

TOUGH LOVE OR FINE-TUNING STRUCTURAL CHANGES TO THE STATE AND REGIONAL WATER BOARDS

By Craig M. Wilson

- I. What Is Right About the Water Boards? Plenty.
- * The Mission Is Sound: To exercise the regulatory and adjudicatory powers of state in the field of water resources (Cal. Wat. Code § 174).
 - * Overall Structure Is Sound: Regional approach/statewide coordination.
 - * Transparency of Operations Should Not Be Modified.
 - * Authorities to Accomplish the Mission Are Ample.
 - Authority to prevent the waste or unreasonable use of water (Cal. Const., art. X, § 2; Cal. Wat. Code § 275).
 - Authority to protect the public trust (*Audubon* Case: Mono Lake).
 - Regulation of waste discharges to waters of the state to attain the highest reasonable water quality (Porter-Cologne Water Quality Control Act, Cal. Wat. Code § 13000 et seq.).
 - * Board Implementation of Broad Authority: Ability to make adaptive change and determine what is reasonable.
 - * In the Past, Water Boards Have Exercised Their Authorities In a Forward-Looking, Proactive Manner.
 - 1968: Non-Degradation Policy
 - 1972: Ocean Plan
 - 1974: Areas of Special Biological Significance
 - 1977: Water Conservation and Reclamation Policy
 - 1978-95: Bay-Delta Plans
 - 1970's: Basin Plans for All Regions
 - 1970's/1980's: Federal Facilities: New Melones (1973 and 1978) and Kesterson (1985)
 - 1988: Sources of Drinking Water Policy

- 1991: Inland Surface Water Plan
- 1992: Groundwater Cleanup Policy
- 1994: Mono Lake Decision: D-1631
- 1996: Enforcement Policy

II. Have the Water Boards Gone a Bit “Off Mission”? Yes.

- * Not Many Forward-Looking Policies In Last Decade.
- * Why? Too much time spent on an overwhelming caseload of individual matters: permits, enforcement actions, State Board review of Regional Board actions.
- * What Areas Are Not Being Adequately Addressed?
 - Global Warming
 - Salinity
 - Bay-Delta
 - Stormwater
 - Show-Me-the-Water Issues
- * The Solution: Refocus the Board Members on forward-looking policies and let the staff deal with individual cases.

III. Specific Recommendations on Structural Changes that May Help the Water Boards Refocus: Strong Chair/Strong Executive Approach.

- * Free Board Members Up to Do Proactive Stuff.
- * Executive Director (State Water Board) and Executive Officers (Regional Water Boards).
 - Give them authority to deal with individual actions: Issuance of permits, enforcement actions, petitions for review of Regional Board actions.
 - Require that Executive Directors and Executive Officers have specific, broad-ranging water expertise.
 - Administrative Law Judges for adjudication.
- * State Water Board Members.

- One full-time Chair; four part-time Members (Air Board model).
- Require additional, broad-ranged expertise for Chair.
- Strong Chair will assist refocusing.
- Modify eligibility-to-serve restrictions: the 10% rule.
- * Regional Water Board Members.
 - One full-time Chair; six part-time Members.
 - Modify eligibility-to-serve rules.
 - Require expertise similar to Perata proposals (SB 1176).
 - Too much to do for an all part-time Board.

IV. Conclusion.

- * Water Boards Are Not Dysfunctional.
- * Need to Refocus on Policy-Setting Actions.
- * Structural Changes Can Help Refocus.

REGULATION OF WATER QUALITY IMPACTS OF DAIRY OPERATIONS

- * The Water Boards Have Chartered a Balanced and Reasonable Approach in this Area.
- * Centerpiece: 2007 Adoption by Central Valley Water Board of a General Order (Waste Discharge Requirements) of Existing Milk Cow Dairies: This is an example of a forward-thinking action.
 - Regional Board and its Executive Officer should be commended.
- * Order Is Unprecedented in Its Breadth of Coverage.
 - 1,600 dairies covered.
 - Dairies required to prepare and implement detailed Waste Management and Nutrient Management Plans.
 - Many detailed requirements implemented on specific time schedule.
- * Environmentalists Unhappy and Have Sued, Whereas, in My Opinion, They Should Have Declared Victory.
 - Two Lawsuits: The only contention of one is that the Order should have been adopted under federal law, not state law. The other says the comprehensive new requirements do not rise to the level of best practicable control technologies.