animate the water quality control plans.

Water Supply

California's governance structure for water quality and water supply issues has evolved over the last half century to address conflicting demands. With respect to water supply, there have been demands for fairness and independence in the allocation of appropriative rights among competing interests. Over time, this goal of fairness has resulted in the State separating its planning and infrastructure for water supply from its adjudication of water rights.



Today, the Department of Water Resources has primary responsibility for planning, building, and maintaining California's water supply infrastructure. The State Water Board has the regulatory responsibility for allocating appropriative water rights, within constitutional and statutory bounds, among the various persons claiming water rights. The State Water Board also has primary responsibility for enforcing the constitution's prohibition against the waste or unreasonable use of water and protecting the public trust—all of which have water supply implications.

State and Regional Water Board Interaction and Governance

The State Water Board not only sets state policy for water quality control, but also oversees Regional Water Boards to assure that they follow the Porter-Cologne Act and consistently comply with state policy for water quality control. While the Regional Water Boards are separate state agencies from one another and the State Water Board, they are only semi-autonomous. First, Regional Water Board plans and guidance documents cannot take effect unless approved by the State Water Board. Second, virtually all orders of the Regional Water Boards are subject to State Water Board review, either by petition of an aggrieved person or upon the State Water Board's own motion. Third, the State Water Board has responsibility for allocating budgetary resources among itself and the nine Regional Water Boards. Fourth, the State Water Board must furnish legal services to the Regional Water Boards.

The State Water Board's authority over virtually all aspects of Regional Water Boards provides a mechanism to implement consistent state policy. That authority, however, is not as direct as the State Water Board carrying out policy through a monolithic agency model. While it can establish policies that the Regional Water Boards must follow, the State Water Board is ultimately in an error correction role if a region deviates from established policy or embarks upon a policy direction that the State Water Board finds inappropriate.



Enclosure 2: Existing Authority and Accountability Measures

Authority of the State Water Board

While the Regional Water Board system vests each of the nine Regional Water Boards with a substantial decision-making role, it also provides much of the ultimate authority over the water quality control programs to the State Water Board.

The State Water Board exercises multiple forms of control over the nine Regional Water Boards. The Regional Water Boards act in two primary ways: quasi-legislative actions, including the adoption of total maximum daily loads (TMDLs¹) and amendments to beneficial uses of water and water quality objectives contained in regional water quality control plans; and quasi-adjudicative actions, including the adoption of waste discharge requirements, cleanup and abatement orders, cease and desist orders, and administrative civil penalties. No quasi-legislative action by a Regional Water Board is effective unless affirmatively approved by the State Water Board. If a Regional Water Board fails to satisfactorily amend its water quality control plan, the State Water Board, itself, may amend the Regional Water Board's water quality control plan.

All Regional Water Board quasi-adjudicative actions are subject to the State Water Board's authority via petitions for review filed by aggrieved persons, as well as by the State Water Board's own motion review at any time. Upon review by the State Water Board, the State Water Board may issue an order that upholds the Regional Water Board's action, remands the matter to the Regional Water Board with directions, or takes a different action. The State Water Board designates most of these orders as precedential orders, which makes them binding on all of the Regional Water Boards. For both quasi-legislative actions and quasi-adjudicative actions, the State Water Board is not limited to correcting errors by the Regional Water Boards. To the contrary, the State Water Board may also substitute its own judgment on technical and policy issues.

In addition to reviewing and approving or overruling Regional Water Board actions, the State Water Board also takes its own formal actions in the first instance. These actions are binding upon the Regional Water Boards. For example, the State Water Board can adopt its own water quality control plans, which supersede any conflicting regional water quality control plans. The State Water Board also has broad authority to adopt state policies for water quality control, and the Regional Water Boards are obligated to comply with those policies.

¹ Under the federal Clean Water Act, states have a responsibility for identifying waters that are not meeting water quality standards established pursuant to the Act and then developing plans (known as TMDLs) to bring those water bodies into compliance with the Act. TMDLs provide an important backstop, when other provisions of the Clean Water Act have failed to achieve the Act's goals.



The State Water Board also exercises authority over the Regional Water Boards in less obvious ways. The State Water Board has budgetary control over the Regional Water Boards. This allows the State Water Board to identify statewide water quality priorities, such as TMDLs and enforcement, and reallocate Regional Water Board funding to those program areas. It also allows the State Water Board to shift resources between Regional Water Boards to the extent it deems appropriate.

The State Water Board's Office of the Chief Counsel also provides the legal counsel to each of the nine Regional Water Boards. This allows the State Water Board to provide consistent legal advice to the nine Regional Water Boards, even on the highly complex water quality legal issues that routinely arise. Closely related to consistent legal advice, the State Water Board also maintains a Training Academy to provide consistent training to State and Regional Water Board staff.

Finally, the State Water Board has developed a system of staff roundtables for its major programs. These roundtables include management staff from the State Water Board and each of the Regional Water Boards, and work on areas of developing policy and consistency, including such initiatives as statewide permit templates. Likewise, State and Regional Water Board members meet collectively as the Water Quality Coordinating Committee to provide a forum and dialog on common water quality issues across the state.

Accountability of the Regional Water Boards

Due to its automatic involvement in the approval process, the State Water Board is naturally positioned to know about all quasi-legislative actions by each of the Regional Water Boards. Historically, the State Water Board has largely relied upon aggrieved parties and other interested stakeholders and partners to bring issues about Regional Water Board quasi-adjudicative actions to its attention. The State Water Board has, from time to time, assigned staff members the responsibility for conducting program audits of the Regional Water Boards, but that function has, to a large extent, suffered from budget constraints.

Finally, there are a fair number of less formal communication and feedback conventions in place between the State Water Board and Regional Water Boards. These include monthly meetings between the top management of the State Water Board and the Regional Water Boards, regular meetings between the Chair of the State Water Board and the chairs of the Regional Water Boards, and semi-annual meetings of the Water Quality Coordinating Committee, which is comprised of all of the members of the State Water Board and the Regional Water Boards. All of these conventions provide an opportunity for the State Water Board to communicate its expectations and directions to the Regional Water Boards, and for the Regional Water Boards to report back to the State Water Board.



Enclosure 3: Biography of Tam M. Doduc

Tam Doduc serves for Governor Schwarzenegger as Chair of the State Water Resources Control Board. She previously served as Deputy Secretary at the California Environmental Protection Agency (Cal/EPA), where she directed the agency's environmental justice and external scientific peer review activities.

Ms. Doduc began her career as an environmental consultant. She then joined the staff of the State Water Resources Control Board and, later, the California Air Resources Board. From 1998 to 2002, Ms. Doduc provided technical and business assistance to environmental technology developers and manufacturers, serving in the Office of Environmental Technology and, later, as Cal/EPA's Assistant Secretary for Technology Certification. From 2002 to 2004, Ms. Doduc served as Cal/EPA's Assistant Secretary for Agriculture, Air and Chemical Programs.

A licensed civil engineer, Ms. Doduc earned a Bachelor of Science in BioEngineering from the University of California at Berkeley, and a Master of Science in Civil Engineering from the California State University in Sacramento. She also holds a Master of Business Administration from the University of California at Berkeley.

