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STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION  
WEDNESDAY, APRIL 10, 2013  
ITEM 8, VOLUME I  
WATER QUALITY CONTROL BOARD  
BOARD MEETING ROOM  
9174 SKY PARK COURT  
SAN DIEGO, CALIFORNIA

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A P P E A R A N C E S

CHAIRPERSON: Tomas Morales

VICE CHAIR: Gary Strawn

BOARD MEMBERS: Henry Abarbanel  
Eric Anderson  
Sharon Kalemkiarian

EXECUTIVE STAFF: David Gibson, Executive Officer  
James Smith, Assistant Officer  
Chris Witte, Executive Assistant

STATE BOARD COUNSEL: Catherine Hagan

STATE BOARD MEMBER  
LIAISON: Frances Spivy-Weber

ALSO PRESENT: Wayne Chiu  
Christina Arias  
Laurie Walsh

1	I N D E X
2	
3	ITEM NO. 8
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5	SPEAKERS
6	Roger Butow
7	Wayne Chiu
8	Doug Liden
9	Mary Anne Skorpanich
10	Todd Snyder
11	Mikhail Ogawa
12	Kris McFadden
13	Shawn Haggerty
14	Drew Kleis
15	Heather Stroud
16	Christine Sloan
17	Jo Ann Weber
18	Richard Boon
19	Ryan Baron
20	Scott Taylor
21	Nancy Palmer
22	Chris Haynes
23	Roger Butow
24	Christine Mailloux
25	Livia Borak

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I N D E X (Continued)

Item No. 8

SPEAKERS

- Julia Chunn-Heer
- Matt O'Malley
- Paloma Aguirre
- Allison Prange
- Alison Hindley
- Lyle Beller
- Sandra Moore
- Jamie Ortiz
- Harry Orgovan
- Jim Peugh

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SAN DIEGO, CALIFORNIA

WEDNESDAY, APRIL 10, 2013, 8:32 A.M.

Moving on, Item No. 8 -- let's see, I have a statement with respect to Item No. 8, which is what we're all here for. And bear with me, because it is somewhat lengthy.

This is the issuance of -- a hearing on the issuance of an NPDES permit waste discharge requirements, our MS4 Tentative Order No. R92013001. This is a time for a public hearing on Tentative Order R92013001, issuance of an NPDES permit and waste discharge requirement for discharging from the municipal separate storm sewer system draining the water sheds within the San Diego region.

The purpose of this hearing is for the Board to hear testimony and comments about the tentative order from staff, U.S. EPA, the co-permittees and their elected officials, environmental organizations, the building industry and other interested persons about the proposed permit and issues that concern them.

Now, before we go any further, I do have a couple of announcements. I want to let everyone know that for planning purposes, tomorrow, the Board will take an extended hearing (sic) beginning at approximately 12:30 to resume at 3:00. And the reason for that is, you know,

1 something that I must apologize for.  
2 The Court of Appeal in our local venue here in San Diego  
3 has scheduled a hearing that I will be arguing in front of  
4 them. And the three justices make their scheduling  
5 decisions not far enough in advance to have worked around  
6 tomorrow's hearing.

7 So there will be a short break so that I can go  
8 and argue a matter in front of the Court of Appeal. And I  
9 will return as quickly as possible after that is heard.

10 We're expecting a large number of participants  
11 today, so we're going to hear from as many members of the  
12 public representing different affiliations and positions as  
13 possible, starting at 4:00 p.m. We'll continue until 7:00,  
14 if necessary. So that should give us plenty of time to  
15 deal with folks that show up. And if a lot of folks don't  
16 show up, we'll break well before 7:00.

17 But due to time constraints, we may not be able  
18 to hear everyone wishing to speak or may have to reduce the  
19 time allowed for interested persons. So I encourage any of  
20 you that are interested persons and have similar comments  
21 to choose a representative to speak on your -- your  
22 coordinated or joint behalf as much as possible. And  
23 unless we decide otherwise, based on a high volume,  
24 interested persons will have three minutes to speak. But  
25 we will allow extra time if you take us up on our request

1 that one person speak on behalf of a number of you.

2 In addition, to maximize public participation,  
3 the Board has prepared sign-up position sheets, and I think  
4 you guys probably saw those as you were coming in so, you  
5 know, if you have not and you would like to, you can sign  
6 up to support or oppose a tentative order and we will use  
7 that to help better understand your positions.

8 They will be part of the record for any decision  
9 in this matter. And remember that, for the most part, the  
10 written comment period for this tentative order is already  
11 closed. So don't use the position sheets or speaker cards  
12 to elaborate on what you do or do not like about the permit  
13 in written form.

14 This is just an opportunity for someone,  
15 generally, opposed or in favor of the tentative order to  
16 make their viewpoint known without needing to orally  
17 address us. Finally, if you have not already done --  
18 finally, if you haven't already, people wishing to address  
19 us, do fill out the speaker cards and hand it to the  
20 Board's executive assistant. They help us in a number of  
21 ways. We organize them so that we're able to call you up,  
22 and they also allow us to estimate how much time is going  
23 to be necessary for the speakers. So please be sure to  
24 write your name legibly so we have an accurate record of  
25 the participants.

1                   Now, a little bit of housekeeping. Yesterday  
2 board members received copies of a letter from the region's  
3 state legislative representatives requesting that the Board  
4 postpone action on the tentative order. We also received  
5 copies from congressional representatives in the region EPA  
6 concerning the tentative order.

7                   The Board is allowing these letters, which are  
8 essentially policy statements, into the record. We're not  
9 accepting other late letters from parties and interested  
10 persons raising procedural objections and reiterating  
11 request for postponement, but will take up oral procedural  
12 objections on that in a few moments.

13                   We've placed about 30 copies of the legislators'  
14 letters at the back of the room for anyone interested. And  
15 I do want to make it really clear that we appreciate the  
16 legislators' attention to the very important issues that  
17 we're tasked with resolving in this order.

18                   We're going to proceed with the hearing today and  
19 tomorrow as outlined before and as I've just talked about.  
20 And I do, however, anticipate that at some point tomorrow,  
21 the Board will determine whether to go ahead and take  
22 action tomorrow or, instead, postpone action until May in  
23 order to hear more focused discussions on one or more  
24 discrete issues.

25                   In the event that we do postpone the action for a

1 month, we'll narrowly and clearly define what topics we  
2 want to receive further attention. We're going to conduct  
3 this hearing as outlined in the revised hearing procedures  
4 that we issued on April third. And the revised procedures  
5 and order of proceedings set forth the order of speakers  
6 for this item and allocate blocks of time to board and  
7 staff parties to this proceeding. We set a time certain to  
8 hear from the public as interested persons and also for  
9 elected officials.

10           Because of the importance of the issues, the  
11 number of speakers and requests for time, we scheduled the  
12 hearing for two days. I expect we'll make a fair amount of  
13 progress today with the time we have. And since we're  
14 going to hear from interested persons from 4:00 to 7:00.

15           Now, we'll begin tomorrow morning at our normal  
16 time, 9:00, but we do have a time certain for elected  
17 officials at 9:15. And we will begin at 9:15, or if  
18 elected officials are here and wish to begin sooner and we  
19 have already convened a meeting slightly sooner.

20           Now, the revised hearing procedures identified  
21 the parties, in addition to all the co-permittees who are  
22 going to be participating in this proceeding. The Board  
23 allocated blocks of time in which the parties -- or  
24 identified groups of parties that must complete their  
25 presentations to the Board.

1                   Now, within your blocks of time, the parties are  
2 to be permitted to restate procedural objections, make  
3 opening and closing statements and arguments, testify,  
4 submit evidence, cross-examine other party witnesses and  
5 offer rebuttal testimony.

6                   Staff and counsel have received some requests for  
7 individual parties to have additional time to make  
8 individual presentations. As I mentioned, we received  
9 several late procedural objections and requests for  
10 postponement. Although the Board has already issued  
11 rulings on some of these objections, we will go ahead and  
12 take these up now.

13                   I understand there is someone who is going to  
14 speak on behalf of the co-permittees on these recent  
15 procedural points.

16                   JAMES O'DAY: Thank you, Mr. Chairman. James  
17 O'Day, with County Counsel for County of San Diego. And I  
18 also brought some backup if the Board will allow, Ryan  
19 Baron representing Orange County and David Burhead  
20 representing the Riverside County group.

21                   I appreciate the opportunity to let us put these  
22 objections on the record. I know we have lawyers on this  
23 panel and you know that there are -- in a proceeding such  
24 as this, where the possibility exists for appeal, there are  
25 certain procedural niceties that we have to cover, as

1 lawyers, on behalf of our clients.

2           And I greatly appreciate your counsel's  
3 cooperating and actually responding to all my barrage of  
4 letters and e-mails recently. She's a true pro. And I  
5 also appreciate our executive officer and the staff in this  
6 whole process.

7           But we're here to move to this panel, and we'd  
8 like a ruling on that, that the hearing be postponed. We  
9 don't do this lightly, and we don't do it flippantly and we  
10 don't do it as a lawyering thing. I want to emphasize  
11 that.

12           Because I'm thinking back to a year ago in April,  
13 we started this process. And much to our amazement  
14 perhaps, or skeptics such as me, we were thrilled with the  
15 workshop process that your board engineered and staff and  
16 Executive Officer Gibson put a lot of time into.

17           And as you know, we had a series of workshops.  
18 They were focused, we had a facilitator, and we had plenty  
19 of time between those events to digest the specific  
20 portions of the permit and prepare for those events,  
21 focused on certain topics.

22           Your staff spent a lot of additional time meeting  
23 with various interested parties over and above what we  
24 probably would have or could have expected. They were  
25 courteous, they were engaged, they were professional. And

1 we appreciate that.

2           So we're not here looking to -- to damage what  
3 has been a truly collaborative effort throughout these past  
4 12 months. However -- and here's the however -- we're  
5 really -- we're standing here wondering why. And we're  
6 wondering why, after having plenty of time to do all these  
7 other events and in between the workshops and giving  
8 everyone time to digest changes to the tentative order, why  
9 we have only eight business days from March 27th in order  
10 to digest what we feel -- and we'll talk about that in a  
11 moment -- are significant changes to the tentative order  
12 and revised tentative order. And we just don't have time  
13 to be properly prepared and engaged.

14           And we also think if this hearing were postponed  
15 for a short of time as to the May hearing, we would have  
16 the opportunity to understand some of the changes. Quite  
17 frankly, there are some changes made we just don't  
18 understand. And I know staff does not have time with  
19 preparing for this hearing, just as we don't have time to  
20 sit down and vet out and get a better understanding of what  
21 some of those changes mean and also to give feedback to  
22 staff as to why we think some of the changes might be good,  
23 why we think some of them not might not be so good.

24           And so we are compelled to make this motion. And  
25 we ask you to rule on that. And in the event that the

1 ruling is to go ahead and proceed with the hearing, which I  
2 think I'm hearing from the chair, we believe that's in  
3 violation of our procedural due process rights. It's done  
4 under protest. And we will be participating here today,  
5 but participating under protest as to the hearing, the  
6 hearing procedures and, perhaps, any eventual outcome of  
7 the hearing, because we just have not had time to do what  
8 we need to do to protect our interest and prepare.

9           And I'm going to continue a little bit. I've got  
10 a couple of statistics, because one of the comments made in  
11 response to the request for a postponement was these were  
12 really just kind of routine changes made in response to the  
13 comments, that they were natural outgrowths of those  
14 comments.

15           I -- one of our people at the County put together  
16 a little statistic -- set of statistics. Forty percent of  
17 the pages in the prior tentative order had significant  
18 changes to them. And by "significant," we mean at least 20  
19 percent of the content on each page.

20           When you take the edits from the prior version of  
21 the tentative order to the current version of the tentative  
22 order and put them into one document, it would be over 24  
23 pages of significant content.

24           The current permit, the permit that's under  
25 consideration today has 12 percent more content if you do

1 it based on a word search. Some interesting stats for you.  
2 But more importantly than that, there are significant  
3 changes.

4 As you know, it's -- there's been a feature added  
5 to the land development standards for a hundred percent  
6 wood removal. Many of the co-permittees -- and I'm sure  
7 you'll hear presentations on that today -- believe that it  
8 is infeasible.

9 We would have liked to have had the opportunity  
10 to vet that out and understand the reason why that was put  
11 in the permit. I don't think it was discussed to any  
12 degree prior to this change having been made. I could be  
13 wrong about that, I wasn't involved in every portion of  
14 that that but I believe that's the case, that it's a brand  
15 new feature and it's a significant new feature.

16 In addition, we have added the water quality  
17 improvement consultation panel concept. And there are some  
18 features of that, specifically with veto power, in our  
19 view, over certain proposals for the water quality  
20 improvement plans that have been added to the permit.  
21 That's a significant situation for us, and we would like  
22 the opportunity to vet that out with board staff. And we  
23 would like a better opportunity to understand why that  
24 feature was put in the permit.

25 And there are other -- if I sit and look at the

1 red line of the revised tentative, it's very red. And so  
2 we urge the Board to perhaps reconsider. I know there is a  
3 lot of people here today that have come from other places.  
4 But I think all the co-permittees and perhaps many or the  
5 parties would still welcome the time to have some  
6 interaction with staff and to be properly prepared and to  
7 get their questions answered in a meaningful way.

8 We have also raised some -- and I'll finish up  
9 soon. We've also raised some objections to the hearing  
10 procedures and we have -- we have passed out a written  
11 submittal on this. I don't want to go over it in great  
12 detail, but Title 23 of the California Code of Regulations  
13 647 and following, discuss how these procedures work, as  
14 well as various provisions of the Administrative Procedure  
15 Act.

16 One of the things that we object to is placing  
17 unreasonable time limits on the permittees. I understand  
18 that the Board has added an hour for the three principal  
19 County co-permittees. That's a total of four hours. If  
20 you were to carve that up just in equal pieces, that's  
21 about 80 minutes for each group. There are 21  
22 co-permittees, for instance, in the San Diego county  
23 co-permittee group alone.

24 I know not all those have asked for time, but  
25 some have asked for time. And we were left with the eight

1 days -- business days that we had to do what we needed to  
2 do to also try to negotiate among the parties how we were  
3 going to carve that time up. And that was not an easy  
4 process. And so we find that to be inequitable and find  
5 that to perhaps be a violation of those hearing procedures.  
6 We think we should be given more time.

7           There was a ruling made on limiting questioning.  
8 And there are government code provisions, 11465.30,  
9 11425.10 and 11513 that give us the right to question  
10 regional board staff. The reason I'm raising this is  
11 because I think there was a provision in the revised  
12 hearing procedures that talked about staff not being a  
13 party.

14           In exchanges with your counsel, it appears that  
15 this objection may not need to be made if we can receive a  
16 confirmation that we would be permitted, if we elect, to  
17 question regional board staff. It sounds like that may  
18 be -- that the intent of the designation of them not a  
19 party was not intended to limit that right, but we would  
20 ask for confirmation of that.

21           And let me tell you who may question. I think  
22 we've been directed to funnel all of our questions into one  
23 party who will be the person doing the questioning. That  
24 raises some issues among the co-permittees about who's  
25 going to do that and people being able to protect their

1 individual clients' rights. And, as lawyers, that causes  
2 us some concern. We think that is improper.

3           So for all of those reasons, we're really --  
4 we're asking that the hearing process be continued and  
5 asking that you make rulings on the following items;  
6 continuing the hearing to at least May, and once again, if  
7 the hearing is not going to be continued, we reserve all of  
8 our rights with regard to our objections to procedure and  
9 objections to the manner of proceeding in what we believe  
10 would be a violation of our procedural due process rights.

11           We ask for confirmation that the permittees have  
12 the ability to question regional board staff. I just  
13 mentioned that. We ask that you confirm that each  
14 permittee does not have to repeat issues raised by other  
15 parties or interested persons in order to exhaust  
16 administrative remedies.

17           We all have a concern that, for instance, if  
18 Orange County has made some particular comments or  
19 objections, that San Diego County also would join in. We  
20 don't want to spend the hours that it would take being  
21 totally redundant about all of that.

22           We -- our understanding of proper procedure would  
23 be that if any parties to the proceeding have raised issues  
24 or made comments or criticism that, on appeal, if there is  
25 an appeal, that we have the ability to pursue that right.

1 We would like a confirmation of that so that we don't have  
2 to demand even more time to have redundant repetitions of  
3 some of the comments and objections.

4 We would like you to consider, and we move for a  
5 ruling on having any rebuttal time not be considered part  
6 of the block of time that you have allocated for the  
7 co-permittees. We think that we, at best, are very  
8 constrained, and prejudicially constrained with amount of  
9 time given. But if we also are not able to have whatever  
10 rebuttal time we might need in addition to that time, we  
11 think that is unfair and violates our procedural due  
12 process rights.

13 We'd also ask you to allow the permittees  
14 separate time to ask questions of the regional board --  
15 this is the same concept that that time would not count  
16 against our allocated time, whatever that may be. At this  
17 point, it's four hours.

18 We also -- one kind of final procedural  
19 objection. To the extent that the Board will eventually  
20 make findings, as you're required to do before the final  
21 determination and adoption of the permit, we would remind  
22 the Board that those findings cannot be supported by  
23 hearsay evidence. They have to be supported by non-hearsay  
24 evidence. And we'd like -- I don't think we have to keep  
25 bringing that objection up. We're bringing it up at the

1 beginning of the process, just to put that on the record.

2 And I -- my colleagues may have a couple of  
3 separate independent brief objections on behalf of their  
4 clients. So I will defer to them at this point. Once  
5 again, I thank for your consideration. We really do want  
6 to continue the collaborative process. It's worked  
7 fabulously up until this point, but something went awry, in  
8 our mind, on March 27th.

9 CHAIRMAN MORALES: Thank you.

10 MR. BURHAM: Good morning, Chairman Morales,  
11 members of the Board. My name is David Burham and we have  
12 the privilege of representing the Riverside County  
13 co-permittees today. I want to just join in the objections  
14 made by Mr. O'Day and I have further objection and, perhaps  
15 better stated, reservation of rights which is joined in by  
16 the Orange County co-permittees.

17 As noted in our written comments, we have --  
18 Riverside County co-permittees have an objection to the  
19 adoption by this board of a regional permit covering  
20 permittees in three counties with multiple completely  
21 separate nonadjacent MS4 systems.

22 In addition, Riverside County co-permittees have  
23 not filed reported waste discharge and there is no active  
24 permit proceeding involving these co-permittees. We  
25 understand that a report of waste discharge will be

1 required under current permit which we believe opens up all  
2 issues, potentially, that would be covered by this permit.

3           As a result of -- I'm not going to go into these  
4 objections. I'm trying to save everyone's time here. From  
5 the start of these proceedings, the Riverside County  
6 co-permittees objected to the adoption of the regional  
7 permit. We participated in all proceedings, including the  
8 workshops, under that reservation of rights. That  
9 reservation, which we renew today, is that while we have  
10 participated in the permit development process and will  
11 testify today, that participation does not waive our  
12 objection to issuance of the regional permit and we  
13 continue to reserve the right to challenge that issuance if  
14 the Board so adopts.

15           One final issue -- and I want to first echo Jim's  
16 lauding of your client -- of your counsel, Miss Hagan,  
17 she's a great lawyer, provides great service. I just want  
18 to note that the California Administrative Procedure Act  
19 and California case law, most notably the Nightlife  
20 Partners case, does require that there be separate advice  
21 to the adjudicator and the agency in and adjudicative  
22 hearing.

23           And to the extent that counsel participates,  
24 basically, on both sides of that line, as counsel to staff  
25 and as counsel to the Board, we believe that that would be

1 a violation of the APA and also the principles elucidated  
2 in case law. So we object to that to the extent it is  
3 relevant today. I just wanted to put that on the record at  
4 this time.

5 Thank you very much.

6 RYAN BARON: Hi, I'm Ryan Baron on behalf of  
7 County of Orange. We join in the objections of San Diego  
8 and Riverside counties.

9 Thank you very much.

10 CHAIRMAN MORALES: All right. Here's what we're  
11 going to do with respect to all of these things. As I  
12 mentioned, we are going to proceed with the hearing. The  
13 decision as to whether we hear more and postpone the  
14 decision for a month will be made tomorrow.

15 It is my hope that given the collaborative  
16 process that we have all engaged in, and the information  
17 that's going to be exchanged in the next day or two, that  
18 any concerns about not understanding or feeling that you  
19 have not had time to properly look at the changes that were  
20 made to the last tentative order will be allayed.

21 MS. KALEMKIARIAN: May I just ask a question?

22 I should also make a disclosure. My disclosure  
23 is -- which I should have made first -- I'm a member of the  
24 Board of Environmental Health Coalition, and I noted there  
25 had been a letter submitted in support of that permit. I

1 did not participate in that letter and haven't participated  
2 in any conversations about the permit. But I wanted that  
3 to be on the record.

4 Now you probably need to ask me --

5 CHAIRMAN MORALES: Yeah. And for any other board  
6 members, we'll get to disclosures once we get through this  
7 process.

8 MS. KALEMKIARIAN: Then I can --

9 MS. HAGAN: You want to follow up when we do other  
10 disclosures?

11 MS. KALEMKIARIAN: That's fine. Doesn't matter to  
12 me.

13 Is it possible, if we do postpone -- not postpone  
14 the hearing today, but continue, basically, in May with  
15 more -- to receive more information, can we reopen the  
16 written comment period to receive comments on the changes  
17 or not?

18 MS. HAGAN: You have the right to reopen the  
19 comment period. That's -- the Board has complete  
20 discretion to do that. The timing would be the factor in  
21 that case, because the obligation -- both to allow the  
22 parties to formulate written comments, allow the staff to  
23 review them, there is an obligation with a federal permit  
24 like this to have responses to comments completed when the  
25 Board takes action.

1           So you would need to build in time to allow all of  
2 those things to occur.

3           MS. KALEMKIARIAN: And can the request for  
4 comment -- I took note of Chairman Morales saying well,  
5 maybe we would limit the focus of the testimony. Can that  
6 also be done with written comment?

7           MS. HAGAN: Yes.

8           CHAIRMAN MORALES: So going back to the rulings, I  
9 have stated that the decision on whether to postpone  
10 anything to May will be made tomorrow, depending on how  
11 today and tomorrow go.

12           Now, what I am going to request of the parties,  
13 since one of the concerns is that you all don't feel you  
14 may have enough time, is after you finish your  
15 presentations, if you feel that, for whatever reason, you  
16 have not had enough time to put your position forward,  
17 please let us know and state with specificity why and what  
18 it is that you might have wanted to talk about. Because  
19 you know I really don't like dealing in generalities, so  
20 give us specifics, folks. That will help you and it will  
21 help us.

22           Now, with respect to the questioning of staff,  
23 staff is not parties, and it was originally our intent not  
24 to allow questioning of staff. We are going to allow it to  
25 give you an opportunity to get better educated because we

1 feel it will help the process along, not because we feel  
2 necessarily that they are parties for whom -- of whom you  
3 have the right to ask questions.

4           So I will caution that you should probably keep  
5 your questions civil, directed, and with an eye towards  
6 getting the information you need, as opposed to simply  
7 getting a point onto the record. If I find that the  
8 questioning appears to be getting a little out of hand, I  
9 will cut it off. I don't believe that will be the case,  
10 but that is a prerogative that I'm going to retain.

11           Now, it isn't, as requested, necessary for each  
12 party to raise an issue in order to exhaust your  
13 administrative remedies. But I would -- so that is the  
14 ruling. But along with that, I'd ask that since you don't  
15 have to raise an issue in order to exhaust your  
16 administrative remedies, don't feel obligated to repeat  
17 issues that have already been raised either. So we'll be  
18 good with the information once, I think.

19           Now, we have already ruled on the amounts of time  
20 allotted to groups and parties. And we believe they're  
21 reasonable, given the extensive public process that has  
22 already occurred and the foundation of knowledge and  
23 information that you have and that's been shared.

24           So we're going to proceed with the time  
25 requirements that we have laid out. However, again, to

1 the extent you feel more time is necessary at end of your  
2 presentation, so state, and state with specificity as to  
3 why or how you feel you did not have enough time. You  
4 know, if you all are able to get it done, which, you know,  
5 I think you will, then -- I understand the lodging of  
6 objections, but it won't be an issue.

7           There, I guess, was a question whether, you know,  
8 questioning of other parties or staff on cross, for  
9 example, counts against your time. Yes, it does. I think  
10 we'll be fine. We have got, you know, two days to deal  
11 with this complicated issue, but it's not only two days  
12 that will be spent dealing with this issue.

13           We have had previous hearings, and I think once  
14 it's laid out how many public forums and meetings have been  
15 held for this whole process, we may all realize that, yeah,  
16 I think more than just about any other decision in the past  
17 collaborative process was in full force here.

18           So I think with that -- let me check my notes.

19           I noted that -- I noted the objection with respect  
20 to findings. And I also noted the objection by the  
21 counties of Riverside and San Diego with respect to the  
22 region-wide permit and its impact on them. I think that  
23 will be part of that presentation on both sides that we'll  
24 have more information about -- Riverside and Orange.  
25 Apologies. Not San Diego.

1           And there were couple of things said about our  
2 counsel, the praise of our counsel I'm in complete  
3 agreement with and, you know, uphold and. The objection is  
4 noted.

5           MS. HAGAN: May I respond to the objection  
6 briefly, just for the record? And, actually, before I do  
7 that, just on the issue of raising issues below to exhaust  
8 your administrative remedies, I agree that you don't need  
9 to specifically raise the issue. But if it's important to  
10 you to have the record clearly state that you agree with  
11 someone else's issue, you're free to indicate that you join  
12 in someone's comment without repeating the comment, as you  
13 probably know. But --

14           And then on the separation of functions issue,  
15 this is a permit proceeding, it's not a prosecutorial  
16 proceeding. The APA does require separation of functions  
17 of the investigative, prosecutorial and advocacy functions.  
18 I think it should be pretty clear in this case that the  
19 staff is here to advise you. They're not advocating a  
20 particular point of view. Likewise, counsel are not  
21 advocating a particular point of view and there's not been  
22 any investigation or prosecution of this permit proceeding,  
23 so we have not separated functions, but --

24           Similarly, I don't intend to do any  
25 cross-examination of parties or make objections. I think

1 you've already stated that you'll be paying attention to  
2 how the questioning occurs. So I don't perceive any  
3 problem. Although, it's fine to have their objection on  
4 the record, as you've noted.

5 MR. ANDERSON: Catherine, can I ask you clarify  
6 two last thing?

7 Could you address the significant changes, if you  
8 care to. And then I would also ask that you clarify a  
9 little bit upfront, if you can about the TMDL inclusion in  
10 the MS4. Some of the most significant objections have been  
11 in complying with the TMDL, including the storm water  
12 permit. And my understanding is we're hearing the storm  
13 water permit.

14 My question is how the storm water permit  
15 deliberations that we're going to undertake can change the  
16 existing TMDLs. Would we have to reopen the TMDLs and go  
17 back and do -- the bacteria team do it all over again if we  
18 didn't like some of the procedures -- some of the things  
19 included in the TMDL?

20 MS. HAGAN: Well, first, on the issue of  
21 significant changes -- I'm not speaking to any particular  
22 changes, but we have evaluated the changes that staff made  
23 to the permit. And, in my opinion, they do result from the  
24 responses -- or the comments that were made on the permit.

25 And so for that reason, I don't believe they

1 are -- individual comments are significant enough to  
2 warrant the need for -- a legal need for an additional  
3 notice and comment period.

4 MR. ANDERSON: And, as a farmer and board member  
5 who read these, I would definitely agree with you.

6 MS. HAGAN: Okay.

7 And then on the issue of the TMDL -- it might  
8 actually be better if you hear from staff on some of the  
9 TMDLs, but it is the case, the permit cannot change what's  
10 in the basin plan. You can't change the basin plan by  
11 adopting a permit provision saying we want to do something  
12 different.

13 In fact, your permits need to be consistent with  
14 the basin plan, because it has the force of regulation. So  
15 if there is something in the basin plan the Board does not  
16 like -- and this is a general statement, but if there is  
17 something in the basin plan the board does not like, the  
18 proper remedy is to see if there's a need to modify the  
19 basin plan itself.

20 CHAIRMAN MORALES: Okay. Now what I'm going to do  
21 is very quickly go over the general order of presentation,  
22 just so that you guys can get a head's up, more or less,  
23 when you're going to be up to bat. And then after I do  
24 that, we will take a very short recess to give you guys the  
25 opportunity to confer between yourselves, and if you still

1 need to as groups of speakers, and give our staff a chance  
2 to get ready for their presentation. It will be no longer  
3 than five minutes.

4 But the order of presentation --

5 MS. HAGAN: Chair, it might be useful at this  
6 point to go ahead with the disclosures, could we do that,  
7 with the Board members?

8 CHAIRMAN MORALES: Sure. Sure, we'll jump to  
9 that.

10 At this time, I want to ask if there are any board  
11 members with disclosures in this matter. And we have heard  
12 one so far from Miss Kalemkiarian.

13 MR. ABARBANEL: As the public knows, board members  
14 and the executive officer has visited many of your  
15 constituencies over the last few months. And during the  
16 time that I have participated, we have been quite rigorous  
17 not to have any ex parte discussions of this MS4 permit, or  
18 anything else before the Board, to my knowledge.

19 MR. ANDERSON: I was also in a couple of those  
20 meetings. And especially with the County, we had County  
21 counsel there and -- really supervising us, making sure we  
22 avoided that. So I agree with Henry.

23 VICE CHAIRMAN STRAWN: And I third that. We  
24 didn't excuse ourselves from the discussions that might  
25 have been directly related to this issue.

1 MS. HAGAN: I have just one follow-up for  
2 Miss Kalemkiarian then.

3 As a result of your EHC board directorship, you  
4 have not had any involvement in this proceeding or any  
5 letters submitted by EHC. So would you agree that you can  
6 approach this with an open mind and make a decision solely  
7 based on the record before you?

8 MS. KALEMKIARIAN: Absolutely.

9 MS. HAGAN: Thank you.

10 CHAIRMAN MORALES: Okay. So very quickly, I know  
11 some of you have looked at the order of proceedings that,  
12 you know, we posted or that you received. But it states  
13 that staff will begin with a presentation of 1.5 hours.  
14 For planning purposes, you can expect that their  
15 presentation will run from 20 to approximately 25 minutes.

16 So after that, U.S. EPA is scheduled for a  
17 30-minute presentation. So the presentation by the  
18 co-permittees for the San Diego region, which is to run  
19 four hours will begin approximately one hour after the  
20 presentations start. So let's plan on that, folks.

21 Okay. Clean Water Now, while not a party, will  
22 have six minutes. And a group of four environmental groups  
23 consisting of Natural Resources defense counsel, San Diego  
24 Coastkeeper, Orange County Coastkeeper and Inland Empire  
25 Waterkeeper will have an hour.

1                   Coalition of Building Industry Trade and  
2 Professional Associations will have an hour and a half.  
3 This group consists of the following entities; the BIA of  
4 San Diego, BIA of Southern California, Associated General C  
5 San Diego, San Diego Regional Chamber of Commerce, Building  
6 Owners & Managers Association, San Diego County Apartment  
7 Association, San Diego County -- or San Diego County --  
8 strike that. San Diego Association of Realtors, Alliance  
9 for Habitat Conservation, San Diego Chapter of the American  
10 Association of Landscape Architects, Associated Builders &  
11 Contractors, Business Leadership Alliance, and the National  
12 Association of Industrial & Office Properties.

13                   So after each group completes its initial  
14 presentation, I'll allow cross-examination of that party's  
15 witnesses by other parties, if requested. If any party  
16 wishes to reserve time for closing arguments, they should  
17 indicate their request at the beginning of their  
18 presentations.

19                   Now, entities or organization that are closely  
20 affiliated with either of the environmental groups or the  
21 building industry coalition, but who are not parties to the  
22 proceeding, will speak as interested persons beginning at  
23 4:00 p.m.

24                   Now, we'll proceed with the order of  
25 presentations, subject to breaking, taking care of

1 interested persons at 4:00 p.m. and elected officials at  
2 9:15 a.m. So we will also break at some point today for  
3 lunch, but we will try and work that into a part of the  
4 proceedings where it's not too disruptive.

5 MR. ANDERSON: I do have slight disclosure, I  
6 think. If the Alliance is the Alliance I think it is, I  
7 did serve as a representative for Farm Bureau on the  
8 Alliance for a short period of time many years ago  
9 regarding multi-species conservation planning. I'm not a  
10 member now and have not discussed this issue. In fact, I'm  
11 surprised they're still around, so --

12 MS. HAGAN: Thank you.

13 CHAIRMAN MORALES: Given that disclosure, no  
14 reason you feel bias one way or the other and will rule  
15 solely on the record?

16 MR. ANDERSON: (No audible response.)

17 CHAIRMAN MORALES: He nodded correct.

18 Some reminders before we get started. Remember  
19 that the Board and board counsel can ask questions at any  
20 time. And time for our questions won't count against you.  
21 And we are keeping track of timekeeping and have -- we're  
22 two deep in the timekeeping department. So we want to be  
23 accurate and we'll try and keep time on your behalf.

24 The Board staff will make a presentation to begin  
25 the hearing. And they're also going to have an opportunity

1 to respond to oral comments and make closing comments at  
2 the end of the hearing, in part because the Board is  
3 obligated to respond to all significant comments on the  
4 tentative order.

5 Staff is not a party, as I mentioned, to these  
6 formal -- to these proceedings in a formal sense, but I  
7 will be allowing some cross-examination.

8 Let's see. If you are using an electronic  
9 presentation, PowerPoint, for example, I would like to  
10 remind you that you cannot include any new evidence in  
11 the -- in the presentation. If you have not already done,  
12 so please make sure that you provide us with an electronic  
13 copy of the presentation. And make a reasonable number of  
14 copies available at the back of the room.

15 Okay. And we'll take a short break and then  
16 before we begin, I will administer the oath.

17 (Brief recess taken.)

18 CHAIRMAN MORALES: We're going to reconvene the  
19 meeting and we're about to begin our presentations. But  
20 before we do, I'd like to administer the oath so that each  
21 person who testifies at this hearing will need to take the  
22 same oath that you would if you were in a court of law.

23 Each person who testifies shall begin by stating  
24 their name and affiliation and that you, in fact, have  
25 taken the oath. All persons who will be testifying at this

1 hearing now please stand and raise your right hand.

2 Repeat after me -- or actually just say "I do"  
3 after I'm done. I'm not going to marry any of you.

4 Do you swear that the testimony you will provide  
5 is true and correct.

6 "I do."

7 CHAIRMAN MORALES: We'll begin the presentations  
8 with staff.

9 MR. CHIU: Good morning, Chairman Morales and  
10 members of the Board. My name is Wayne Chiu and I'm a  
11 Water Resource Control engineer in the Southern Watershed  
12 Unit. I'm with the Regional Water Quality Control Board  
13 and I've taken the oath.

14 I'm the staff liaison on the permit team. And the  
15 other members of the team are to my left, Christina Arias  
16 and Laurie Walsh, both Water Resource Control engineers  
17 with the Southern Watershed Unit. And our supervisor,  
18 Eric Becker, supervisor the Southern Watershed Unit. And  
19 David Barker.

20 Today we bring before you for your deliberation  
21 and consideration for adoption, Tentative Order No.  
22 R9-2013-0001. When this Tentative Order is adopted, it  
23 will become the NPS permit and waste discharge requirement  
24 for discharges from the municipal separate storm sewer  
25 systems MS4, draining the watersheds within the San Diego

1 region, which we refer to as the Regional MS4 Permit. This  
2 permit will eventually cover all 39 Phase 1 MS4  
3 co-permittees in the three counties within the San Diego  
4 region.

5 At this time, we would like to enter the project  
6 files into the record. Now, before I go over the changes  
7 that we have made to the Tentative Order and response to  
8 the comments received, I'd like to start off with why we  
9 have this MS4 permit and why we need it.

10 You could say that the reason why we have this  
11 permit and why we're bringing it to you is, because it's  
12 our job and it's time to renew it, because the old permit  
13 expired. And the reason why we have to renew is because  
14 the Clean Water Act and federal regulations mandate that we  
15 renew it every five years.

16 If we really think about why we have this permit,  
17 we have to think about why we have the Clean Water Act.  
18 The reason why we got the Clean Water Act, along with all  
19 the environmental legislation of the 1970s was because we,  
20 as a society, started noticing that we -- what we were  
21 doing in terms of development and economic activity,  
22 without considering its potential effects on the  
23 environment, was resulting in the degradation of many  
24 resources that we take for granted, such as clean air,  
25 clean soil and, of course, clean water and the environment

1 that -- the beauty of the environment around the creeks,  
2 streams, lakes, bays and, of course, the ocean that we live  
3 around.

4 For decades we've been changing our environment  
5 and, as result, most, if not all, of the water bodies  
6 located within our downstream of developed and developing  
7 areas are listed as impaired for one or more pollutants and  
8 are being noticeably degraded. More and more streams and  
9 creeks are starting to look more and more like this.

10 Is this what we want to leave behind? Is this  
11 what we want to leave to future generations? Can we keep  
12 on doing this? And is it sustainable? When I see pictures  
13 like this, I know that I don't want this for me or my  
14 family. We think most people would say that this is not  
15 what they want to see. And most people would say we can do  
16 get better than this. We want to believe that we can do  
17 better than this.

18 I went into the environmental field because I  
19 wanted to make the future better. I would venture to guess  
20 that if you ask anyone in this room, they would say that  
21 they don't want to leave this world in the same or worse  
22 shape than it is in today. Most people would also say that  
23 they want a better future for themselves and their  
24 children.

25 But to do that, we have to start thinking about

1 what can do today to have that better tomorrow. We think  
2 that the Clean Water Act, just like all environmental laws,  
3 was created to make us work towards a better future. And  
4 we believe that there is a way to bring balance between  
5 development, economic activity, and the environment that  
6 will let us build that sustainable future.

7           So how can we do that with this permit? We can  
8 only do so much with this permit to build that sustainable  
9 future. This is not a permit for the discharge to air or  
10 soil. We don't directly regulate solid waste or hazardous  
11 waste. We are the Regional Water Quality Control Board and  
12 this is a permit for the discharge of waste and pollutants  
13 in storm water, discharged from the MS4s to our receiving  
14 waters, like our creeks, streams, lakes, estuaries,  
15 lagoons, bays and, of course, the ocean.

16           This permit is how we protect our receiving waters  
17 from discharges from the MS4s. And the Clean Water Act  
18 tells us how to do it. For MS4 permits, the Clean Water  
19 Act has two fundamental requirements and one overall  
20 objective that we have to include in this permit. MS4  
21 permits must require the co-permittees to effect -- to  
22 have -- or to effectively prohibit non-storm water  
23 discharges into their MS4s.

24           And the MS4 permits must require the co-permittees  
25 to have control to reduce the discharge in storm water to

1 the maximum extent practicable. And finally, the objective  
2 of the Clean Water Act is to restore and maintain the  
3 physical, chemical and biological integrity of our  
4 receiving waters; our creeks, our streams, our lakes,  
5 estuaries, lagoons, bays and the ocean. By focusing on  
6 addressing non-storm water, storm water and receiving  
7 waters, we can have an effective permit that will improve  
8 and protect water quality.

9           So we've been regulating discharges from the MS4s  
10 now for over 20 years. Seems like we should have been able  
11 to protect our receiving waters better or started to see  
12 some significant improvements by now. But it just does not  
13 seem like that's been happening or that the MS4 permits  
14 aren't getting us to where we want to be. So if we want to  
15 have an effective permit that can help us build that  
16 sustainable future, what do we need to do with this MS4  
17 permit?

18           First, we took a look at the current MS4 permits  
19 to see why they haven't been working. Generally, with the  
20 MS4 permits, we were trying to develop permit requirements  
21 that would have the co-permittees begin by developing a  
22 plan, implementing programs, monitoring and performing  
23 assessments that can prove their plan over time and become  
24 better as they learn from their successes and failures. We  
25 commonly refer to this as an iterative or adaptive

1 management process, which is typically represented with a  
2 circle.

3           However, when we looked at the current MS4 permit,  
4 and for that matter, the previous MS4 permits, we noticed  
5 that they were all focused on implementing actions. The  
6 current MS4 permits are centered around what the  
7 co-permittees are required to implement in terms of  
8 programs and BMPs.

9           The plans are based on the permit requirements.  
10 The monitoring is another set of actions that have to be  
11 implemented. And the assessments are not specific enough  
12 to really improve the plans or tell us that the programs  
13 and BMPs being implemented are really work or not.

14           Everything in the process seems to have a separate  
15 report. We get 59 reports each year, all reporting actions  
16 implemented, but not much, if anything, appears to be  
17 reported about actual improvements in water quality, the  
18 success of any actions to improve water quality. A lot of  
19 time and resources are being spent by the co-permittees on  
20 preparing reports, and water board staff on reviewing  
21 reports. And we'd rather see those resources being spent  
22 on improving water quality.

23           So with this permit, it's time for a new paradigm.  
24 We want to move from focusing on actions for the sake of  
25 implementing actions to focusing on achieving outcomes

1 through the implementation of those actions. So instead of  
2 having the co-permittees only tell us how many miles of  
3 streets they have swept or the number of facilities they  
4 have inspected, we want them to start telling us about what  
5 improvements in water quality they have achieved and what  
6 programs and BMPs help them achieve those improvements.

7 We want to have a permit that truly allows for an  
8 iterative and adaptive management process that begins with  
9 a plan with goals for achieving improvements in water  
10 quality, strategies to achieve those goals, and schedules  
11 for achieving those goals, implementation of those  
12 strategies with a focus on achieving the goals that can  
13 improve water quality, monitoring to collect data on  
14 progress for achieving improving water quality and  
15 assessments of the data to inform the co-permittees of the  
16 progress and how to improve their plans, programs and BMPs  
17 to better achieve improvements in water quality.

18 As you have probably seen in Supporting Document  
19 No. 3 in your agenda package, for over two years we've had  
20 this permit team of four staff working almost full time  
21 developing this permit and new paradigm. We have spent  
22 over a year, in 21 meetings, with different co-permittees,  
23 the environmental community and U.S. EPA to listen to  
24 criticisms about the current MS4 permits and get  
25 recommendations on how the MS4s -- how to improve how the

1 MS4 permits work.

2           We released the administrative draft of the  
3 Tentative Order to the public on April 9th, about a year  
4 ago from today. We provided the public a five-month period  
5 to provide us written comments. During that five-month  
6 period, we had two public workshops on the administrative  
7 draft. We had four professionally-facilitated focus  
8 meetings where we had the co-permittees and major  
9 stakeholders sitting around the table talking about the  
10 outcome-oriented approach and the concepts and how those  
11 should be included in the MS4 permit.

12           Between those public workshops and focused  
13 meetings, we had an additional 20 meetings with the  
14 co-permittees, environmental groups, the building industry  
15 to discuss requirements -- specific requirements in the  
16 administrative draft. In response to what we heard and  
17 learned in the workshops, the focus meetings, and the  
18 meetings, and from the written comments received, we  
19 revised the administrative draft and released the Tentative  
20 Order on October 31st, 2012.

21           The public was provided over two months -- 71 days  
22 to be exact -- to provide written comments on the Tentative  
23 Order. During those 71 days, we had two public workshops  
24 in front of the Board in November and December of last year  
25 where the public could speak directly to the Board about

1 their concerns.

2           During that time, we also had 11 more meetings  
3 with the co-permittees' representatives of industry and the  
4 California Storm Water Quality Association. After the  
5 close of the written comments -- written comment period on  
6 January 11th, we prepared our written responses to  
7 comments, which is Supporting Document No. 6 in your agenda  
8 package and a revised version of the Tentative Order, which  
9 is Supporting Document No. 7 in your agenda package, with  
10 all the changes we made in response to the written comments  
11 received, which we released on March 27th, 2013.

12           Just in the last three weeks, we had an additional  
13 six meetings where we met with the co-permittees, the  
14 building industry, representatives of industry,  
15 environmental organizations and U.S. EPA. And here we are  
16 today before you for a public hearing to consider adoption  
17 of the revised Tentative Order.

18           So for over two years, we have had four staff  
19 working thousands of hours. We've spent hundreds of hours  
20 in over 50 meetings. We have organized and attended four  
21 professionally facilitated focused meetings, each meeting a  
22 full day with all the stakeholders sitting in a room  
23 discussing the outcome-oriented approach for the MS4  
24 permit.

25           We have had four public workshops, two of which

1 were in front of you, where the stakeholders could speak  
2 directly to you about their concerns. And we have had two  
3 lengthy public comment periods. So as you can see, we have  
4 had a very robust and inclusive participation -- public  
5 participation process.

6 We have listened. We have made a lot of changes  
7 that have resulted in an improved Tentative Order. And I'm  
8 glad to say that we have general agreement from the  
9 co-permittees and all the stakeholders that they would like  
10 to move from an action-oriented permit to an  
11 outcome-oriented permit and that they are in favor of a  
12 water quality improvement plan to direct the  
13 outcome-oriented approach, which is the central focus of  
14 the permit requirements.

15 I wish I could also tell you that we have total  
16 agreement on everything in the permit, that this should be  
17 a consent item but, of course, that's not the case. As  
18 much as we try to bridge all the gaps of disagreement and  
19 understanding, there are still a few remaining areas of  
20 concern in the permit requirements, all of which you heard  
21 about during those board workshops in November and  
22 December.

23 These are also the areas of concern that received  
24 the most written comments that were submitted by the end of  
25 the close of the -- by the close of the comment period on

1 January 11. The remaining areas of the concern are the  
2 development planning structural BMP requirements, the total  
3 maximum daily loads or TMDL requirements and compliance  
4 with the water quality standards based discharge  
5 prohibitions and receiving water limitations.

6           The bad news is that we will probably never get to  
7 full agreement with the co-permittees and the stakeholders  
8 on how these three areas of concern should be addressed.  
9 Now what we have are really policy decisions, where the  
10 Board needs to make a decision on the move forward. This  
11 was especially evident after we had those six additional  
12 meetings with the co-permittees and stakeholders in the  
13 last three weeks.

14           The good news is that we believe we have added a  
15 few provisions to the Tentative Order that do address these  
16 three concerns and should get us a little closer to  
17 bridging those gaps. Fundamentally, we have not changed  
18 anything in the Tentative Order, only added some additional  
19 clarifications, options and flexibility that will allow the  
20 co-permittees to implement an iterative and adaptive  
21 management process that will result in improvement in water  
22 quality better and faster.

23           Let me go through the general comments for these  
24 three areas of concern and what we added to the Tentative  
25 Order in response to those comments. For the development

1 planning structural BMP requirements, we received a lot of  
2 comments expressing concerns about there being almost no  
3 exemptions from the hydromodification management  
4 requirements especially for projects in locations where  
5 there is no potential for erosion and down stream receiving  
6 waters, such as projects discharging to hardened channels.

7 We received a lot of comments objecting to  
8 requiring the same numeric structural BMP performance  
9 standards on all prior priority development projects. And  
10 this was commonly referred to as a one-size-fits-all  
11 approach to the develop planning requirements.

12 We have did been told that in some cases, it is  
13 not feasible to incorporate such structural BMPs due to  
14 technical factors, such as soil types or limited  
15 infiltration capabilities. We have also heard that in some  
16 cases there would be limited water quality benefit relative  
17 to the cost associated with implementing the structural  
18 BMPs on site.

19 And finally, we have received a lot of comments  
20 about requiring redevelopment projects to design to a  
21 pre-development runoff condition versus a pre-project  
22 runoff condition. We heard that the pre-development runoff  
23 condition was an impossible standard to meet because there  
24 was no way to know with any certainty what that condition  
25 really is or just how far back in time the Board expects a

1 project to attempt to replicate.

2           After carefully considering the comments, we  
3 decided that we could add a few provisions to the  
4 Tentative Order that would provide a little more  
5 flexibility to the co-permittees. To address the concerns  
6 about hydromodification exemptions, we added an exemption  
7 for projects that discharge to channels whose bed and banks  
8 are concrete-lined from the point of discharge all the way  
9 to the Pacific Ocean.

10           To address the one-size-fits-all concern, we added  
11 an optional watershed management area analysis. If the  
12 co-permittees implement this optional analysis, the  
13 co-permittees will be allowed to identify additional  
14 watershed-specific hydromodification exemptions and allow  
15 development projects to comply with the structural BMP  
16 performance standards offsite where there would be greater  
17 water quality benefits to the watershed, such as  
18 retrofitting areas of existing development, rehabilitating  
19 degraded stream segments or implementing regional  
20 structural BMPs.

21           To address the concern about restoring the project  
22 to some, quote unquote, historical pre-development runoff  
23 condition versus a pre-project runoff condition, we added a  
24 clarification to the definition for pre-development runoff  
25 condition to explain that the standard has nothing to do

1 with replicating some sort of historical condition. It's  
2 not about returning a site back to some pre-Columbian  
3 condition. It's about using the underlying native soil and  
4 its characteristic as a baseline for designing structural  
5 the BMPs.

6 The goal is to achieve runoff conditions that are  
7 more natural, less erosive and, in short, better than  
8 concrete. It's not a historical condition to restore, but  
9 a design standard to improve runoff from a project site.

10 For the total maximum daily loads, we received a  
11 lot of comments from the co-permittees which expressed  
12 concerns about the basis of the TMDLs, such as a scientific  
13 basis of the TMDLs or the appropriateness of the water  
14 quality standards in the basin plan that are the basis of  
15 the TMDLs, the achievability of the TMDLs and, of course,  
16 the cost for implementing the TMDLs.

17 Many comments basically said that the TMDLs should  
18 not be included in the Tentative Order until all those  
19 concerns could be resolved. However, if the TMDLs are not  
20 removed from the Tentative Order, the co-permittees also  
21 requested some modifications of the TMDLs to make them more  
22 consistent with the TMDLs as they are in the basin plan.

23 The TMDL requirements in the Tentative Order are  
24 completely consistent with the assumptions and requirements  
25 of the TMDLs as they are in the basin plan. However, there

1 are a few elements in the TMDLs, as there are in the basin  
2 plan that the co-permittees wanted to see also included in  
3 the Tentative Order.

4 So for the beaches and creeks bacteria TMDLs,  
5 co-permittees wanted us to add a provision that allows them  
6 to propose interim TMDL compliance dates. The  
7 co-permittees also asked for a couple additional elements  
8 that would provide them more options to determine -- to  
9 demonstrate compliance with the TMDL requirements.

10 They wanted to see the load base compliance  
11 determination options for the bacteria TMDLs. They also  
12 wanted to see an option that would allow them to utilize  
13 the water quality improvement plan to determine  
14 compliance -- to demonstrate compliance.

15 So, fundamentally, we cannot take the TMDLs out of  
16 the Tentative Order. The TMDL is required by law and  
17 mandated to be included in this permit. Many of the  
18 concerns expressed about the basis of the TMDLs were  
19 already considered when the TMDL basin plan amendments were  
20 adopted by this board and approved by state -- the state  
21 board and U.S. EPA.

22 Water quality objectives in the basin plan are  
23 based on sound science and are there for the protection of  
24 water quality. The TMDLs went through a scientific peer  
25 review process. The TMDL basin plan amendments were in

1 compliance with CEQA requirements and also considered the  
2 cost for implementation and compliance.

3           So the concerns expressed are with the TMDLs as  
4 they are in the basin plan. The basin plan would have to  
5 be changed to a separate process before changes could be  
6 made to the TMDL requirements in the Tentative Order. In  
7 the event that any of the TMDLs are amended in the basin  
8 plan, we added a reopener provision that states we will  
9 modify the TMDL requirements in the Tentative Order when  
10 the TMDLs are amended in the basin plan.

11           As further request to allow the co-permittees for  
12 code interim compliance for the beaches and creeks bacteria  
13 TMDLs, we added a provision to allow for adjustable interim  
14 compliance data. As per the request for additional  
15 compliance determination options, we added a load base  
16 compliance determination option for the bacteria TMDLs and  
17 added a way for the co-permittees to demonstrate compliance  
18 through the implementation of the water quality improvement  
19 plans. So while we did not remove the TMDLs from the  
20 Tentative Order, we did add all the requested elements to  
21 the Tentative Order.

22           Finally, we received a lot of comments from the  
23 co-permittees expressing concerns with the lack of a  
24 pathway to compliance with the water quality standard based  
25 discharge prohibition and receiving water limitations in

1 Provision A of the Tentative Order. The co-permittees are  
2 concerned that without a pathway to compliance, there will  
3 be no way for them to be fully in compliance with the  
4 requirements of Provision A and they will be exposed to  
5 potential enforcement actions by the Board and potential  
6 third party or citizen lawsuits.

7 On the other hand, we received comments from the  
8 environmental community that opposed any revisions to  
9 Provision A or including anything that might resemble a  
10 safe harbor for the co-permittees if they are violating the  
11 discharge prohibitions and receiving water limitations of  
12 Provision A.

13 So we thought about this one for a while. And to  
14 address this concern, we added a compliance option that  
15 each co-permittee may choose to implement, as part of the  
16 water quality improvement plan, that sets a high bar for  
17 them to demonstrate that they will attain water quality  
18 standards in the receiving waters, or demonstrate that they  
19 are not causing or contributing to exceedences of water  
20 quality standards in receiving waters within a reasonable  
21 time schedule.

22 The way we approached this addition was by  
23 thinking about what would be required if a co-permittee  
24 were issued an enforcement action, such as a cleanup and  
25 abatement order, or if a TMDL was developed and required to

1 be implemented, or if a co-permittee were to develop a  
2 restoration plan.

3           The requirements in the compliance option are what  
4 we would expect of a co-permittee to bring them into full  
5 compliance of Provision A. We did not revise anything in  
6 Provision A. Those requirements do remain. However, we  
7 believe that this compliance option to provide a useful  
8 tool for the co-permittees to move toward protecting  
9 receiving waters from MS4 discharges and improving water  
10 quality in receiving waters faster. It also provides the  
11 public a more transparent process for holding the  
12 co-permittees accountable.

13           So as you can see, we have added several  
14 additional elements to the Tentative Order to provide the  
15 co-permittees some additional flexibility and options for  
16 implementing the requirements of the Tentative Order and to  
17 demonstrate compliance. We believe that by adding these  
18 additional elements, we have done as much as can to address  
19 these remaining concerns.

20           We believe that these additional elements can  
21 allow the co-permittees to implement a better and truly  
22 iterative and adaptive management process. And by allowing  
23 the co-permittees to implement a better iterative and  
24 adaptive management process, we believe that the adoption  
25 of the Tentative Order will better protect our more

1 pristine water bodies from degradation, restore some of our  
2 water bodies to something more natural, rehabilitate some  
3 of our water bodies so they can support all of their  
4 beneficial uses, and will get us to that sustainable  
5 future, at least in terms of balancing development and  
6 economic activity with cleaner and healthier waters.

7           So we're ready for the Board to adopt the revised  
8 version of the Tentative Order. However, you'll be hearing  
9 from the co-permittees and other stakeholders and there  
10 will likely be some additional proposed changes to the  
11 Tentative Order the team may recommend.

12           So at this time, we recommend the Board receive  
13 oral testimony and comments from the public, and the team  
14 will provide recommendations at the conclusion of those  
15 public comments. So the team's available for any questions  
16 you might have at this time.

17           Thank you.

18           VICE CHAIR STRAWN: You mentioned that under the  
19 old permit, there were 59 separate reports required from  
20 the co-permittees. Under the revised one, do we have a  
21 measure or some comparison of how many reports or how many  
22 hours of reporting are required under this new approach?

23           MR. CHIU: Well, what we have done is, those 59  
24 reports we have consolidated down to 10 reports on an  
25 annual basis, focused primarily on monitoring and

1 assessments versus primarily focusing on reporting actions  
2 or numbers of actions being implemented. So those numbers  
3 are still being provided, but they're provided in a very  
4 short summary form versus, you know, the monitoring and  
5 assessments are going to be front and center in the  
6 reports.

7 VICE CHAIR STRAWN: And as follow-up, I'll make  
8 the same comment I did at one of the other hearings, as the  
9 co-permittees make their presentations, if you have a  
10 suggestion of how the reporting could be streamlined, I'd  
11 like to hear it.

12 MR. ANDERSON: I had a brief question about the  
13 TMDLs. Now that you did incorporate all the TMDL language  
14 in the permit, specifically there were a lot of interim  
15 dates that have actually passed. In general, on the TMDLs,  
16 have all those interim goals been complied with or do we  
17 know?

18 MR. CHIU: There are a couple of TMDLs where I  
19 know the final compliance dates have passed. Honestly, I  
20 don't think we have the data to tell us if compliance has  
21 been fully achieved and is being achieved continually.

22 Hopefully, we will be getting that kind of data to  
23 inform us whether or not those TMDLs are, in fact, being  
24 fully complied with.

25 MR. ANDERSON: Thank you.

1           CHAIRMAN MORALES: Okay.

2           MR. CHIU: Thank you.

3           MS. KALEMKIARIAN: Actually, I'm sorry.

4           Mr. Chiu, if this becomes something that will be  
5 answered later, just let me know. Great presentation,  
6 first, and I understood the first three points very well.

7           When you got to the amendments or changes that the  
8 staff recommended to deal with the compliance issues, I did  
9 not quite understand, because it seemed a little vague to  
10 me. So I understand there is not a safe harbor and the  
11 material talks about the 9th circuit opinions, et cetera.

12           So what is it that if a locality under the changes  
13 you've made says we weren't able to meet the goals, what do  
14 they have to show you under the revised order, just that  
15 they have tried, or that they have made some progress,  
16 or --

17           MR. CHIU: Well, under the -- under the optional  
18 or the compliance options, the way it's been laid out is  
19 it -- they provide us a schedule that they will try to  
20 achieve full compliance within.

21           However, that schedule can be adjusted, provided  
22 the data and the information that they gather during that  
23 schedule tells them that, you know, an adjustment may be  
24 necessary, perhaps a numeric goal for one of the pollutants  
25 may need to be adjusted if there's no science, for example.

1           Or if, you know, some of the strategies that they  
2 proposed aren't actually making the progress that they had  
3 expected, maybe they need to change the strategies that  
4 they have proposed or maybe they need to change the -- the  
5 end date of their schedule to accommodate that change. All  
6 those things can be adjusted.

7           The main thing is that they actually have  
8 someplace in there that says we will attain the water  
9 quality standards or demonstrate that we are not causing or  
10 contributing to the exceedence of those water quality  
11 standards through this analysis and through the  
12 implementation of that compliance option.

13           But, you know, it doesn't necessarily mean that  
14 there is a date certain that is never going to be adjusted  
15 or cannot be adjusted. It can be adjusted. It is part of  
16 the adaptive management process but, you know, recognizing  
17 we have to have something that we're striving toward,  
18 rather than some ambiguous goal somewhere in the distant  
19 future that nobody can put their finger on.

20           Does that make sense?

21           MS. KALEMKIARIAN: Yes.

22           MR. ANDERSON: Achieving that is to the maximum  
23 extent practicable standard?

24           MR. CHIU: Yes.

25           Anymore questions?

1 Thank you.

2 CHAIRMAN MORALES: Okay. Now we'll hear from  
3 U.S. EPA.

4 MS. HAGAN: Do you want to see if there are any  
5 questions from other parties?

6 CHAIRMAN MORALES: Is that how we're going to do  
7 it, after each presentation?

8 MS. HAGAN: I think that makes most sense to do it  
9 that way, but you can modify it -- you can do it however  
10 you want. Like when you get to the co-permittees, for  
11 example, and they go for four hours, and then the  
12 environmental groups go, might make sense to have the  
13 cross-examination more closely in time.

14 It's up to you.

15 CHAIRMAN MORALES: I would think so. And that  
16 will make our timekeeping efforts a little easier as well.  
17 So we'll go ahead and go with U.S. EPA.

18 And so you all understand the procedure, folks,  
19 when you make your presentations --

20 You know what, we can't do that because it --  
21 co-permittees, for example, will be the first ones out of  
22 the gate. And they may have questions of people that come  
23 after them at cross-examination.

24 So I'm sorry, sir, we'll revert to the way we had  
25 it set up. So if there are any questions that any folks

1 out there would like to ask of staff, now is the time.

2 MS. HAGAN: Just parties, right?

3 CHAIRMAN MORALES: That's correct.

4 And so we all are clear, the only folks that can  
5 ask cross-examination-type questions or questions in  
6 general of -- at this proceeding are designated parties.  
7 So you know who you are, and if you don't know, you're not  
8 going to be asking questions. Okay.

9 MR. BOON: Okay. I'm Richard Boon. I'm the  
10 program manager for the Orange County storm water program.  
11 I've taken the oath. I don't know if I have to say that at  
12 this point, but --

13 I have one question on I think one of the pivotal  
14 issues today, and that is for Wayne and his colleagues.  
15 This new performance standard for land development that  
16 appears to have, I think for a lot of us come completely  
17 out of left field -- so the question is, in the revised  
18 draft released on March 27th, the new BMP treatment  
19 criteria now requires retention of a hundred percent of the  
20 pollutants in the 24-hour 85th percentile storm event  
21 instead of the volume retention that is currently in our  
22 fourth term permit, Riverside's fourth term permits, and I  
23 think most of the fourth term permits in Southern  
24 California.

25 So the specific question is, did any of the

1 written or oral comments that were received address this  
2 specific requirement? And second, whose comment or which  
3 comment were you responding to when you changed the  
4 requirement? And that's my question.

5 CHAIRMAN MORALES: Okay.

6 MR. CHIU: So I guess this was a question that was  
7 in the opening remarks from the attorneys as well.

8 The hundred percent pollutant removal standard is  
9 basically a clarification. Whereas before in the  
10 Tentative Order, it basically said that the standard was  
11 retention of the entire storm design volume -- design storm  
12 volume on site to remove the pollutants within that storm  
13 volume, in the new Tentative Order -- or the revised  
14 Tentative Order, we have clarified that that standard is  
15 actually talking about the retention of 100 percent of the  
16 pollutants associated with that design capture volume on  
17 site.

18 And the response was in response to one of the  
19 comments about allowing for biofiltration to occur in  
20 conjunction with retention requirements. If they weren't  
21 able to fully retain everything on site, they should be  
22 allowed to do biofiltration to remove pollutants before it  
23 gets off the site.

24 So we used that 100 percent pollutant removal as  
25 the new design standard so that they can use retention in

1 conjunction with other flow-through devices in order to  
2 capture the pollutants associated with that 100 percent  
3 capture volume. That make sense?

4 So like, you know, we're talking about -- this is  
5 called the storm water pollutant control BMP requirements,  
6 it's not the storm water retention BMP requirements. So  
7 we're talking about the control of pollutants versus the  
8 retention of storm water for the sake of retaining storm  
9 water.

10 MR. ANDERSON: So the old standard in the current  
11 permits just is a water retention standard, not a pollutant  
12 removal standard, right?

13 MR. CHIU: Well, no, it is a pollutant removal  
14 standard, but it is based on the retention of a certain  
15 design capture volume. So it's whatever pollutants are  
16 associated with that design capture volume that we're  
17 trying to make sure don't leave a site.

18 VICE CHAIR STRAWN: So if I understand you  
19 correctly, basically you view this as a -- a loosening or  
20 an allowance of some additional options for the  
21 co-permittees. Where the old requirement was to capture  
22 all the water and then remove the pollutants, now we say  
23 you can either capture the water and remove the pollutants  
24 or you can use biofiltration to remove the pollutants  
25 basically in real-time and allow that water to be released;

1 is that it?

2 MR. CHIU: Right, that is exactly correct.

3 VICE CHAIR STRAWN: So we're not adding any  
4 requirements to the co-permittees?

5 MR. CHIU: No. Like I said, it is simply a  
6 clarification of what we are trying to achieve with this  
7 design standard. It is the removal of pollutants, not the  
8 retention of storm water.

9 CHAIRMAN MORALES: Okay. Thank you.

10 MS. SKORPANICH: Good morning. I'm Mary Anne  
11 Skorpanich from the County of Orange.

12 My question is a follow-up to yours, Mr. Anderson,  
13 your last question, about whether compliance is evaluated  
14 as compared with the MEP standard. And your staff answered  
15 in the affirmative.

16 My question to your staff is, where in the permit  
17 is that stated?

18 Thank you.

19 MR. CHIU: MEP standard is stated in Provision A,  
20 where you have to remove pollutants from storm water to the  
21 maximum extent practicable. But the compliance option says  
22 that you have to provide us a schedule for which you will  
23 achieve compliance with the discharge prohibitions and  
24 receiving water limitations based on water quality  
25 standards through the MEP.

1           MEP is meant to evolve over time. It is meant to  
2 become better over time, it is not meant to be static. So  
3 if you think that it is going to take more than one permit  
4 term or even several permit terms, the expectation is you  
5 will tell us when you expect to achieve the water quality  
6 standards in the receiving waters or demonstrate that your  
7 MEP is removing pollutants to the maximum extent  
8 practicable and complying with Provision A requirements to  
9 achieve the water quality standards in -- either in your  
10 discharge or in your receiving waters.

11           MS. SLOAN: Good morning. Christine Sloan with  
12 the County of San Diego, representing the San Diego  
13 co-permittees in the land development core group.

14           I have a question for staff, if they are aware of  
15 any BMPs that are capable of removing a hundred percent of  
16 pollutants from storm water?

17           MR. CHIU: Yes. It is called retention of 100  
18 percent of a design capture volume on site, that is 100  
19 percent of the pollutants. Or using that in combination  
20 with some sort of biofiltration or other pollutant removal  
21 flow-through device that can remove a certain percentage.

22           Maybe that flow-through device may have to be  
23 sized a little bit bigger in order to get the equivalent  
24 pollutant removal of what has not been retained on site,  
25 but the combination of those two can achieve 100 percent

1 pollutant removal of the design capture volume.

2 CHAIRMAN MORALES: Okay. Any more?

3 Very good -- oh, one more.

4 MR. UHLEY: Good morning. My name is Jason Uhley,  
5 watershed protection, Riverside County Flood Control.

6 I'd ask one more follow-on question, which is, do  
7 you believe there are any BMPs that can remove a hundred  
8 percent of the pollutants if retention is not feasible on  
9 site?

10 MR. CHIU: I believe, yes. However, we have also  
11 included an alternative compliance option in there so that  
12 it does not have to necessarily be done fully on site.

13 If the co-permittees choose to implement the  
14 watershed management area analysis option, and they  
15 identify alternative compliance options off site, those  
16 alternative compliance options can also be used to meet the  
17 on site performance standard, but it would be done off  
18 site.

19 Furthermore, I -- I believe that there is nothing  
20 that is technically infeasible to retain everything on  
21 site. It is just a matter of is it cost effective to  
22 retain it on site. Technically, we can retain any volume  
23 on site.

24 MR. ANDERSON: The alternative compliance options  
25 were arrived at through input from the BIA and the

1 co-permittees?

2 MR. CHIU: The alternative compliance options will  
3 be developed during the water quality improvement plan  
4 development process. Again, this is an optional watershed  
5 management area analysis. And this has to be done in order  
6 to have those alternative compliance options.

7 The environmental community and the building  
8 industry will be a part of that development process. The  
9 expectation is that the building industry, through their  
10 knowledge of watersheds and engineering, would allow the  
11 co-permittees to identify some of these options, as well  
12 as the environmental community may be able to identify some  
13 areas within a watershed that are deserving of some  
14 restoration or rehabilitation efforts.

15 MS. KALEMKIARIAN: It may be because I'm the  
16 newest member here, but I want to second something that  
17 Mr. Strawn said. When you give your testimony, rather than  
18 repeating what the letters say, "Oh, this isn't  
19 scientifically feasible," "we object to the TMDLs" -- we  
20 know that.

21 But when Mr. Chiu was just saying there's best  
22 practices. If you're from the business industry, I want to  
23 hear, "No, there's not, we don't know how to do this yet."  
24 Or if you're from the environmental groups, I want to hear,  
25 "Yes, we do know how to do that, here's an example."

1 That's going to help me in terms of testimony.

2 So I'm just putting that out there. If you've got  
3 that, I would appreciate it.

4 CHAIRMAN MORALES: Think you got a taker.

5 MR. GRIGG: Just coming from the construction  
6 industry --

7 MS. KALEMKIARIAN: For the record, I wasn't saying  
8 right now, although I appreciate it.

9 MR. GRIGG: My name is Barry Grigg. I come out of  
10 the mechanical industry. My son's an industrial salesman  
11 for Ferguson. In the last nine months, we have not found  
12 one vendor that can do what you're asking to do on site,  
13 because you can't maintain a hundred percent of the flow.

14 I would ask the vendors to be presented to us  
15 where the studies have been done. I personally have talked  
16 to a dozen. Manufacturers don't have the ability to  
17 understand what a 100,000 or a 200,000 commercial complex  
18 is going to require and at what percentage of maintenance  
19 are they going to be required to implement it over what  
20 period of time. I don't believe a study's been done.

21 So asking if it can be done? It probably can be  
22 done. I believe there is an advertisement on TV. We can  
23 hire Emerson who will actually do the study and provide the  
24 figures that will show how much not only will it cost, but  
25 how it can be implemented, over what period of time, which

1     apparently we haven't accomplished yet.

2             But from the industry standard in the building,  
3     sitting outside, trying to go figure out how is it going to  
4     impact them, the design side on the civil engineering, it's  
5     not done yet. You don't have the infrastructure or the  
6     support to even begin implementation. Need to define a few  
7     things first.

8             Thank you.

9             MS. HAGAN: Chair, can you clarify with the  
10    speaker if he's part of the coalition that's a party or  
11    he's an interested person?

12            CHAIRMAN MORALES: Yes.

13            Sir? Mr. Grigg?

14            MR. GRIGG: Yeah.

15            CHAIRMAN MORALES: Are you with the building  
16    industry coalition, or are you here as --

17            MR. GRIGG: I'm here on behalf of 492 people that  
18    have put in over 17,000 hours worth of investigation on the  
19    permit and the studies.

20            CHAIRMAN MORALES: And who are those people?

21            MR. GRIGG: They apparently call themselves the  
22    Alliance of Political and Economic Conservatives in  
23    San Diego. A silly little name.

24            But they have actually put in the time. And there  
25    were five other people -- and I hope to, I'm not quite

1 sure, be able to say something at the end of tomorrow.

2 It's pretty much pointblank.

3 But as far as the facts, if you would like, when  
4 this is all done, let's have another open hearing and I'll  
5 invite about 14 major manufacturers that will repeat just  
6 what I've said, people that are interested in the  
7 watershed.

8 CHAIRMAN MORALES: Okay.

9 Thank you.

10 MR. GRIGG: You're welcome.

11 CHAIRMAN MORALES: And with respect to the  
12 procedures for this hearing, if there are going to be  
13 comments that interested persons have, you know, please  
14 save them until you have the opportunity to speak.

15 Now, if any of the -- the parties want to make  
16 that part of their questioning and you can incorporate, you  
17 know, specifics, please feel free.

18 So, thank you.

19 VICE CHAIR STRAWN: Would it help if we ask that  
20 gentleman to fill out a speaker card so we have that?

21 MR. GRIGG: I got it. I was just waiting for a  
22 break.

23 But, thank you, sir.

24 CHAIRMAN MORALES: Very good.

25 U.S. EPA -- oh, one more question?

1 MR. GRAY: Good morning. Mark Gray with the  
2 Building Industry Association of Southern California. And  
3 I represent -- I'm with the Building Industry Coalition.

4 I have a number of questions that I might ask.

5 Is that fair, Wayne?

6 MR. CHIU: (Indicating).

7 MR. GRAY: Wayne, has an MEP analysis been done  
8 for retaining a hundred percent of the pollutants in the  
9 85th fifth percentile storm, or does staff's opinion rest  
10 in the earlier analysis that vetted the 85th percentile as  
11 a storm water treatment?

12 CHAIRMAN MORALES: Well, first, before we --

13 How many questions do you have, sir?

14 MR. GRAY: I have about five.

15 CHAIRMAN MORALES: Okay. Why don't we take the  
16 questions first and then --

17 MR. GRAY: These are -- okay.

18 Well, respectfully, some -- these are somewhat  
19 complex. Should I repeat some of them, Wayne, or -- Wayne  
20 a works really -- it's hard to respond to questions. I've  
21 been in his shoes and I --

22 Would you like me to ask all five?

23 CHAIRMAN MORALES: Yes. And then we will be sure  
24 to restate them or re-ask them prior to his responding.

25 MR. GRAY: Sure.

1           Does the Board staff believe that this performance  
2 standard is justified to protect water quality?

3           Does the staff have reason to believe that the LID  
4 performance standard in the South Orange County MS4 permit,  
5 which was adopted in 2009 is not adequate to manage  
6 pollution? And I'd ask further, what is the basis for this  
7 determination, given that the standard is not yet been  
8 implemented in that -- in South Orange County that was  
9 submitted late in the year in 2011.

10           And then, I think the last one I'll ask -- I'd  
11 really like to go to hydromod, but should we stick to --  
12 should I go on to hydromodification as well? Okay.

13           Why is only the concrete lining provided as a  
14 categorical exemption in the hydromodification control  
15 requirements? And why aren't equivalent linings not also  
16 provided to categorical exemption?

17           I've raised this issue a number of times in  
18 workshop process. And HNPs describe a little more robust  
19 sweeter set of armoring that exists.

20           And then the last one on hydromodification, is it  
21 your intent to require co-permittees to restore all  
22 channels to a natural state at some point in the future?

23           I -- I've read the fact sheet. You assert that.  
24 I'd just maybe like you to follow up on that as well.

25           So, thanks, Wayne. I appreciate that. I'll be

1 happy to repeat those, Wayne, if that helps us.

2 MS. ARIAS: Can you repeat the first one, please?

3 MR. GRAY: Sure.

4 Has an MEP analysis been done for retaining a  
5 hundred percent of the pollutants in the 85th percentile  
6 storm event, or does staff's opinion rest in the earlier  
7 analysis that vetted the 85th percentile storm water as a  
8 storm water treatment design storm.

9 And I'd follow up with that, how did staff  
10 determine that retention of a hundred percent of the  
11 pollutants in the 85th percentile storm event constitute  
12 MEP? And as we have asked a number of times, has any  
13 economic analysis been done looking at the ability of those  
14 BMPs to meet MEP?

15 Thank you.

16 CHAIRMAN MORALES: Okay. What I'd ask of staff  
17 is, before you answer a question, please, you know, repeat  
18 it so that we know what you're understanding the question  
19 to be prior to your answer.

20 Thank you.

21 MS. ARIAS: Good morning, Chairman Morales,  
22 members of the Board. My name is Christina Arias and I'm  
23 also part of the permit writing team.

24 So I'll repeat the question as I understand it and  
25 try and give you an explanation. So the first question

1 was, has an MEP analysis been done for this design standard  
2 that is within the Tentative Order, or is it staff's  
3 opinion that this is the proper storm water treatment  
4 design?

5           So first of all, I would like to clarify or build  
6 upon the discussion that Wayne presented to you earlier,  
7 that's about the standard itself. Mr. Boon came up here  
8 earlier also saying that this requirement came out of left  
9 field. But I would actually respectfully disagree with  
10 him.

11           This is not a new standard different from the  
12 standard that is in his current South Orange County permit.  
13 It's worded a little bit differently, and we did that so  
14 that -- to provide clarity. So in the South Orange County  
15 permit, the language says that the requirement is to retain  
16 the volume of storm water runoff from a certain size storm.  
17 And that will vary, depending on where you are in the  
18 region and the site characteristics.

19           But as Wayne mentioned, this is a -- this is about  
20 pollutant control. We're not talking about storm water  
21 treatment for the sake of -- we're not talking about  
22 retaining storm water for the sake of retaining storm  
23 waters. That's a nice ancillary benefit. We have hydromod  
24 requirements that address the volume issue.

25           We are not talking about retaining storm water

1 inasmuch as we're talking about, however, the quantity of  
2 pollutants are in that volume of storm water. And  
3 depending on what the project is, that could be a little  
4 bit of pollutants or a lot more pollutants. But the  
5 important thing is we can estimate what that quantity of  
6 pollutants is.

7 Now, why was the Orange County permit written so  
8 that we retain the 85th percentile storm. If you read the  
9 fact sheet for those earlier permits, it's because  
10 retention is the only treatment design that will remove 100  
11 percent of that amount of pollutants. Anything else, any  
12 other treatment device you use will have an efficiency with  
13 it.

14 You know, this type of device has a 50 percent  
15 removal efficiency or 20 percent removal efficiency.  
16 Retention is the only one that will retain 100 percent of  
17 those pollutants. So that's why when I say this is not a  
18 different requirement, we worded it so that that's very  
19 clear that this is about retaining the pollutants on site,  
20 and that retention is the way to do it, the only way to do  
21 it a hundred percent.

22 Now, let's say that due to infeasibility factors,  
23 that it's -- we really can't retain that -- the pollutants  
24 because it comes in a big volume of water that the soil  
25 can't infiltrate. So in that situation, the design

1 requirement -- the next provision below states that in that  
2 situation, that whatever cannot be -- pollutants that  
3 cannot be retained on site must be treated. We don't say  
4 how it must be treated -- well, we say you must consider  
5 bioinfiltration first. But then you can also consider  
6 whatever other types of treatment there are to -- to remove  
7 the amount of pollutants that you were not able to retain.

8           So let me use some real numbers. So let's say  
9 that the design standard is that you must retain 100 pounds  
10 of Pollutant X on a site, but you can only retain 50 pounds  
11 of it. Then the requirement is that you must treat the  
12 rest of the storm water coming off the site such that you  
13 remove the remaining 50 pounds. That's what the  
14 requirement says.

15           It's a clarification from the requirements from  
16 both the Riverside and the South Orange County permit. I  
17 hope that's helpful to the audience. I'm not really sure.

18           So the question is, do we feel it's justified?  
19 Absolutely. This board adopted this requirement upon  
20 adoption of the South Orange County and Riverside permits.  
21 This is the MEP standard that this board recognizes. It's  
22 already in two permits today.

23           The question was -- the third question, does staff  
24 think that the LID standard from the South Orange County  
25 permit is not adequate? No, we do think it's adequate.

1 That's why we're using it again. It's the same standard.

2           The fourth question, why is the -- this is -- now  
3 we're jumping over to hydromod. Why was the concrete-lined  
4 channel the only categorical exemption included in the  
5 permit? Okay. Remember, there's a lot of discussion about  
6 the fact that the previous Tentative Order did not have any  
7 exemptions. We got a lot of comments stating that that did  
8 not make sense because when you're discharging to concrete,  
9 there's no threat of erosion, so why do we have to do  
10 hydromod on site.

11           So we agreed with that argument. That's why we  
12 put that requirement back in. So the question is, what  
13 about the other exemptions that are included in the  
14 San Diego County hydromod plan? And I'm only talking about  
15 San Diego County right now, because their's is the only  
16 plan that's recognized by the Board at this time.

17           That plan does contain numerous other exemptions  
18 that the co-permittees and the stakeholders and everyone  
19 developed very rigorously. That hydromod plan is specific  
20 to looking at hydromodification, where the control should  
21 be placed, and where it's appropriate for exemptions.

22           Now, fast-forward to today. Let's talk about the  
23 water quality improvement plan. That one is not only  
24 looking at hydromodification management. We're looking at  
25 pollutants, strategies, innovative strategies. So if we

1 exempt a certain channel today, per the hydromod plan, then  
2 we're forever conditioning that stream to that state.  
3 Maybe through the water quality improvement analysis,  
4 maybe, just maybe, we can -- there's a stretch of that  
5 stream where the concrete may be able to be taken out, we  
6 can rehabilitate that -- that stream segment.

7           So there was also a follow-up question, is it  
8 staff's opinion that the co-permittees should be required  
9 to restore all the concrete? Absolutely not. That's not  
10 the requirement. We know that there's some segments of  
11 concrete that will never, never be removed, mostly for  
12 flood control, and we understand that. It's important to  
13 protect life and property.

14           All we're saying is that on a watershed basis,  
15 that each of these creeks should be evaluated in light of  
16 restoration opportunities, or what works best with the  
17 priorities within that watershed and how the co-permittees  
18 may or may not be able to work together.

19           Or they may decide that nope, the San Diego  
20 hydromod plan works today and it's -- it works with the  
21 water quality improvement plan as the process works itself  
22 through. And if all of those exemptions are appropriate in  
23 terms of the water quality improvement plan and where we're  
24 trying to go, then they can present -- then those  
25 exemptions can be revived within that plan.

1                   It's important to understand that those  
2 exemptions, the hydromod plan today is still intact,  
3 nothing is changing until that water quality improvement  
4 plan is developed years from now.

5                   Do you have any more questions for me?

6                   CHAIRMAN MORALES: Any questions by the Board?

7                   No. Thank you.

8                   Unless there are any further -- yes, sir?

9                   MR. GRAY: That wasn't all the questions that I  
10 asked. May I read it again, for the record, sir?

11                   CHAIRMAN MORALES: Yes. The question that you  
12 believe you asked that was not answered, what was that?

13                   MR GRAY: How did staff determine the retention of  
14 a hundred percent of the pollutants in the 85th percentile  
15 storm event constitutes MEP? Has staff conducted an  
16 economic evaluation of this edit to the permit?

17                   MS. ARIAS: Do you mind if I answer from here?

18                   CHAIRMAN MORALES: Not all.

19                   MS. ARIAS: Okay. The question, how do we  
20 determine the MEP standard for 85th percentile? And I'd  
21 have to say that this was included in the South Orange  
22 County and the Riverside County permit.

23                   So this Tentative Order recognizes the MEP  
24 standard that the Board adopted from these earlier permits.

25                   Did we do a cost analysis? No, we did not. We're

1 not required to do a cost analysis for this proceeding.

2 MR. UHLEY: May I ask another follow-up question,  
3 just a follow-up question for Miss Arias.

4 In the 2010 Riverside County permit, does it  
5 currently require that we reduce an equivalent amount of  
6 pollutants for biofiltration and other BMPs from retention  
7 are not required, just yes or no.

8 CHAIRMAN MORALES: Sorry. Let me make sure I  
9 understand the question. And if it's not just a simple yes  
10 or no answer, I will allow more than just yes or no.

11 MR. UHLEY: I'm trying to structure it so it's  
12 just a simple confirmation or denial.

13 CHAIRMAN MORALES: I appreciate that.

14 MR. UHLEY: What I understood Miss Arias to say  
15 was that the current 2010 MS4 permit for Riverside and the  
16 current 2009 permit for Orange County required that for  
17 biofiltration and other BMPs that are not retentioned that  
18 they must retain an equivalent amount of pollutants  
19 otherwise be captured by retention BMPs.

20 I'm just asking her to confirm or deny that,  
21 please.

22 CHAIRMAN MORALES: That question, I understand.

23 MR. CHIU: I'll have to answer that. Sorry,  
24 Miss Arias is not quite as familiar with the Riverside  
25 permit as I am.

1           The short answer is we don't know, because the --  
2   the way that the Riverside permit is -- is structured  
3   basically says you must retain the design capture volume on  
4   site. If that is technically infeasible, then you may use  
5   biofiltration BMPs and then there's a design standard that  
6   is associated with the biofiltration BMPs where it says --  
7   I think it's like 0.75 of the core volume space of  
8   something or other and that will constitute MEP at that  
9   point.

10           We don't know if that's equivalent to removing all  
11   pollutants or more of the pollutants than a design capture  
12   volume. The intent was to be as much or more than all the  
13   pollutants, but we don't know. So by adding this  
14   additional clarification of removal of 100 percent of the  
15   pollutants associated with the design capture volume, there  
16   is no design standard associated with the flow-through BMPs  
17   that can be determined upon evaluating what 100 percent of  
18   the pollutant is.

19           So that becomes, then, a flexible design standard  
20   versus a fixed standard.

21           MR. GRAY: Mark Gray again, representing the  
22   building industry. Just one follow-up to Christina's  
23   testimony. I just want to clarify that the South Orange  
24   County permit -- and this gets at what Wayne was discussing  
25   in the Riverside context and maybe Wayne could clarify

1 this.

2 The South Orange County permit allows  
3 biofiltration of the remaining volume in the event of  
4 infeasibility. And there is no really manage of delta  
5 between what you can manage on site. You manage that delta  
6 in a biofiltration. There is no other design coefficient  
7 or sizing factor.

8 Is that not the same standard that we're proposing  
9 here? How is that different? To me, it appears that the  
10 standard you've created with the pollutant removal language  
11 is a different standard than what exists in South Orange  
12 County.

13 Can you address that, please?

14 MR. CHIU: Again, I would disagree with their  
15 interpretation. I think they are trying to make it all  
16 about the retention standard, retention of storm water.

17 Again, we are talking about retention of  
18 pollutants and removal of pollutants prior to discharge  
19 from a site. So in the Orange County and Riverside County  
20 permits, as they are today, it is all about first, look at  
21 if you can retain the design capture volume on site, which  
22 is associated with the 85th percentile storm event.

23 If that is technically infeasible, then you may  
24 use biofiltration BMPs. Biofiltration BMPs must be  
25 designed according to how it is in the permit, which is

1 0.75 of something -- I can't remember off top of my head  
2 what it is -- it's fairly hard to understand, I think.

3           So what we have is now a pollutant removal design  
4 standard. It is not a retention standard. It is not a  
5 flow-through design standard. It is a pollutant removal  
6 design standard. Retention is going to get you to that  
7 pollutant removal standard fastest and easiest, because if  
8 you retain 100 percent of the design capture volume, you  
9 remove 100 percent of the pollutants in that design capture  
10 volume from being discharged from the site.

11           If you cannot retain 100 percent of the design  
12 capture volume and 100 percent of the pollutants in that  
13 design capture volume, you may use flow-through BMPs.  
14 Those flow-through BMPs must be able to achieve the removal  
15 of 100 percent of the pollutants within the design capture  
16 volume.

17           Now, if that is not feasible, or if a project  
18 proponent or the co-permittees determine that it would be  
19 better to do something off site through an alternative  
20 compliance project or a candidate project identified by the  
21 co-permittees within their water quality improvement plans,  
22 they are allowed to utilize those alternative compliance  
23 projects to meet that on site design standard off site.

24           Whatever portion of it may be done off site. They  
25 can capture 100 percent of the pollutants off site

1 somewhere. Or they can remove 75 percent of it on site and  
2 do the remaining 25 percent off site. But we have provided  
3 the flexibility for them to do it either on site or  
4 off site with retention, with retention and flow-through  
5 BMPs, with retention and off site alternatives, with  
6 retention flow-through BMPs and off site alternatives, or  
7 off site alternatives.

8 So they have a lot of flexibility now to do any  
9 one of those options in combination with each other to  
10 remove 100 percent of the pollutants associated with the  
11 design capture volume.

12 CHAIRMAN MORALES: Thank you.

13 Okay. Now we're going to move on and we'll hear  
14 from U.S. EPA. And while we scheduled them for a half an  
15 hour, folks, it's my understanding the presentation will  
16 not be half an hour. So the intent is that after they do  
17 their presentation, there won't be any questioning of EPA,  
18 so we'll break for lunch at that point.

19 MR. LIDEN: Thank you very much.

20 Members of the Board and Chair Morales for this  
21 opportunity.

22 Unfortunately, my boss, the acting water division  
23 director, John Kimmer, really wanted to be here in person  
24 to testify, and he had a conflict. And our other staff  
25 person, who works very closely with the regional board on

1 storm water permitting, also had a conflict. And since our  
2 travel budget has limited us to about a radius of ten miles  
3 from our local offices, and I'm based here in San Diego, I  
4 was the one chosen to give this testimony.

5 I work very closely with the regional board and  
6 with the sitting County of San Diego Storm Water  
7 Department, and under the leadership of the executive  
8 officer here in trying to address storm water, as well as  
9 water and waste water issues in Mexico. And I think we  
10 would all be very well served if Mexico also had a storm  
11 water permit and a TMDL process. I think that would solve  
12 most of our problems.

13 So the bad news is I won't be able to answer very  
14 many technical questions, but I would be very happy to take  
15 those back to my colleagues and, hopefully, get you answers  
16 by tomorrow, if you have any following my testimony. But  
17 that's the bad news. The good news is that I should  
18 hopefully have you out of here by lunch.

19 Thank for the excellent presentation, Mr. Chiu. I  
20 think you've really captured how much work has -- your  
21 staff, your colleagues have put into this effort over the  
22 last two years. It's a tremendous effort. And I know that  
23 EPA is very supportive of the approach that you've taken  
24 and we encourage the adoption of this permit as currently  
25 drafted.

1           We believe the decision to issue a regional MS4  
2 permit for the entire San Diego region is a wise one. We  
3 have seen this approach work well in the San Francisco Bay  
4 region. By issuing this regional permit, your staff will  
5 have more time to work on permit implementation that leads  
6 to water quality improvements, rather than spending a lot  
7 of time issuing separate MS4 permits for each separate  
8 entity.

9           Your staff has made incredible efforts to involve  
10 interested stakeholders in development of those permits.  
11 Meeting last April, as you heard, they have held eight  
12 workshops focused on various aspects of the permit,  
13 followed by two board workshops held November and December.  
14 Your staff has provided many opportunities for input and  
15 has shown flexibility in how permit language has been  
16 updated to reflect stakeholder input.

17           I'm going to focus my comments on a few specific  
18 areas. One is that flexibility in achieving compliance  
19 with water quality limits. One aspect of this permit has  
20 been revised response to stakeholder comments is the  
21 proposed approach for achieving compliance with receiving  
22 water limits.

23           This is a significant step that departs from the  
24 approach used by the regional board on existing MS4 permits  
25 and those MS4 permits across California since the issuance

1 of the State Water Resources Control Board Resolution 9905.

2 As described in the draft permit, permittees may  
3 use implementation of strategies and accepted water quality  
4 improvement plans to demonstrate compliance with receiving  
5 water limitations. In order for permittees to take  
6 advantage of this, the permit requires the permittees  
7 provide numeric goals and schedules for protecting water  
8 quality and attaining water quality standards.

9 Additionally, quantitative analysis must be  
10 provided which demonstrates storm water control actions  
11 implemented will achieve the numeric goals. While we would  
12 prefer the receiving water limitations including these --  
13 included in the existing permits for San Diego, Orange and  
14 Riverside County, we can and do support the draft permit's  
15 approach which still ensures measurable water quality  
16 improvements be achieved.

17 Proposed permit provisions -- that's a tough one  
18 to say numerous times -- on the preparation of the -- and  
19 implementation of water quality improvement plans are an  
20 important step forward. Under these plans, the direction  
21 taken in water quality monitoring and storm water control  
22 measures should be prioritized to those areas of greatest  
23 importance. The plan provides a framework for efficient  
24 and strategic use of resources to control urban runoff and  
25 achieve measurable water quality improvements.

1           The next area I'd like to talk about is low impact  
2 development tools. As we have seen across California and  
3 the nation, the use of low impact development tools has  
4 resulted in efficient storm water control to protect water  
5 quality and achieve other benefits, such as the  
6 replenishment of groundwater supplies.

7           We are supportive of the post-construction  
8 controls laid out in the draft permit's development  
9 planning section. Provisions that require new and  
10 redevelopment projects to control the 85th percentile storm  
11 are fundamentally consistent with the approach the Board  
12 has taken previously in the Orange and Riverside County  
13 permits, as well as with many renewed MS4 permits across  
14 the state.

15           We support the permit -- this section of the  
16 permit includes important provisions to manage  
17 hydromodification. We support the permit's requirements to  
18 minimize potential erosion to natural non-hardened  
19 channels. We also agree with the permit's -- draft  
20 permit's approach for alternative compliance under this  
21 section of the draft permit, which allows for  
22 implementation of off site storm water retention projects  
23 in lieu -- or in lieu of programs.

24           Next section is on TMDL implementation. We very  
25 much support the draft permit's approach for incorporating

1 TMDLs. Finding No 5 in the draft permit regarding TMDLs  
2 appropriately references EPA regulations, including the  
3 regulations requiring that NPDES permits incorporate limits  
4 consistent with TMDL allocations.

5           Urban runoff is a primary contributor to water  
6 quality impairments addressed by the TMDLs implemented in  
7 this permit. In order to achieve the water control  
8 improvements mapped out by the waste allocations in the  
9 TMDLs you have adopted, it is vitally important that this  
10 permit include a clear, measurable and enforceable approach  
11 for TMDL implementation.

12           The proposed permits TMDL provisions achieve this  
13 objective. Your staff has been very responsive to comments  
14 by expanding the options for determining compliance with  
15 TMDL-related provisions. Specifically, we believe your  
16 staff has appropriately incorporated into this permit the  
17 waste allocations, numeric targets, interim milestones, and  
18 final compliance goals from the adopted and improved TMDLs.

19           We are aware that in many cases, implementation of  
20 the TMDLs would be costly for the municipalities working to  
21 improve water quality. We remind the Board that each of  
22 these TMDLs underwent extensive public process during the  
23 TMDL resolution phase. In this region, the state holds a  
24 process for the TMDL implementation plan phase frequently  
25 lasts between two to four years per TMDL. In particular,

1 the limitation plans and associate schedules were the  
2 product of detailed discussions and negotiation between  
3 your staff and stakeholders and are appropriately reflected  
4 in this permit.

5           It is important also to note that there are  
6 opportunities to revise the TMDL implementation schedules.  
7 The draft permit calls for an adaptive management approach,  
8 as we heard about, to achieve water quality improvements.  
9 As knowledge is gained during the TMDL implementation, it's  
10 possible that monitoring and control measure performance  
11 data may lead to reassessment of the TMDL implementation  
12 plan, that the -- it's possible that monitoring and control  
13 measures performed may lead to reassessment of the TMDL  
14 implementation plan conclusions.

15           We understand that your staff is open to such  
16 reassessments if they are based on sound scientific data  
17 and on the ground experience addressing storm water  
18 discharges. Such an adaptive management approach to a  
19 achieving water quality improvement is also consistent with  
20 the longstanding iterative approaches in MS4 permitting.

21           In conclusion, again, we do support the proposed  
22 permit as a necessary step to address the primary  
23 contribution of water quality impairments in your region.  
24 And we hope that you will adopt this permit that your staff  
25 has worked so hard to develop.

1 Thank you very much.

2 CHAIRMAN MORALES: Thank you.

3 MR. ANDERSON: And because I can't find it, could  
4 you just confirm that you had a letter in the record  
5 supporting this permit as well? I don't think we actually  
6 had a letter in the record.

7 MR. CHIU: There's a letter -- we do have letter  
8 in the record officially.

9 CHAIRMAN MORALES: I was going to say I think  
10 Mexico's storm water plan is called the Tijuana Valley  
11 recovery team.

12 MR. LIDEN: And we certainly are hoping to use  
13 some of the -- I think some of the -- the experiences  
14 gained here and that the dedicated staff at the City and  
15 County of San Diego are working to implement here. We're  
16 hoping that we can help Tijuana implement those types of  
17 procedures south of the border so that it will help all of  
18 us.

19 CHAIRMAN MORALES: Thank you.

20 Is there anything we need to put on the record  
21 before breaking for lunch?

22 MS. HAGAN: Not with regard to this matter. Just  
23 that I do want to announce that we'll be talking about the  
24 international boundary and waste water treatment plant  
25 litigation, briefly, in closed session.

1 MR. ANDERSON: Before you go, can I get your name?

2 MR. LIDEN: Sorry. It's Doug Liden, L-i-d-e-n,  
3 and I'm an environmental engineer out of the San Diego EPA  
4 border office.

5 MR, ANDERSON: Mr. Liden, we just received letter  
6 from the congressional -- the whole congressional  
7 delegation -- so the assembly delegation -- asking your  
8 superiors to ask us -- to review that.

9 Do you have any comment about that letter? Have  
10 you seen it?

11 MR. LIDEN: We have seen the letter, our regional  
12 administrator has seen the letter. I cannot -- we have not  
13 yet responded. We certainly will. I think it's important  
14 to note that we do believe that the TMDL process has -- as  
15 I mentioned in my testimony, has been appropriately  
16 included in this permit and does provide for flexibility.

17 We also, again, recognize that it is -- some of  
18 these efforts will be costly, but as the draft permit  
19 points out there -- and the LA area has shown that there  
20 has been real cost benefits from improved water quality as  
21 well. And we want to make sure to point that out.

22 But I have not. We certainly will let you know as  
23 soon as we respond to letter.

24 CHAIRMAN MORALES: Thank you.

25 A very quick question for the co-permittees. You

1 guys are up to bat next. I want to give everybody an  
2 opportunity to grab a bite to eat, but how soon do you  
3 think you'll ready to proceed.

4 UNKNOWN co-permittee: One hour.

5 CHAIRMAN MORALES: An hour?

6 Okay. We'll reconvene no later than 1:00. Please  
7 try to get here so we can start at 1:00, folks.

8 (Whereupon, at 12:00 p.m. the lunch recess was  
9 taken.)

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4 (AFTERNOON SESSION - DATE\*\*\*\*\* 1:04 P.M.

5

6 CHAIRMAN MORALES: Okay. Call the meeting to  
7 order.

8 And if I could ask the co-permittees to begin  
9 their presentation. And just for a point of information,  
10 we stated at the beginning, and in the documents, that any  
11 amounts of time that get used for cross-examination would  
12 be deducted off of the total block. And so for the  
13 co-permittees, we have got a total of seven minutes that  
14 you have used on your cross.

15 Okay. So I think we'll first hear from Mary Anne  
16 Skorpanich.

17 UNKNOWN SPEAKER: Chairman Morales, in terms of  
18 those seven minutes, I just want to confirm, does that  
19 cover all the questions that were asked of staff, or is  
20 that just those asked by the co-permittees?

21 CHAIRMAN MORALES: Those were the ones asked by  
22 the co-permittee representative. BIA will have a larger  
23 deduction.

24 MS. SKORPANICH: Good afternoon, Chairman and  
25 members of the water board. I am Mary Anne Skorpanich from

1 the County of Orange, and with me is Todd Snyder from the  
2 County of Orange, and Jason Uhley from Riverside County  
3 Flood Control District.

4 I just wanted to make some brief introductory  
5 comments before the individual presentations by the  
6 permittees will begin.

7 Although the hearing just started, you already  
8 heard, before today, from many, many people that more time  
9 is needed before adoption can happen. It's been nearly  
10 universal; you've heard it from the permittees, you've  
11 heard it from the nongovernmental organizations, from  
12 business, from legislature, congress and the newspaper, all  
13 saying this needs more time.

14 You'll be hearing testimony today from many, each  
15 with their particular issues, but a common theme that  
16 you'll hear throughout these proceedings is a broad  
17 opposition to the permit as it's currently drafted.

18 As to the permittees' testimony, you'll be hearing  
19 about how the environment is getting better as a result of  
20 our programs, about how there is a lack of substantial  
21 evidence to change course as laid out in this Tentative  
22 Order. And about, finally, how there is more work to be  
23 done.

24 We strongly urge you, at the conclusion of  
25 tomorrow's session, to direct your staff to continue the

1 stakeholder process that worked so well for those months  
2 that we engaged in that last year, and to return with you  
3 with a permit that has broad support rather than broad  
4 opposition that we can all be behind.

5           In addition to that, I'm also requesting that we  
6 have some time for closing argument, 10 to 15 minutes,  
7 possibly tomorrow. And as to specifics that were requested  
8 earlier, I did want to point out that in the introductory  
9 slides of the staff presentation, there were a series of  
10 photos, some showing sort of the dos and don'ts of what we  
11 would like our waterways to look like.

12           And all of those bad examples were all as a result  
13 of the 401 and 404 Clean Water Act section of activities  
14 and permitting. So the concrete-lined channels, the  
15 bridges over the waterways, the ditches and the culverts,  
16 none of that's governed by the MS4 permit.

17           So I just wanted to draw that distinction, that  
18 while those are not things that we necessarily want to see,  
19 that changes to this permit are not going to change those  
20 things and make them go away.

21           On the other hand, a lot of the pictures of what  
22 we find very good about the waterways, some of those  
23 success stories that you'll hear some more about in the  
24 following testimony, are examples -- and those photos  
25 documented a few of them -- of actual good activities that

1 have been undertaken by the permittees to make those  
2 waterways look as good as they do today and perform as well  
3 for the environment and for the people here.

4 Thank for your time and your consideration.

5 MR. ABARBANEL: Would you and the other  
6 co-permittees be coming up with a specific date at which  
7 the permit should be voted on?

8 MS. SKORPANICH: I would say that considering that  
9 the normal permit process takes well over a year for a  
10 single county, and you're taking on three, that the -- what  
11 was it, from April to October stakeholder process, while  
12 there was some meetings with selected permittees before  
13 that, that I would think another couple of months would be  
14 needed to allow time, as you heard earlier, for those  
15 meetings to happen, for folks to go back and reflect on  
16 what they mean and to come back and have some further  
17 discussion.

18 So I would think another couple of months would  
19 probably get us there.

20 MR. ABARBANEL: Okay. June?

21 MS. SKORPANICH: I beg your pardon?

22 MR. ABARBANEL: June? I'm asking for a specific  
23 answer to the extent that --

24 MS. SKORPANICH: I would say by the time we would  
25 have a new round of -- a new draft that might result out of

1 that, and then time for comments, we'd probably be looking  
2 at the end of the summer. So September, October, somewhere  
3 in that time frame.

4 MR. ABARBANEL: Thank you.

5 MS. SKORPANICH: Any further questions?

6 CHAIRMAN MORALES: No.

7 MS. SKORPANICH: Thank you.

8 MR. SNYDER: Good afternoon, Chairman, members of  
9 the Board. My name is Todd Snyder. I'm a watershed  
10 planning manager for the County of San Diego and, yes, I  
11 have taken the oath.

12 Under the current 2007 storm water permit for  
13 San Diego County region, my agency serves as the principal  
14 permittee. So in that capacity, we're responsible for  
15 coordinating the regional efforts of our 21 co-permittees  
16 which included the County of San Diego, the Port District,  
17 the Regional Airport Authority and the 18 incorporated  
18 cities in San Diego County.

19 We have done our very best to insure that the  
20 presentation we're about to give represents a consensus of  
21 our 21 co-permittees, but with only eight business days to  
22 read the revised permit, share our thoughts collectively,  
23 we had a chance to meet once, and coordinate our message,  
24 this has been a real challenge.

25 We very much support the many requests you've

1 heard today to continue this hearing so that all parties  
2 will have time to understand the changes that have been  
3 made and to dialogue with your staff on the new permit  
4 language.

5           It appears there are many instances where regional  
6 board staff might have intended one thing, but permit  
7 language can be interpreted very differently by permittees  
8 and stakeholders. So we will attempt to bring these issues  
9 up as we go through our comments. However, one of our  
10 concerns is that we simply have not had enough time to  
11 identify some of the changes that would require additional  
12 clarification.

13           So please keep in mind, as we go through the  
14 San Diego County co-permittee presentation, that this  
15 represents the consensus of the 21 co-permittees in  
16 San Diego that we've been able to reach over the last eight  
17 business days. There are definitely still issues where  
18 some of our co-permittees have differences of opinion. And  
19 we very much hope that each individual co-permittee who has  
20 requested time will be given the opportunity to express  
21 their unique perspective at some point either today or  
22 tomorrow.

23           So we're going to focus our presentation on five  
24 key topics, which you see up here on the slide. So we'll  
25 be talking about water quality improvement plans --

1                   MR. ABARBANEL: Mr. Snyder, the previous speaker  
2 represented co-permittees as in broad opposition to the  
3 permit. Are they opposed to the permit itself, broadly, or  
4 are they, as a collection of co-permittees, expressing a  
5 specific set of opposition that they want addressed?

6                   MR. SNYDER: My perspective would be we're going  
7 to show you in our presentation the portions of the permit  
8 that we have identified that we're in opposition to.

9                   MR. ABARBANEL: Can we infer that you are in  
10 support of the remainder?

11                   MR. SNYDER: No, you cannot. And that comes from  
12 my comments that we have only had eight business days to  
13 look at the revised draft.

14                   MR. ABARBANEL: Thank you.

15                   MR. SNYDER: So our plan is to walk through each  
16 of the five issues on the screen first, one at a time.  
17 We're first going to discuss our technical concerns, and  
18 we'll follow that by discussing our legal concerns. So  
19 when we have finished with the technical and legal comments  
20 for each issue, we will move on to the next. So that will  
21 result in some frequent switching out of speakers, and we  
22 hope that won't be too disruptive.

23                   So for San Diego County, in deference to the other  
24 co-permittees that are still to speak after us, we're going  
25 to attempt to limit our presentation to an hour. We're not

1 sure we can get there, but if we can have the official  
2 timekeeper or timekeepers give us a head's up when we're  
3 about ten minutes out, that would be really helpful.

4 We will probably, at the end of that hour block of  
5 time, defer to Orange County. But if there is still  
6 testimony to be given, we would appreciate the opportunity  
7 to come back and finish our presentation.

8 And so if there are no questions for me at this  
9 time, I will ask Mikhail Ogawa, who's representing the  
10 City of Del Mar, to start us off with comments on our water  
11 quality improvement plan section of the permit.

12 MS. OGAWA: Honorable Chair, members of the Board,  
13 my name is Mikhail Ogawa. I am the clean water manager for  
14 the City of Del Mar. I have taken the oath and am prepared  
15 to speak.

16 It's unfortunate that I'm timed to be the first  
17 primary technical speaker right after lunch because my  
18 monotonous voice has been described as both buttery and  
19 sleep-inducing. So I won't take offense if you kind of get  
20 a little sleepy.

21 Although I'm the representative for the City of  
22 Del Mar, I'm here today to represent the San Diego regional  
23 co-permittees -- San Diego County regional co-permittees.  
24 And as Todd says, the topics we're addressing today  
25 represent the general consensus of the co-permittees.

1           The co-permittees thank the regional board and  
2 your staff for considering, acknowledging, and  
3 incorporating some of the comments submitted in January to  
4 the Tentative Order that was released in October,  
5 specifically, the water quality improvement plans. And I  
6 have to say that, from a volume perspective, over the  
7 course of the year, since the administrative draft was  
8 released and the numerous meetings we have had, as Wayne  
9 described, as far as content goes, we're probably 90  
10 percent there.

11           But also, as Wayne described, in any relationship,  
12 there's some remaining issues that we need to work out. So  
13 I'll be covering some of those outstanding issues related  
14 to the water quality improvement plans. But before moving  
15 through, getting into the comments, I want to also describe  
16 sort of the presentation format you'll be seeing, in  
17 general, for our San Diego co-permittees' presentation.

18           So at the top of each slide, it's got the general,  
19 sort of, theme and area of the permit that we're  
20 discussing, the issue specifically, or any supporting  
21 information related to that issue, a direct proposed  
22 solution, and then also how to propose solutions integrated  
23 directly into the current Tentative Order. And I also  
24 believe that a red-lined strikeout of the current Tentative  
25 Order with the San Diego co-permittees' recommended changes

1 has been given to you so you'll have that in front of you.

2 So the first item is related to the compliance  
3 option for water quality improvement plans and is directly  
4 related to the requirements necessary for co-permittees to  
5 maintain their status under this compliance option. The  
6 context for the issue is that the co-permittees have the  
7 individual choice to exercise entering into this rigorous  
8 option.

9 However, as this particular provision states, each  
10 co-permittee can only obtain the rewards of this option if  
11 all the co-permittees in that watershed implement the  
12 strategies. The co-permittees believe each co-permittee  
13 should have that, is committed to the compliance option,  
14 should not lose their compliance status because another  
15 jurisdiction, for whatever reason, is not fulfilling their  
16 obligations. And my understanding is that this issue has  
17 been discussed with your staff and, in general, your staff  
18 agrees with it. So we're just asking that we change  
19 co-permittees from singular -- I mean to singular from  
20 plural.

21 The next issue is related to another one of the  
22 requirements necessary to maintain that compliance status  
23 under the compliance option. The phrase "continues to be  
24 accepted" is used relevant to our analysis that's performed  
25 under this compliance option. And that could be

1 interpreted to allow the regional board to rescind the  
2 coverage provided by the compliance option at any time and  
3 it's not based on any submittal of documents or of the  
4 analysis itself.

5           So we just ask that we maintain the association of  
6 that term, accept it when we deliver materials or our  
7 analysis that's being analyzed. There's plenty of  
8 opportunities for the regional board to review that  
9 documentation prior to it being accepted. We just don't  
10 want any mid-course changes to our compliance if we elect  
11 to do this compliance option.

12           And again, this issue has been discussed with  
13 staff. My understanding is that staff is in concurrence,  
14 in general, with this change.

15           The next issue has to deal with the approval of  
16 the water quality improvement plans and submittals.  
17 There's inconsistency in the terminology that's used. In  
18 some ways, it's approved or approving or approval,  
19 acceptance, concurrence. And in one case we have the  
20 executive officer may certify our plans. And so we would  
21 just, you know, like to have this streamlined and use the  
22 term "approved" throughout the document so that we  
23 understand.

24           However, if the use of all these different  
25 synonyms is intentional, we believe that a definition

1 should be provided for each, so there is no confusion as to  
2 what kind of approval we're receiving from the Board. And  
3 then because it's used so frequently throughout the  
4 document, we're not presenting the language here, it's in  
5 the red-line strikeout version you have in front of you.

6           The other issue with water quality improvement  
7 plan submittals is the lack of explicit comments provided  
8 by the regional board. In fact, between the October  
9 version and the March 27th version, the language that  
10 specifically said that the regional board -- or that  
11 co-permittees would need to respond to regional board  
12 comments was struck. And so we would just like to have it  
13 explicitly stated in the permit that the regional board  
14 will be providing comments on these key milestone  
15 submittals, the priority conditions as they are submitted  
16 and the numerical.

17           Next is an issue related to the timelines for  
18 changes to our water quality improvement plans and our  
19 submittals based on the approvals or comments from board  
20 staff. So we believe that the intent is not for the  
21 regional board to require mid-course corrections within 90  
22 days, but perhaps it's to address any issues or  
23 deficiencies that the Board staff may find. And so we  
24 believe that it's inappropriate for the -- for us to  
25 completely change course or make dramatic programmatic

1 changes within 90 days if an issue is found within our  
2 plans. Again, there's a distinct and rigorous approval  
3 process that will occur and so we don't believe that in any  
4 given year that the Board staff finds an issue that we have  
5 to turn around and change our entire programs within 90  
6 days.

7           Similarly, the jurisdictional runoff management  
8 plans are -- in the current Tentative Order are slated to  
9 be turned in three months after we receive approval on our  
10 water quality improvement plan. And so the idea is that we  
11 complete our plans, board staff approves it or the Board  
12 and, within 90 days, three months, we're expected to turn  
13 around updates, complete updates to our jurisdictional  
14 programs based upon the approved plans. And for some  
15 jurisdictions that need to take their jurisdictional plans  
16 to their governing bodies, it's impossible, you can't even  
17 get on their agendas for three months. So what we  
18 recommend is that the jurisdictional runoff management  
19 plans are submitted coincidental with the water quality  
20 improvement plans, and if there are issues that will  
21 require changes to our jurisdictional plans, that those  
22 changes would be submitted with the next annual report.  
23 And we believe that that provides sufficient time to  
24 demonstrate that we're responsive to the comments of the  
25 Board, as well as gives us the ability to make the changes

1 programmatically and been approved by our governing bodies.

2           And again, these particular issues have been  
3 addressed with board staff. And my understanding is  
4 there's general concurrence with these language changes.  
5 So those language changes are presented here.

6           This last one is related to Provision A. And  
7 again, it's related to the updates necessary within 90 days  
8 and again, 90 days to make a complete update to a water  
9 quality improvement plan would be pretty aggressive. And  
10 so with minor modifications we believe that we can address  
11 those within 90 days. But major updates should remain on  
12 an annual cycle. And again, this has been addressed with  
13 board staff and our understanding is that there.

14           So that concludes my portion. If anyone has any  
15 questions I'd be more than happy to answer.

16           CHAIRMAN MORALES: Actually, I do, very quickly.  
17 I think it's a procedural question. The document that was  
18 red-lined that you referred to, is that this document that  
19 was given to us?

20           MS. OGAWA: Correct.

21           CHAIRMAN MORALES: Okay. I think we have  
22 something to --

23           MS. HAGAN: I wanted to ask a question about that.  
24 Is the -- are the presentations that you're going to be  
25 going through showing all of the changes that are also

1 shown in this permit, or will there be other proposed red  
2 lines in this document that are not discussed during your  
3 presentation?

4 MS. OGAWA: I can't guarantee that they're all --  
5 that they're the same.

6 MS. HAGAN: Okay. Well, we can follow up later  
7 and maybe we can square up which ones were presented and  
8 which ones weren't when you're finished or tomorrow.

9 MR. ABARBANEL: I wonder if I might address your  
10 suggestions. Except for the first, I have no problem with  
11 them. The first seems to me to be disaggregating the  
12 collective responsibility of the region for the quality of  
13 its water and the reallocating of that responsibility on  
14 geographical lines that have very little to do with water  
15 quality.

16 So I would say that you have not gone far enough.  
17 Why bother with the jurisdictions having independence, why  
18 not every individual in the region having to have an NPDES  
19 permit and so we don't have to rely on each other at all?  
20 I think that's the wrong direction to go. You haven't gone  
21 far enough in the wrong direction, in my opinion.

22 I think there's a real value for collectively  
23 addressing the fact that as the Board's practical vision,  
24 which has been discussed here and will in the future  
25 emphasize, is perhaps on a watershed approach instead of a

1 regional approach, although I think that is not adequate  
2 enough in itself.

3           Suppose they take the watershed that your city  
4 happens to sit in, or at least the northern watershed, you  
5 would have to deal with the City of San Diego, the County  
6 of San Diego, Solana Beach, Poway and Escondido in order to  
7 maintain proper water quality in that watershed. I think  
8 that's dividing the attention of the cities and county that  
9 are involved and that we ought to focus on a regional  
10 permit and regional responsibility. If Escondido is out of  
11 compliance, that lack of compliance flows down the river to  
12 Solana Beach and Del Mar, and you really don't want to be  
13 trapped with that.

14           MS. OGAWA: I'll turn over the podium to  
15 Kris McFadden from the City of San Diego.

16           MR. MC FADDEN: Good afternoon. I'm  
17 Kris McFadden. I'm the Deputy Director of the City of  
18 San Diego Storm Water Division and I have taken the oath.

19           I'm here today because, actually, the City of  
20 San Diego is the only co-permittee in San Diego County that  
21 does discharge to an ASPS, in particular this is La Jolla  
22 Shores ASPS. Of course, working with our partners over the  
23 many years, the City has made great efforts to address  
24 dry weather flows and is well on the way to address all the  
25 water quality issues in the ASPS.

1                   Currently, the Tentative Order does exclude  
2 references to ASPS in B3B. Therefore, it's not covered by  
3 the water quality base compliance. We propose to include  
4 the references from Provision A under Provision B. This  
5 slide actually has the underlined additions that we would  
6 recommend.

7                   Our main goal is to be sure that this new permit  
8 does incorporate all of the ocean plan standards in the  
9 same way that it is going to be incorporating the basin  
10 plan standards for compliance. This will allow us to  
11 finalize our current plans for water quality improvements  
12 in the ASPS and throughout the rest of the city.

13                   Also, I want to do one other thing and reiterate  
14 what everyone one else is saying, how productive the staff  
15 have been and available they have been. And when we're  
16 talking about reopening TMDLs, I think it's important that  
17 we do have commitment that regional board staff will have  
18 the time to actually spend on this very important process.  
19 I know that they're very, very busy, and I would encourage  
20 allocating any additional resources, if possible, or  
21 potentially looking at a third party TMDL. That was very  
22 successful for us in the past where the regional board  
23 actually partnered with the municipalities in that  
24 particular area.

25                   Those are all the comments I have, but I'm

1 available for any questions now or in the future.

2 MR. ABARBANEL: I wonder if I can make a  
3 suggestion.

4 Thank you very much for the suggestion that the  
5 water board staff have more time and resources. We have a  
6 letter here from one, two, three, four, five, six, seven,  
7 eight, nine -- ten people in Sacramento who can help you.

8 MR. MC FADDEN: Excellent.

9 Thank you.

10 VICE CHAIR STRAWN: Kris, I don't seem to have a  
11 speaker card for you. Did you do one for --

12 MR. MC FADDEN: I'm part of the co-permittee,  
13 but I can definitely. Actually --

14 VICE CHAIR STRAWN: If you could, with spelling of  
15 names and what have you. Not that we don't know who you  
16 are.

17 MR. MC FADDEN: Very good.

18 Thank you.

19 MR. HAGGERTY: Mr. Chairman, members of the Board,  
20 Shawn Haggerty, partner with the law firm Best, Best &  
21 Krieger and City Attorney for the City of Santee. And I'm  
22 going to make two legal comments on the WQIP compliance  
23 option. And while my comments are legal, I've also taken  
24 the oath.

25 The first one has to do with one of the key

1 issues -- key policy issues facing the state and MS4  
2 discharges today, which is the receiving water limitations  
3 language that is in the permit. The -- as was discussed in  
4 our presentation, the Tentative Order does establish that  
5 very rigorous compliance option through the WQIP. And  
6 that's in Provision B3C of the permit.

7           To fully implement this compliance option, it's  
8 our legal view that you have to also link Provision A of  
9 the permit to this compliance option. Right now, as it's  
10 written, the Provision B3C links back to Provision A, but  
11 Provision A does not reference Provision B3C.

12           That may seem overly technical, but the courts  
13 have read these permits as having each section of the  
14 permit be independently enforceable. And so we are very  
15 concerned that whatever benefit might be provided to the  
16 compliance option after going through a very expensive and  
17 rigorous process, we may not be able to obtain the outcome  
18 that I think everyone's looking for, unless this change is  
19 made to the permit.

20           So we are asking for -- it's a simple language  
21 change, which would be to add the suggested language that  
22 we have on the slide to the provisions in A1 and A2. And  
23 that would close the loop between the compliance option and  
24 the Provision A.

25           And I need to take a second to address some

1 arguments that I anticipate you might be hearing later, and  
2 these are things that, if we have an opportunity, would  
3 probably be more effective after hearing from others in the  
4 form of rebuttal or summation. But just to make sure that  
5 you get our point of view, I do want to address what I  
6 believe will be some contentions you might hear about the  
7 compliance option in general, and whether that's something  
8 that is even consistent with the Clean Water Act and, of  
9 course, state law. And, specifically, that relates to  
10 concepts called anti-backsliding and anti-degradation.

11 We think that you fully have the ability to pursue  
12 the compliance option. I think that's reflective in the  
13 staff's presentation and also the EPA has supported the  
14 approach. But more specifically, you -- this is an area  
15 where you really have to look closely at what the Clean  
16 Water Act says and what the regulations say.

17 The concept of anti-backsliding does exist in the  
18 Clean Water Act and there are restrictions on the ability  
19 of regulators to relax specific technology-based effluent  
20 limitations or specific water-quality based effluent  
21 limitations, standards or conditions.

22 However, if you read the act carefully, those  
23 requirements, the anti-backsliding issue, does not apply to  
24 receiving water limitations as we're dealing with here when  
25 they're incorporated into an MS4 permit. Section 42P3B of

1 the Clean Water Act is a unique section of the Clean Water  
2 Act applying to MS4 permits.

3           And I think we often forget that it is a very  
4 specific congressional solution to a problem that is very  
5 difficult to address and a system -- MS4 system that is  
6 different than closed systems, like public-known treatment  
7 works or individual industrial permits. This is a very  
8 different situation. And Congress came up with a very  
9 different approach to regulating it. And we heard  
10 discussion of the maximum extent practicable standard  
11 earlier. So that is the anti-backsliding issue.

12           And to the extent there is an application of  
13 anti-backsliding, Finding 24 of the permit, and also the  
14 fact sheet on Page 27 find that the permit, as written, is  
15 consistent with anti-backsliding provisions.

16           With regard to anti-degradation, there are state  
17 and federal requirements. We'll probably hear about that  
18 as well. But this permit does not allow new or increased  
19 discharge of waste. The WQIP process includes a very  
20 specific monitoring process, reporting process and adaptive  
21 management process that is specifically designed to prevent  
22 degradation of water quality. And to the extent that there  
23 is any question about that, Finding 23 of the permit and  
24 also Pages 26 and 27 of the fact sheet address the issue.

25           The second issue is a more technical one in the

1 sense of this is really just permit language, we think.  
2 With regard to the WQIPs, and to take advantage of the  
3 compliance option that's in the permit, certain things have  
4 to go to a consultation panel. And the consensus of the  
5 San Diego co-permittees is that they have no objection to  
6 the development of the WQIP through that stakeholder  
7 process. And likely, there would be value to going through  
8 that process.

9           The problem is, is that the way the permit is  
10 currently written, it uses a term that the -- basically,  
11 the WQIP can't go forward unless there's a majority  
12 concurrence of members of the panel. And that is the  
13 language that we have a concern about.

14           So I'm going to have a problem with reviewing --  
15 the panel reviewing it, taking input from the panel. But  
16 the idea this independent panel would have, essentially,  
17 veto authority over the process and, if no majority  
18 concurrence, put the brakes on the process, we think it is  
19 very problematic from a legal point of view.

20           We think it's an improper delegation of legal  
21 authority by the Board because, essentially, the Board  
22 could be prevented from ever acting upon the WQIPs if the  
23 panel just stops it and there is no way to have review of  
24 that panel decision.

25           We also think it's an improper impairment of

1 jurisdictional authority because, again, this independent  
2 panel could put the brakes on the process even though the  
3 jurisdiction wanted to go forward. And then there's some  
4 complexities with open meeting requirements and potential  
5 conflict of interest issues. So we have provided some  
6 simple language changes to address that point.

7 Those are my legal comments. I'll turn it over  
8 now to Drew Kleis from the City of San Diego.

9 MR. ANDERSON: Just real quick, were those legal  
10 comments the reason for the letter from the state that  
11 raise concerns about the -- let me rephrase that.

12 Would those fixes address the concerns raised in  
13 the assembly letter about the receiving water limitation  
14 language in the permit?

15 MR. KLEIS: It would help. I mean I think  
16 there's, honestly, a broader statewide issue -- and we have  
17 a member of the state board here -- that they are  
18 addressing. This would go, at least partway, to addressing  
19 that issue. And it would at least provide the linkage  
20 between the receiving water limitation of this particular  
21 permit and this particular compliance option.

22 But whether it address all of the issues I think  
23 you'll hear others comment on that.

24 MR. ANDERSON: Okay.

25 MR. KLEIS: Good afternoon. My name is Drew Kleis

1 and I'm a program manager with the Storm Water Division at  
2 the City of San Diego, here to talk about TMDLs.

3           Okay. Before I get into the specific slides, let  
4 me also echo what Kris McFadden said, and a few others. I  
5 probably hold the record for most meetings and time spent  
6 on the phone with Board staff over the last year, and even  
7 before then, talking with them as they were contemplating  
8 how to approach the new permit. And I want to echo the  
9 comments about -- a lot of comments about time and energy  
10 spent trying to work with the municipalities to identify  
11 solutions.

12           And I think the TMDL section of the permit, they  
13 did identify some solutions, ones that we brought up at the  
14 December board workshop, and Wayne covered those in his  
15 presentation. So there was a lot of progress made on  
16 certain key issues that the San Diego co-permittees  
17 requested. That's not to say that all the issues from all  
18 individual co-permittees are addressed, but certainly for  
19 those group requests, they tackled those issues.

20           And so I think the -- the items I'm going to cover  
21 fall into two categories. Those issues that were  
22 addressed, now we're just tinkering with the fine-tuning of  
23 wording. Then there are maybe a few things that were not  
24 addressed that were other issues on the team, and I'll try  
25 and capture those. Then there's just a few typos and

1 things like that that were found.

2 I also want to say that I'm speaking on behalf of  
3 the San Diego co-permittees. And when the discussion about  
4 who's going to cover TMDLs came up, there was general  
5 silence in the room, so I was selected to do that. There  
6 are people in the room that have more detail on TMDLs.

7 So I want to approach it that -- I think I  
8 mentioned this at the December workshop. I'm in charge of  
9 planning our compliance -- putting our compliance plans  
10 together for the City watershed planning, et cetera. So I  
11 want to approach it from a land use planning and from a  
12 watershed planning perspective and try and put some context  
13 to why these requests are really an attempt to be more  
14 strategic and more efficiently achieve water quality faster  
15 in our planning.

16 Okay. The first issue has to do with how  
17 concentration-based TMDL compliance is determined in the  
18 permit. And the general approach, from a planning  
19 standpoint, would be to try and prioritize your watershed  
20 areas and outfalls and address BMPs in the highest  
21 polluting areas first.

22 And we would like to be able to do that with an  
23 approach where we calculate the concentration limits on a  
24 watershed basis, rather than outfall by outfall. When it's  
25 measured outfall by outfall, compliance is everywhere and

1 there is no prioritization, you have to meet that  
2 concentration everywhere.

3 The concept would be let's target first those  
4 highest polluting areas, address BMPs there and actually  
5 exceed maybe the concentration reductions that are required  
6 to offset the areas that maybe aren't really contributing  
7 to the problem so that the overall watershed average  
8 concentration is met.

9 And I know I'm under oath on this, so I wanted to  
10 make sure that I'm speaking adequately. I checked with  
11 both our consultants and attorneys on this. As permit  
12 writers, regional board and the regional board body has the  
13 discretion to -- on how to translate waste load allocations  
14 into the permit that are from adopted TMDLs. For example,  
15 the -- including the load-based calculations for the  
16 bacteria TMDLs, one of the changes that was made, that is  
17 within staff's discretion to write that into the permit and  
18 how it's done.

19 They also have the discretion to clarify how the  
20 concentration limit is calculated, whether it's on a  
21 watershed basis, a region basis or an outfall by outfall.  
22 So from a water quality standpoint, we think it's more  
23 advantageous to be able to calculate that concentration  
24 limit on a watershed basis.

25 MR. ABARBANEL: May I ask you a question about

1 that?

2           There's definitely a difference between an outfall  
3 by outfall average -- excuse me -- requirement than an  
4 average over outfall. But average does not represent  
5 distribution very well at all.

6           Would you and your co-permittee troops be willing  
7 to consider an average over outfalls, possibly a weighted  
8 average where some outfalls are more important than others,  
9 and a limitation on the RMS variation around that average  
10 so there are no outliers causing significant damage?

11           MR. KLEIS: I cannot keep up on RMS outliers, but  
12 I think I understand your concept.

13           The City of San Diego would certainly support --  
14 this is a great example where we'd like to have more  
15 discussion and talk through those sort of things.

16           But, yes, the City of San Diego would be  
17 interested in trying to put some clarity, or better  
18 defining what this flow-weighted average would look like.  
19 I can't speak for the other co-permittees on that.

20           MR. ABARBANEL: Thank you.

21           MR. KLEIS: Okay. The next issue has to do with  
22 the Shelter Island Yacht Basin TMDLs. And this one's  
23 pretty straightforward.

24           We did talk with --

25           MS. KALEMKIARIAN: Sorry, just a clarification

1 question, going back.

2 MR. KLEIS: Sure.

3 MS. KALEMKIARIAN: When it says in your language  
4 there, on the previous slide, "across all outfalls within a  
5 jurisdiction," you're referring to the jurisdiction of one  
6 co-permittee, because you also referred to watersheds, and  
7 that would be across jurisdictions, potentially, right?  
8 What's the jurisdiction that's mentioned? What's the  
9 jurisdiction?

10 MR. KLEIS: The jurisdiction would be the  
11 jurisdictional boundary. So you have to weight the average  
12 within your jurisdictional boundary.

13 MS. KALEMKIARIAN: So the City of San Diego is the  
14 jurisdiction?

15 MR. KLEIS: That's correct.

16 MS. KALEMKIARIAN: So then, how does that relate  
17 to the comment of the fella from Del Mar who said we don't  
18 want to have to be tied to each other when we look at the  
19 whole watershed, that would be a cross-jurisdiction -- how  
20 do we -- how does that have any significance if you're  
21 getting an average for jurisdiction versus the watershed?

22 MR. KLEIS: Okay. Good question.

23 Just to clarity, when I say watershed approach or  
24 a watershed average, what I mean is an average for a  
25 drainage area, could be a subdrainage area, for that

1 jurisdiction. But you would -- you would want to have a  
2 clear distinction between one jurisdiction's efforts and  
3 their compliance progress versus all the others. You would  
4 want that clarity in between each jurisdiction's  
5 implementation. So the calculation of the concentration  
6 would be on a watershed basis within that jurisdiction,  
7 within each jurisdiction.

8           So I think what I'm asking for here is in line  
9 with what Mikhail was saying, that we would want to have  
10 compliance jurisdiction specific. Our planning is  
11 watershed based, but compliance, ultimately, because it's  
12 compliance, needs to be jurisdiction specific. We would  
13 take that same approach on the concentration calculation.

14           Okay. Back to the water effects ratio and the  
15 Shelter Island Yacht Basin TMDLs. We talked with Board  
16 staff briefly on this on Friday, I believe. And at the  
17 time, I did not mention the specific language from the  
18 TMDL.

19           The TMDL addresses that -- a water effects ratio  
20 that if a study is completed and the new ratio is  
21 established, it lays out the methodology and process for  
22 incorporating that water effects ratio into the  
23 calculations for the TMDL. And so we just would like to  
24 carry through that TMDL provision into the permit. And  
25 it's noted there in the underlined text.

1           This too is -- this issue is also clarification.  
2   If you recall, one of the options that the co-permittees  
3   requested was to allow for different methods of complying  
4   with the TMDLs. And that has been incorporated into  
5   Attachment E, the TMDL attachment, in the compliance  
6   determination provisions.

7           Just for clarity sake, we would also like that  
8   essentially in all our statements included in the final  
9   effluent limitations of each TMDL where there are multiple  
10  options for complying with that TMDL, so that those two  
11  separate sections are not in conflict.

12           I also want to note that was added to the baby  
13  beach bacteria TMDL. We would just like that same core  
14  language included in the other TMDL.

15           This next slide just captures or presents the  
16  suggested language to make that more -- option clear. And  
17  at the bottom of the slide, it indicates the separate  
18  sections in Attachment E where we would like that  
19  acknowledged.

20           Okay. This next issue, we informally call it the  
21  dormant TMDL issue, and have met with Board staff on this  
22  several times, most recently the day the permit was  
23  released, but before its release.

24           Essentially, the bacteria TMDL says that no  
25  further action is required for delisted water bodies. If

1 you're meeting the water quality standards, no further  
2 action is required.

3           And our recommendation -- or our belief is that if  
4 water bodies are meeting the receiving water limitations,  
5 that the more in-depth and more costly and extensive TMDL  
6 monitoring is warranted. Really, there should be what  
7 would be appropriate is monitoring to confirm that you're  
8 continuing to meet the water quality standards, that you're  
9 not slipping.

10           And so we talked about that concept with Board  
11 staff. There was general agreement in principal -- I was  
12 not at that meeting. I believe there was general agreement  
13 in principal and Board staff suggested that we put together  
14 some suggested language.

15           And so we put that language together. I will show  
16 you on the next slide. Just in case you don't miss it, we  
17 made sure it was bold and red and underlined. It's in four  
18 locations where this would occur. It would be -- the  
19 suggestion is to allow for the possibility for the  
20 co-permittees to develop an alternative monitoring program  
21 as part of their water quality improvement plan, have that  
22 reviewed and, hopefully, approved by the regional board.  
23 Then if they approve that, that would be part of their  
24 WQIP.

25           We also suggested -- and that would apply to both

1 beaches and creeks. And we also suggested the same  
2 approach for a modified assessment program, the logic being  
3 the same amount of detailed assessment is not necessary if  
4 you already know that you're achieving water quality  
5 standards.

6 So this next slide -- it looks almost identical --  
7 but those are the four sections where we propose that  
8 language. We haven't really had a lot of time to get  
9 feedback from Board staff yet on this issue.

10 I'm going to skip the typos, but here's -- maybe I  
11 went one slide too far. I'll go over this real quickly.  
12 It's just a typo to correct in the TMDL Attachment E, also  
13 answers the question whether the red line corresponds  
14 directly or on a one-to-one relationship with the slides.  
15 They don't. I believe there is more edits in the red line  
16 than the PowerPoint slides.

17 Thank you.

18 Any questions before I go?

19 MR. ABARBANEL: Just let me correct a typo. It's  
20 p-r-i-n-c-i-p-l-e, not a-l in an earlier slang.

21 MR. KLEIS: Thank you.

22 MS. STROUD: Good afternoon. I'm Heather Stroud,  
23 Deputy City Attorney with the City of San Diego. I'm just  
24 going to address a few compliance and legal issues with the  
25 TMDL issues.

1           The first is, there is a provision in Provision F  
2 of the draft Tentative Order that would require the water  
3 quality improvement plans to incorporate waste load  
4 allocations of newly adopted TMDLs, prior to those TMDLs  
5 being incorporated into the MS4 permit.

6           It's kind of a situation of the cart being put  
7 before the horse. TMDLs are kind of a broad planning  
8 document that are not self-enforcing. And the waste load  
9 allocations would need to be translated into the permit.  
10 And we don't really have any way of knowing how the  
11 regional board is going to exercise its discretion in doing  
12 that until that process actually happens.

13           So we're requesting -- we have two possible fixes,  
14 either strike that requirement or, at a minimum, revise the  
15 applicable provision that require that the WQIP be updated  
16 in the next annual update following incorporation of the  
17 TMDL into the permit.

18           The next two slides address what may seem like,  
19 you know, minor or really technical changes, but they  
20 actually have pretty significant impact on the compliance  
21 determinations. The first issue is one that has been  
22 touched upon, that the permit language requires that all  
23 co-permittees implement strategies or all co-permittees may  
24 be found out of compliance.

25           And the place this comes up is in Attachment E, in

1 both the interim and final TMDL compliance determination  
2 sections for all of the various TMDLs that are included in  
3 there. It's where the alternative compliance options were  
4 added, which we asked for, so we certainly appreciate that  
5 they have been incorporated.

6           So it's a matter of moving an apostrophe to make  
7 the co-permittees from plural into singular. And this is  
8 actually consistent with the Clean Water Act and required  
9 by the Clean Water Act, because a co-permittee is only  
10 responsible for discharges from its own MS4, that's  
11 4DCFR122.26 Subsection B1. It's also consistent with the  
12 definition of co-permittee in the draft Tentative Order  
13 directly out of the federal regulations.

14           The next issue is just a minor grammatical  
15 clarification and kind of a legal pet peeve and/or is used  
16 throughout the permit but, especially, in the TMDL  
17 compliance section is inappropriate, just creates the  
18 ambiguity. I think the intent was that it be an or, so it  
19 should just say or instead of and.

20           And then the final issue on TMDLs, the compliance  
21 language in Attachment E suggests, by the way the headings  
22 are set up, that receiving water limitations are, in and of  
23 themselves, water quality-based effluent limitations.

24           Water quality-based effluent limitations have a  
25 specific definition in the federal regulations. And the

1 restriction on the quantity of pollutant that can be  
2 discharged from the point source into the receiving water,  
3 whereas the receiving water limitations is just that, it's  
4 a limitation on pollutants or a standard that's applicable  
5 in the receiving water itself, it's not the end of a pipe  
6 numeric limitation.

7           So we would request that that -- that just minor  
8 change to clarify that the receiving water limitations are  
9 not in and of themselves set in stone.

10           And with that, I will pass it on to Christine  
11 Sloan.

12           MS. SLOAN: Good afternoon, Chairman Morales,  
13 members of the Board. My name is Christine Sloan. I am  
14 the chair of the Land Development Work Group for the  
15 San Diego co-permittees. I have seven distinct land  
16 development items to share with you today. In the interest  
17 of time, I will try to move quickly.

18           Our first topic is retention. The retention  
19 language, as you've already heard, now states that you must  
20 first retain on site a hundred percent of pollutants  
21 contained in the captured volume. Then the language states  
22 if you can't retain, you can treat with flow-through BMPs  
23 to achieve a hundred percent pollutant removal.

24           By adding in this hundred percent removal, the  
25 permit is attempting to establish a new MEP standard. This

1 hundred percent standard is not found in other permits, nor  
2 is it attainable. Drinking water treatment standards can't  
3 even reach a hundred percent pollutant removal.

4 If the language remains as it is, or without  
5 clarification, it will be infeasible for most projects to  
6 comply on site. If a hundred percent pollutant removal is  
7 not feasible on site, we are forcing jurisdictions to use  
8 the optional alternative compliance program, or they must  
9 deny development.

10 For those of you in the audience who are not  
11 familiar with what retention looks like, we have this slide  
12 here to give you a visual. This is so you can capture  
13 large volumes of rainwater and keep it on site without  
14 release into drains or creeks. And this will be our new  
15 on site standard.

16 Here is a picture of current BMPs that we use now  
17 and that are effective at removing pollutants, but do not  
18 meet a hundred percent pollutant removal. The language --  
19 if the language remains as written, we will still have to  
20 do this, but you will also have to do mitigation off site.

21 So we have some suggested language. And we do  
22 believe the language would be consistent with Orange  
23 County's 2009 permit and Riverside County's 2010 permit.  
24 We do believe you're going to hear more comments on  
25 retention today and that Riverside has further edits on

1 this section of language. And San Diego supports  
2 Riverside's edits on this language.

3 Our next topic is alternative compliance. As I  
4 mentioned, if you cannot comply on site, you may be able to  
5 comply --

6 MR. ABARBANEL: Sorry, I should have asked.

7 So what percent do you suggest, 99.8?

8 MS. SLOAN: I suggest that if the intent is that  
9 the Orange County and the Riverside language has not  
10 changed, then we should not change the language.

11 MR. ABARBANEL: Thank you.

12 MS. SLOAN: Okay. So as we said, if you can't  
13 comply on site, you may be able to comply off site.  
14 However, there are new changes to the alternative  
15 compliance language. The language now imposes an optional  
16 WQIP watershed analysis on the jurisdictions before they  
17 can offer off site mitigation. The language is so specific  
18 and complex that it is creating a disincentive for  
19 jurisdictions to use it.

20 Due to this complexity, we are already aware of  
21 some smaller jurisdictions that plan to opt out of this  
22 program. Jurisdictions that do opt out will not have an  
23 option for off site mitigation for their applicants. The  
24 way the language is written now, they won't even be able to  
25 allow applicant-found mitigation.

1           With a couple simple changes, we can make this  
2 option more attainable. By removing some specificity of  
3 the language, we can allow the WQIP process to determine  
4 the details, therefore getting more jurisdictions to use  
5 the program. In addition, we should allow applicant  
6 mitigation off site until jurisdiction is able to pursue  
7 the watershed analysis.

8           VICE CHAIR STRAWN: We're at our ten minute  
9 warning.

10          MS. SLOAN: Okay.

11          My next topic is the HMP exemptions.

12          As you've heard before, the co-permittees are  
13 adamant that we retain our current HMP. They have been  
14 vetted, they have been approved by the regional board  
15 through resolution in 2010. We feel that it is  
16 inappropriate to repeat this within the WQIP. This repeats  
17 a costly stakeholder process within each watershed. By  
18 doing so within an optional program, it will be creating  
19 inconsistent application and implementation of exemptions  
20 across watershed and jurisdictional boundaries.

21          We also argue that we should be changing aspects  
22 of our HMP after we have completed our HMP assessment. As  
23 you know, our HMP was approved in 2010, began implementing  
24 in 2011, we started monitoring in 2011 and that extends  
25 until 2016. Changes to our HMP affects what we are already

1 monitoring now and brings us back to the beginning without  
2 completing our assessment.

3 By ignoring our HMP exemption, we have to repeat  
4 the HMP exemption stakeholder process, continue our HMP  
5 monitoring and begin a new watershed analysis under the  
6 WQIP. We feel that this is simply a waste of taxpayer  
7 funds to repeat what we have already completed. This is  
8 the language we are suggesting.

9 Next topic is prior lawful approval. This is a  
10 simple edit that I believe Regional Board staff have  
11 already indicated that they will change. There was an  
12 oversight on the prior lawful approval timing when the  
13 permit was adopted in March -- I'm sorry, updated in March.  
14 The original 18-month timing should now be aligned with our  
15 new WQIP timing and subsequent BMP design manual update.  
16 We're unable to give existing applicants direction until  
17 our BMP design manual is accepted. Therefore, we suggest  
18 the language aligning the timing with the acceptance of the  
19 BMP design manual.

20 We have another item with priority development  
21 projects. At the request of the San Diego co-permittees,  
22 Regional Board staff reconfigured the PDP category language  
23 to improve understanding. We appreciate the change,  
24 however we believe there was an unintended omission with  
25 redevelopment.

1           As it is right now, redevelopment has a stricter  
2 threshold than new development. Redevelopment has a  
3 positive impact on water quality and should be encouraged.  
4 We request an additional adjustment of the language so that  
5 the redevelopment threshold is existing development  
6 qualifying as a PDP.

7           VICE CHAIR STRAWN: I apologize. We had a  
8 correction in our time here. We're giving you three more  
9 minutes, over and above.

10          MS. SLOAN: This is my last slide.

11          Single-family residential.

12          Due to the stricter PDP threshold for residential  
13 projects, we have had discussions with regional staff to  
14 include an alternative for small residential projects.

15          We understand in the responsive comments that many  
16 commenters were against the leed language -- the l-e-e-d  
17 language. We support the decision to remove the leed  
18 language. However, we feel it is still important to have  
19 an easy option for single-family residential.

20          For someone like me who attempts to build a new  
21 home with a driveway and a pool, I could drop in a  
22 preapproved BMP and be done. This would still be compliant  
23 with the regulations and would have the same water quality  
24 benefit. It would streamline the process and save taxpayer  
25 dollars. And this is the leed language.

1                   Next, I hand it over to Heather Stroud.

2                   MS. STROUD: Hello again, Heather Stroud from the  
3 City of San Diego.

4                   VICE CHAIR STRAWN: Can I get a pink card from the  
5 previous speaker. I don't think we have a speaker card.

6                   MS. STROUD: I have a sense to say the last time  
7 up that I did take the oath.

8                   Also, drew just told me that the slide I presented  
9 on the TMDL and/or issue had an error in our red line. So  
10 I think the red line that we handed out is actually correct  
11 and you can disregard the language that was on that slide.  
12 We intended for that to be an or not an and.

13                   So the pre-development standard issue, we have  
14 submitted extensive written comments on it and I won't go  
15 into it in too much detail right now, given our time  
16 constraints. But we don't feel that their response to  
17 comments are the changes made to the Tentative Order  
18 addressed our concerns fully.

19                   Basically, the response to comments seems to boil  
20 down to the Regional Board's opinion that they don't think  
21 that it would be a taking for the co-permittees to impose  
22 the pre-development standard on redevelopment projects.  
23 And we are glad to hear that that's the opinion, but we're  
24 not sure that gives us a whole lot of comfort in case that  
25 we do end up with legal challenges when we try to enforce

1 that.

2 Just briefly, the legal standard is that  
3 mitigation for a project has to have a nexus to the impacts  
4 of that project. And for redevelopment projects, if we're  
5 going back to the conditions that exist on a site before  
6 any development happened, then we're asking those projects  
7 to mitigate for impacts that they did not themselves cause.

8 The -- there's not really a great alternative  
9 option because the alternative compliance would allow  
10 in lieu fee, but that is subject to the Mitigation Fee Act  
11 most likely, which also requires a reasonable relationship  
12 between the fee and the project's impacts, which may be  
13 difficult to establish.

14 So our --

15 MR. ANDERSON: So would you fix it by saying  
16 "while complying with the law regarding nexus"?

17 MS. SLOAN: That would be one way to fix it. And  
18 that would allow the co-permittees to work with their  
19 attorneys to address those issues. The other solution  
20 would be to change the standard to pre-project so that  
21 we're not asking redevelopment projects to mitigate for  
22 more than they're causing.

23 Okay. How much time do we have left?

24 VICE CHAIR STRAWN: Eight minutes.

25 MS. WEBER: Good afternoon. I'm Jo Ann Weber with

1 the county of San Diego. I did take the oath.

2 I'm here today to talk about the monitoring  
3 assessment section. I'd like to echo some of my  
4 colleagues' comments, that it's been excellent to work with  
5 the staff. And, again, they have been ever ready at the  
6 telephone whenever I have had a question, and I really  
7 appreciate it.

8 The first issue has to do with requests for MS4  
9 outfall monitoring and its frequency. Just for your  
10 background, what we use this data for, we contend we can --  
11 for wet weather, we can monitor homogeneous land uses or  
12 representative mixed land uses and extrapolate the results  
13 to other drainages. These data better inform the planning  
14 process and allows us to prioritize drainages and/or land  
15 uses for implementation. Also, in the back end, it helps  
16 us to demonstrate progress down the road.

17 The San Diego co-permittees have really been way  
18 out ahead of this with a bacteria TMDL implementation plan.  
19 And as part of that effort, a robust data set has been  
20 already collected in San Diego of homogeneous land uses,  
21 specifically residential and commercial. We have similar  
22 or even more than the L.A. data set which has been  
23 considered the gold standard in the past.

24 In addition, as part of our 2007 permit, we have  
25 collected over 250 random wet weather samples. And the

1 purpose of those samples was specifically to provide a  
2 baseline of our water quality from our MS4s. We feel that  
3 there's no benefit to actually collecting what would be 102  
4 samples, that 51 samples per year would be appropriate, and  
5 that we can easily continue our baseline as well as -- as  
6 well as filling in any additional homogeneous land use data  
7 that we do need to proceed forward.

8 Our recommendation is to change the suggested  
9 language -- and you can see the red line -- from twice to  
10 once. We're required to do special studies as part of this  
11 permit which we actually like, because it helps answer very  
12 specific questions, helps us move forward.

13 However, in the most recent draft, it appears as  
14 though the special studies that we are currently doing or  
15 that we would do once the order started would not appear,  
16 instead it would not count towards that requirement,  
17 instead it would be -- it would be based on when our WQIP  
18 was accepted. And, as you know, that process is about a  
19 two year length.

20 And so we would like to have some slight  
21 modifications in language, as you can see at bottom, so  
22 that we actually do get counted for special studies done  
23 during the WQIP process which, in fact, can help guide the  
24 WQIP planning effort.

25 This has to do with in the assessment section, the

1 co-permittees, as part of their assessment, are requested  
2 to annually conduct a spreadsheet exercise to estimate  
3 discharge concentration volumes from each land use area for  
4 each major MS4 outfall for each storm event.

5 First, annual. We see no additional benefit for  
6 doing this annually. Waterfall doesn't change that fast,  
7 there is a lot of variability in storm water concentrations  
8 between storms. We think that once per permit term would  
9 be a more reasonable time scale to do this.

10 We have thousands of outfalls, so we don't feel  
11 there's an additional benefit to do this on an outfall by  
12 outfall basis. Instead, we would recommend aggregating the  
13 outfalls based on some kind of hydrologic sub area, such as  
14 a scale that we typically use for modeling.

15 Also the duplicative requirement, there are annual  
16 estimates from monitored outfalls that will be extrapolated  
17 to estimate individual jurisdictional loads already in the  
18 permit. It's in the previous subsection from this section.  
19 I know that staff -- we did work closely with staff on this  
20 and they did want this estimated jurisdictional load so  
21 we'd actually given them that language so they could get  
22 what they want, but we could do it without overextending  
23 the quality of the data, but also giving them some number  
24 to go by. And the proposed solution, the red line is shown  
25 at the bottom of the slide.

1           Oh, sorry. Here's the red line.

2           VICE CHAIR STRAWN: Jo Ann, if I can jump in here,  
3 back to your last slide, would you -- where you want to go  
4 from annual to once per permit, would you consider kind of  
5 an additional requirement in there that, if there were  
6 significant development or redevelopment in the area of  
7 that outfall, that you would -- that could trigger a  
8 more -- a repeat or something less than once per permit?  
9 You have to base that on building permits or something,  
10 but I could see where we're going five years in some areas  
11 where there was significant development, might not cover  
12 the needs.

13           MS. WEBER: There is the additional analysis under  
14 the duplicative requirement that could be picked up there,  
15 potentially. I can see your concern. I certainly would be  
16 happy to address staff with that concern. Thank you.

17           A new requirement with this March draft is a  
18 transitional monitoring and assessment program annual  
19 report. Assuming that this permit is adopted, such that we  
20 begin the monitoring before October 1, which I think is  
21 likely, we would be required to actually submit a report  
22 next January, 2014. We have not budgeted for that. Our  
23 budgeting process took place in January of 2013. And so  
24 what we would request is to accommodate the co-permittees  
25 budgeting timeline, that our first transitional report will

1 be due January 31st, 2015 and would essentially include the  
2 last two years of data.

3 We would put the data -- we have budgeted to put  
4 our data on Seden, which is a statewide database. And so  
5 the data would be available to the public before it is  
6 formally reported. The suggested language to make that  
7 happen is in the bottom. And, basically, if we just put  
8 complete transitional monitoring reporting period, that  
9 would sort of solve the budgetary issue.

10 Under TMDLs, this is a bacterial TMDL, beaches and  
11 streams. Currently, there's a compliance calculation that  
12 is not part of the actual TMDL resolution. It's under  
13 Part C, it says, basically, any storm event not sampled  
14 bacteria density for every wet weather day of these storm  
15 events must be assumed to be equal to the highest bacterial  
16 density reported -- result reported from wet weather  
17 samples collected.

18 Bacteria TMDL only speaks about what to do within  
19 a single storm. It does not -- it's silent on what you do  
20 for storms -- for other storms that you have not sampled.  
21 This approach is very stringent. It's not sound science to  
22 assume it's just the highest value. And, frankly, it's a  
23 disincentive; either you're going to sample just one  
24 sample -- one storm the whole year, see what you get, or  
25 else you're going to feel like you have to sample every

1 single storm. And I don't really see the benefit to doing  
2 that.

3           Additionally, in the actual bacteria TMDL on  
4 Page 854, it states that, because of the many issues  
5 related to collecting wet weather samples from multiple  
6 sites within a short time frame, it basically indicates  
7 that discharges are expected to develop a wet weather  
8 monitoring or sampling approach in their blurps or slurps  
9 which are the implementation plan for the TMDLs.

10           These plans were submitted in October 2012 and  
11 they're going to be implemented upon permit adoption. And  
12 so, essentially, we have looked at this, we have come up  
13 with a solution to this. And at this point, in the  
14 San Diego County slurps -- blurps -- excuse me, blurps -- I  
15 guess I got a new one now, slurps -- we have recommended  
16 three wet weather samples, rain event samples, as a place  
17 to begin, with the idea being that, as we get closer to our  
18 compliance deadlines for wet weather, we would want to ramp  
19 that up in order to show the good progress.

20           And I wonder if we should try to take a page from  
21 L.A. and Santa Monica -- they have been doing bacteria  
22 TMDLs for a lot longer than we have. And what I notice  
23 there is that they always base wet weather interim  
24 compliance on sample storm, they don't try to extrapolate  
25 to non-sample storms. And here's just a -- it's a

1 strike-out is what we're proposing. So lots of red.

2 Okay. Then finally, action levels. The  
3 Tentative Order provides clear linkage between Provision B  
4 and C and states that the water quality improvement plan  
5 should guide the customization of "nows and sows" to meet  
6 the highest water quality priorities in a given watershed.  
7 We propose, you know, to be consistent with Provision B  
8 that co-permittees should be allowed to do that  
9 customization. And this is suggested language so that  
10 basically B and C are consistent and talk to each other.

11 MS. STROUD: I think this is the last time you'll  
12 see my face. Heather Stroud, City of San Diego.

13 VICE CHAIR STRAWN: You're now into the other  
14 county's time, but it's your split.

15 MS. STROUD: This is my last -- it's our last  
16 slide, so I think it may be more efficient to cover it.

17 This is another quick fix. Essentially, there was  
18 language added to a footnote in the "nows and sows" section  
19 in Provision C which could, potentially, be read to create  
20 another compliance point in the permit. And we don't think  
21 that was the intent at all, so this is clarifying language  
22 just to say that for TMDLs, compliance is determined in  
23 Attachment E. So if there's an exceedence of a now or sow  
24 that just happens to be a WQBEL, that that compliance  
25 determination is made in Attachment E.

1           And to quickly wrap up, you know, the San Diego  
2 co-permittees don't feel like the permit is ready to be  
3 adopted as is. As you can see from our presentation,  
4 there's a lot of just kind of -- what may seem like small  
5 issues that really could turn into big issues as we try to  
6 live with this permit for the next five years. And we  
7 would request that you direct your staff to work with us to  
8 work out some of these issues.

9           Thank you.

10           MS. KALEMKIARIAN: Chairman Morales, just a  
11 question for Mr. Gibson or for Mr. Chiu, I guess.

12           How -- what's the most efficient way, in a short  
13 time, for us to get the staff's response to these types of  
14 edits? Is that going to come from a concluding comment  
15 that they'll make at the end of the hearings or --

16           MR. GIBSON: I would suggest to the Board that you  
17 give the other speakers an opportunity to speak. The  
18 environmental groups might have a different point of view  
19 on some of these issues. And at the conclusion of those  
20 comments, you may have areas of focus that you may want to  
21 ask the staff to consider and address in their closing  
22 remarks.

23           MS. KALEMKIARIAN: And my question goes to -- I  
24 imagine that some of these, from the comments made, the  
25 staff would say yeah, that's no problem. And I'd like to

1 know what those were. And I may not be able to keep track  
2 of that so easily.

3 MR. GIBSON: Sorry, Catherine Hagan was speaking  
4 for the moment.

5 But another thought that we were just discussing  
6 was that to the extent the Board wants to have an errata  
7 prepared, the staff would be able to work on that tomorrow  
8 afternoon during our break and be able to bring back a  
9 suite of proposals for the Board to consider on one or more  
10 areas that you identify from the hearing.

11 MS. KALEMKIARIAN: Yeah, I'm not asking them to  
12 do something herculean, but if there are some of these  
13 where -- from anyone's comments, the NGOs or the  
14 co-permittees, if they say yeah, we don't agree with that,  
15 I'd like to know that so that we're not talking about stuff  
16 that's not an issue, for the staff at least.

17 So, however that can happen. I don't know how  
18 difficult that would be. I assume that if they're easy  
19 ones, they know them now, but I don't know.

20 MR. GIBSON: I'm not sure how difficult it will  
21 be. Part of the discussion you may wish to have on  
22 Thursday is if you want to provide them enough time to put  
23 a lot of effort into it and come back in May with some  
24 proposals. If they are focused areas that the Board has  
25 agreement on that they want the staff to bring a proposal

1 back on Thursday afternoon, it would not be herculean for  
2 them to do that.

3 Most of the changes to the Tentative Order have  
4 been such that they can be revised efficiently with the  
5 anticipation that the Board may want to explore them a  
6 little bit more or have errata prepared. Staff have  
7 structure the changes to the Tentative Order surgically so  
8 they can make those changes.

9 I would suggest that for efficiency sake, that if  
10 the Board can identify the areas in particular that it may  
11 want addressed, rather than ask the staff to address a very  
12 long and detailed minutely changed Tentative Order, that  
13 would probably be most constructive.

14 MS. KALEMKIARIAN: Okay.

15 CHAIRMAN MORALES: Okay. Let's take -- let's see,  
16 it's about 22 after on that clock -- five minutes. And  
17 then Riverside and Orange County, you guys can decide who  
18 goes next, but be ready to start in five minutes.

19 Thanks.

20 (Brief recess taken.)

21 CHAIRMAN MORALES: I have an announcement.

22 There has been some questions with regard to  
23 today's timing -- the questions primarily from -- I'm  
24 thinking it's people that want to go to the ball game, but  
25 what we will do is, at 4:00, when we start taking the

1 public comments, even if they finish prior to 7:00, we  
2 won't be expecting any of the identified parties or, you  
3 know, the co-permittees to continue on immediately after  
4 they conclude.

5 Our thinking is that we wanted to start the public  
6 participation section at 4:00 to give as many people from  
7 the public the opportunity to participate. But those of  
8 you that don't conclude today, we'll start you up tomorrow,  
9 understanding that we will take a break at 9:15 for the  
10 public officials.

11 So with that, if we can get started here.

12 MR. BOON: Okay. Good afternoon, Richard Boon  
13 with the County of Orange and the Orange County Storm Water  
14 Program. I've taken the oath. This is presentation in  
15 four parts. I will speak for 15 or 20 minutes, then hand  
16 it over to my colleague Ryan Baron, with County Counsel;  
17 Scott Taylor with RBF; and, finally, my colleague from  
18 Laguna Niguel, Nancy Palmer.

19 So before I start I have a slightly off the -- an  
20 opinion, editorial, please. I don't share your staff's  
21 dystrophian view of the storm water landscape. I don't  
22 think we're shortchanging the next generation. I've taken  
23 my daughters down to upper Newport bay, we've gone  
24 kayaking, I've pointed out all of the restoration projects,  
25 quite dramatic improvements in water quality occurring --

1 not as a result of me, but certainly as result of the  
2 people that I have the privilege to work with.

3 We have gone town to Salt Creek Beach. Before  
4 they have gone in the water, I have taken them to one side  
5 and shown them the ozone treatment BMP, PWA Engineering  
6 project of the year and explained that because of the  
7 people that dad works with, this water is clean to swim in,  
8 where it probably was not previously.

9 We have looked at the beach and gone looking for  
10 trash. And I've pointed out there is no trash because we  
11 passed those drain inlet filters on the way down to the  
12 beach that the people that dad works with put in place. I  
13 don't think we're cheating the next generation. I think  
14 we're doing them -- we're making them proud.

15 So anyway opinion editorial piece over. I'm  
16 talking to -- going to talk about some introductory items.  
17 You've seen a lot of text. I'm going to talk more about  
18 some ideas and some points of contention. I don't have a  
19 lot of decks on my slides. Then my colleagues are going to  
20 get into a little bit more detail. And then, finally, some  
21 conclusions and questions.

22 So, first the stakeholder process. We have talked  
23 about the stakeholder process. I think it was proceeding  
24 very well through the end of October. Our perception from  
25 Orange County is that something happened after October --

1 see the slide -- and it did not work quite so well after  
2 that.

3 But going forward from today, hopefully with some  
4 judicious direction from yourselves, we can get this  
5 process back on track. And I think I'm going to talk about  
6 some of the ideas that I would like to be the focus of  
7 those focus meetings that, Chairman Morales, you hinted at  
8 might be a way of resolving outstanding issues over the  
9 next couple of months -- month or couple of months.

10 So, where are we at in Orange County? We are in  
11 the middle of our forth term permit. So our concerns are  
12 somewhat different from our colleagues in San Diego. We  
13 have a program that we are still seeking to fully  
14 implement, seeking to maintain the momentum of.

15 So what does this regional permit process mean to  
16 us? Well, the permit comes out -- and somebody mentioned  
17 that I talked about in left field earlier on. We get a  
18 permit, we come up with a plan to meet the permit. And our  
19 frustration, I think, is that even before we get to fully  
20 implement the plan, the goalposts move.

21 And that came into focus today -- the question was  
22 particularly on land development, that we have this unique  
23 performance standard. I'm not clear if the goalposts moved  
24 or whether they didn't move on this hundred percent  
25 pollutant capture system. If they did not move, as I think

1 your staff suggested, then we should be able to retain the  
2 current language, there's no change in the performance of  
3 the program. If they did move, we need to be very clear on  
4 that because it has really tremendous ramifications for the  
5 program we have constructed for the last set of  
6 requirements.

7           So don't take my daughters' word for the state of  
8 the environment. I wanted to put some data up there,  
9 because it's one of the few things, as we have contemplated  
10 this permit, that we really haven't talked about, where are  
11 we at with water quality in the open environment.

12           I just wanted to touch on a couple of, I think,  
13 key areas of concern to storm water practitioners;  
14 bacterial metal, toxic organics, condition of receiving  
15 waters, and where we are with this new paradigm for storm  
16 water.

17           Okay. So this is something that's going to be  
18 difficult for the court reporter to put down, but it's a  
19 plot of bacteria data at the monitoring station at the  
20 lowest point in the Aliso Creek watershed for the period  
21 2001 through 2012. The only take-home message from this  
22 is that there is an unmistakable downward trend in  
23 concentration of bacteria, intracochti on the lower shot,  
24 fecal coliform. It's unmistakable, it's statistically  
25 valid.

1           It shows that over the last ten years, we seem to  
2    have achieved a 20 percent reduction in bacterial  
3    concentrations. So what does that mean in terms of  
4    beneficial uses? It appears to show that in recent years,  
5    we are meeting the Rec 1 standard for this particular  
6    watershed in its lower reaches in dry whether.

7           And I want to point out this is a trend that we  
8    see not only in Aliso Creek, but in all of our watersheds  
9    in Orange County. And it's something that we drew  
10   attention to in our last annual report. So something is  
11   working.

12           I wanted to talk about metals. These -- these are  
13   all our monitoring stations. These describe the monitoring  
14   program elements that use those locations for taking  
15   samples. And the take-home message here is, that during  
16   dry and wet weather, we don't exceed these objectives that  
17   frequently. We have a single exceedence of one location  
18   for copper during a storm event, and we have some  
19   exceedences for selenium.

20           But when we do toxicity identification  
21   evaluations, we never ever find toxicity that we can  
22   attribute to metals. So I think that's important to  
23   understand.

24           MS. HAGAN: Mr. Chair -- excuse me for  
25   interrupting. Are these data showing information that's

1 already in the Board's record for this matter? Has staff  
2 seen it, other parties seen it?

3 MR. BOON: We have put in every comment letter and  
4 every conversation that we have had that we need to get  
5 recognition for the accomplishments of the program. And  
6 this is information that is pertinent to that argument.

7 MS. HAGAN: But has this data been presented  
8 previously? Is it in the record?

9 MR. BOON: Some of this data has not been  
10 previously provided to you. But if you're thinking that  
11 you might want to strike it, this would be the first  
12 municipal permit renewal process that preceded with no  
13 discussion of the state of the environment.

14 MS. HAGAN: Well, the difficulty is that the  
15 proceeding -- hearing notices clearly stated no new  
16 evidence would be admitted, that the written record closed  
17 on January 11th. So this -- does this data predate January  
18 11."

19 MR. BOON: I don't know that this is what we have  
20 said. We're not getting due recognition for the  
21 accomplishments of the program. I don't think the Board  
22 can properly evaluate the efficacy of a permit of  
23 regulatory construct unless they understand how the current  
24 program is working. And this, ultimately, is the ultimate  
25 performance data for the program.

1 MS. HAGAN: Maybe we could take a break and just  
2 discuss this briefly? I don't know -- I mean, it sounds  
3 like it's information the Board might like to have. On the  
4 other hand, is anybody being prejudiced by not knowing  
5 where this comes from, whether it's accurate, how to  
6 question it. And I don't know if staff has concerns with  
7 it or other parties do.

8 MR. BOON: It's in the annual report.

9 MS. HAGAN: It is in the annual report?

10 MR. BOON: It's in one of those 59 reports.

11 MS. HAGAN: That's what I was hoping you would  
12 say. If that's true, then that's great.

13 MR. BOON: All right. To continue, copper. The  
14 principal sources of copper in the urban environment are  
15 vehicle braking, architectural copper and ornamental ponds  
16 and swimming pool. The first outweighs the second and  
17 third by many orders of magnitude. Senate Bill 346 went  
18 into effect 2010. It requires changes in brake pad  
19 composition for water quality protection. It will  
20 essentially phase out copper in brake pads.

21 The California Storm Water Association was very  
22 aggressive in moving this along. It was carried over the  
23 line by our colleagues from San Diego. It is going to  
24 solve the copper problem such as it is in urban runoff.

25 So where is the toxicity that we find coming from?

1 State board looked at toxicity back in 2010, a very  
2 comprehensive analysis of 992 sites, occurrence of toxicity  
3 in 48 percent of them. In every case, it was either  
4 organophosphorus or pyrethroid pesticides plus some  
5 ammonia. So really, the focus is on toxic organics  
6 pyrethroid pesticides because the OBs have been regulated  
7 out of the marketplace.

8           So we do all of the things that you would expect a  
9 municipality to do in MS4 program. We talk to people about  
10 pesticide use. We have a very innovative, integrated pest  
11 management policy for our own municipal works colleagues.  
12 But the real achievement here was the work by Department of  
13 Pesticide Regulations, again encouraged by the service  
14 water protection regulations labeling requirements are  
15 estimated to ultimately reduce pyrethroid loadings to  
16 surface water environment by 80 or 90 percent. And that's  
17 an evaluation that was done by Jorgenson, Ph.D. out of U.C.  
18 Davis. So state intervention is really going to have a  
19 major impact on major source of toxicity for us.

20           Beaches. We have 42 miles of coastline. We have  
21 invested very heavily in protecting our beaches and  
22 restoring water quality. And you can read the bay report  
23 card for a lot of excellent statistics and very excellent  
24 summary of the progress made and are continuing to make.  
25 And this is Baby Beach, one of our problems spots, but is

1 no longer.

2 Coastal waters. We move off the beaches.  
3 Southern California Coastal Water Research Project last  
4 year had a nice glossy 40 years of the Clean Water Act.  
5 Where are we at. The last sentence of the first paragraph,  
6 Toxic Contaminants, have been decreased up to 99 percent.  
7 And they were considering all sources, not just PRTWs, but  
8 also urban runoff and industrial discharges. And also  
9 reflected on the very significant improvement of coastal  
10 water quality of the beaches.

11 Then finally, low impact development. This new  
12 paradigm for how we manage urban runoff. Where are we at  
13 in Orange County. We have a comprehensive model program  
14 for LID implementation. It's been in effect North Orange  
15 County 18 months. In the last reporting year, 284 sites,  
16 9,000 installed LID BMPs in the Santa Ana region of  
17 Orange County. Our program is still pending approval with  
18 your staff in South Orange County.

19 Channel rehabilitation. Achieving the practical  
20 vision. We also have projects that have restored channels.  
21 This is Norco Channel in Laguna Regional Park, County of  
22 Orange, City of Laguna Niguel. Over ten year, it went from  
23 what you see on the left, to what you see on the right.

24 So I just wanted to reflect on the permit that is  
25 being created. This is a word cloud. The size of the word

1 is proportional to its frequency in the document. You'll  
2 see that must is fairly prominent. In our current permit  
3 we have 415 musts, which you can also read as individual  
4 directives. In the regional permit, we have -- now have  
5 1079, so almost three individual specific directives for  
6 every day of the year. If prescription is good, then more  
7 prescription must be even better. But we remember the safe  
8 words of Paracelsus, the dose makes the poison.

9 All right. Last item in terms of particular to  
10 Orange County. We have four jurisdictions that cross the  
11 regional board boundary. We were under the assumption, and  
12 indeed received assurances, I think, that for those  
13 jurisdictions, rather than having to manage two different  
14 sets of requirements, you could apply to be managed or  
15 regulated by one board or the other.

16 The regional permit says no, there will be three  
17 programs in Orange County now; a North Orange County  
18 program, South Orange County program, and a blended program  
19 of the more stringent requirements taken from either permit  
20 for the four jurisdictions that have the misfortune to sit  
21 on the boundary. That's just nuts.

22 So how it all adds up, I think your staff lost  
23 faith in the stakeholder process, at least as to Orange  
24 County's involvement at the end of October. I think we  
25 were making good progress. I think we can continue to if

1 we have the option to meet.

2 I want to leave you with this. Our current  
3 program is working. We have tangible real water quality  
4 outcomes we can point to. As we say, and I've said to your  
5 counsel, we never seem to be able to get that into the  
6 record. And I really think you need to have an  
7 appreciation for that as you contemplate the structure and  
8 what is being required with this next generation permit.

9 MR. ANDERSON: So you're arguing to continue the  
10 current state of MS4 permitting?

11 MR. BOON: I think that our current program, the  
12 Orange County Storm Water Program, is working.

13 MR. ANDERSON: It's making progress?

14 MR. BOON: We are making significant progress.  
15 It's doing all of the things that the staff wanted to  
16 improving water quality. We have channel rehabilitation,  
17 restoring beneficial uses, but you never see any mention of  
18 that in the preamble to the next -- to the next permit.

19 MR. ANDERSON: I agree with you on the iteration  
20 about moving the goalposts, having sat through a couple of  
21 those, but -- because you guys generate more paperwork than  
22 just about any other entity, right?

23 I would think that you would be arguing to reduce  
24 and approach this, because I -- although there may be that  
25 many musts, I did not count them when I was reading them,

1 they seem to allow alternative ways to comply with the  
2 musts that seem to be better than the previous permit.

3 MR. BOON: I think we have. We think that the  
4 water quality improvement plan portion is necessarily a  
5 helpful feature to us, it's something that we welcome.  
6 But when we start fiddling with the land development  
7 program, a program that cost us over \$1.2 million to  
8 develop, that went through an exhaustive stakeholder  
9 process in over 18 months, we think it's just unnecessary  
10 disruption being caused.

11 MR. ANDERSON: And you don't think that this  
12 permit reenforces this LID?

13 MR. BOON: Well, I think that's one of the  
14 questions for these focused meetings hopefully going  
15 forward, have you changed the standard or have you not  
16 changed the standard. If you have, you're putting back the  
17 cause of LID implementation in South Orange County  
18 potentially 12 or 18 months. If you have not, let's keep  
19 the current language and continue to move forward.

20 CHAIRMAN MORALES: You mentioned, toward the end  
21 there, when you were talking about the stakeholder process,  
22 you said a few more meetings on very focused issues. You  
23 just mentioned one, the LID program. And I guess, you  
24 know, how this change modifies or doesn't modify at all the  
25 current South Orange County LID program.

1                   What other focused questions would you anticipate  
2 being necessary to be done.

3                   MR. BOON: Okay. I've got a couple of those  
4 coming up. So let me just catch up with the paperwork  
5 here.

6                   CHAIRMAN MORALES: Okay. Then I'll let you --  
7 I'll hold my question. You can get there.

8                   MR. BOON: Okay. So the --

9                   CHAIRMAN MORALES: But I do have one further  
10 question. And this does not count against your time when  
11 we ask questions.

12                   What's your understanding of the application of  
13 multiple MS4 permits? Say this gets approved and then  
14 there is a current, as you mentioned in the middle of the  
15 current Orange County permit. How do you understand the  
16 overlap to work.

17                   MR. BOON: Well, my understanding is, if the  
18 permit were adopted this year, we would ultimately prepare  
19 a reported waste discharge and roll into it when our  
20 current permit expires. So we're necessarily -- we're  
21 looking obviously at this next permit. So you've heard the  
22 protests, but we necessarily have to be engaged in the --  
23 in this dialogue.

24                   I think there was a commitment that there's a  
25 potential for reopening when we enroll, but that's never --

1 you know, your staff may think do we need to do that again.  
2 Probably not. I think what is key in the short term is how  
3 you resolve the jurisdictions that lie along a regional  
4 board boundary. I think trying to take the most stringent  
5 requirement from either permit is unworkable.

6 CHAIRMAN MORALES: Okay.

7 MR. ABARBANEL: I wanted to comment on some of the  
8 things you said. I really appreciate it and am impressed  
9 by your sequence of successes. I, too, read the SCCWRP 40  
10 year anniversary of the Clean Water Act document and you  
11 were not well represented there, and you should have been  
12 represented more.

13 MR. BOON: I was, actually. I wrote Page 42.

14 MR. ABARBANEL: Then you were not sufficiently  
15 represented according to things you've told us today. At  
16 one of our workshops, I think it was December, we were  
17 excoriated by the BIA for having spent an enormous amount  
18 of money and having accomplished nothing in the last -- I  
19 don't remember whether it was in the last 10 or 20 years in  
20 improving water quality.

21 Without meaning to put words in your mouth, I have  
22 a sense that you would disagree with that.

23 MR. BOON: Yes.

24 MR. ABARBANEL: Okay. Thank you.

25 I understand the issues that you've raised,

1 besides the desire for additional recognition, are  
2 transition issues. Your permit ends soon, but you will  
3 then, if there is a regional permit, transition into that.  
4 And there's some smoothness criteria, does your LID plan  
5 fit with this, does this fit with that.

6 Those things, I presume, can be worked out in  
7 discussions between the counties, not just Orange County,  
8 San Diego and Riverside and the staff at the water board.  
9 Do you think that there is a possibility for these things  
10 being worked out?

11 MR. BOON: I certainly hope so, because I think  
12 the program is delivering all of the things that you want  
13 your staff -- that your staff want to have delivered. I  
14 mean, there are 9,000 acres in North Orange County now that  
15 look lot greener more ecological.

16 So I believe we have a robust program that  
17 delivers low impact development, which is where the state  
18 wants -- and the feds want to see storm water management  
19 go. And I wouldn't want to derail that, put a halt on that  
20 while we argue or try to fine-tune the mousetrap for  
21 infinitesimal incremental gains. We're going to get as  
22 much as we're going to get. We should just be out there,  
23 continue.

24 MR. ABARBANEL: Finally, I'd like you to know that  
25 your daughters would be welcome at the University of

1 San Diego when they're old enough.

2 MR. BOON: Should I make the check out now?

3 MR. ABARBANEL: Doesn't go to me.

4 MR. BOON: So I think we have covered that. So  
5 critical regulatory issues -- Shawn Haggerty talked very  
6 eloquently on this, the receiving water limitations  
7 language. I think your staff has taken a bold step, I  
8 think they have gone as far as they can go. The water  
9 quality improvement references the receiving water  
10 limitations. It's just that the receiving water  
11 limitations need to reference the WQIP.

12 And I don't think we're going to -- I think the  
13 resolution to that is going to occur in Sacramento.  
14 State Board Member Frances Spivy-Weber, you guys are up.  
15 And you understand our concerns.

16 I did want to talk about action levels and,  
17 particularly, numeric action levels. The purpose of  
18 NALs -- and your staff well know my concerns here --  
19 they're supposed to guide the program we have for abating  
20 elicited discharges on lethal connections. And they define  
21 numerics. They're inflexible. They don't work as they're  
22 intended to work. They don't work as they're explained in  
23 the Response to Comments.

24 And there are two consequences of that. On this  
25 chart here, which I actually copied out of the National

1 Research Council Report on Storm Water, it's a  
2 cross-section of a typical watershed. We know in South  
3 Orange County, the local geology is dominated by these  
4 marine sedimentary formations that are high in phosphorous,  
5 that have naturally high -- are naturally high in nickel  
6 and cadmium. It seems to me that --

7           And so the water drains out of the hillside, down  
8 into the channel, receiving water exceeds the NALs that we  
9 have for nickel and cadmium and some other things,  
10 phosphorous. It seems under the NALs provision, although  
11 we have a natural condition, we have to investigate every  
12 pipe that has a wet weather -- that has a discharge from it  
13 because it exceeds a NAL, even though the drainage is  
14 subsurface drainage that reflects the local geographic  
15 chemistry, it's not a GIC.

16           I looked in the Response to Comments. It states,  
17 "If there are nonstorm water discharge issues, the  
18 co-permittees" -- "those discharges should only be NPDES  
19 permitted discharges."

20           So if you are a homeowner, you have a French drain  
21 with a small sump pump, and you're pumping out subsurface  
22 drainage, are you now required to get an NPDES permit as a  
23 homeowner, because your discharge -- we will find that your  
24 discharge exceeds the NAL. Was the Clean Water Act meant  
25 to embrace homes and homeowners? So that's what it would

1     seem, that's one of the consequences.

2             The second consequence is, as I mentioned, we have  
3     lost -- this is our numeric action limit exceedences over  
4     the last year. And because of the local geology, we are  
5     pretty much the entire time exceeding phosphorous, whereas  
6     under that prior program that we had that was really  
7     targeted at aberrant conditions, there was a much lower  
8     frequency of exceedence.

9             So we have lost the ability to distinguish between  
10    natural subsurface drainage that is a reflection of the  
11    local geology and those discharges that are arising from  
12    connection to illegal discharges.

13            One other item. As I said, we like the water  
14    quality improvement plan, but it needs to be better  
15    interlinked with the germ- -- essentially the mandatory  
16    program elements that you have to do seemingly  
17    irrespective of what you've laid out in your WQIP.

18            So how it all adds up, the WQIP, the purpose is  
19    negated by having these requirements that cannot be  
20    modified based on your local priorities. So changes to the  
21    permit, defer the receiving water limitations section until  
22    the state board has acted, ideally, or include a reopener.  
23    Allow for a local derivation of NALs data set, and then  
24    just align the WQIP program so one can inform the other.

25            And that's the end of my contribution.

1                   MR. ANDERSON: Just a quick question on the  
2 subsurface. Is that a fairly widespread issue throughout,  
3 or is it a fairly unique situation? I know in the past, we  
4 haven't dealt with those very well.

5                   MR. BOON: It's a significant issue for a number  
6 of our South Orange County cities where there's been a lot  
7 of hillside development.

8                   MS. KALEMKIARIAN: I have a question too,  
9 Chairman Morales.

10                   Mr. Boon, the presentation by staff and also  
11 others have said that there was a new approach in this  
12 permit by not looking at actions, but looking at goals and  
13 outcomes and taking a flexible approach to that. And I  
14 think, perhaps, my colleague was trying to ask you, do you  
15 see that that's different, or is your position from  
16 Orange County that that's really not a significant  
17 difference and you think the old approach of actions would  
18 be fine. Or do you not believe that that's even the case  
19 that that was the old approach.

20                   MR. BOON: I don't think that that is the case,  
21 that it was the old approach. I think what I'm asking for  
22 is that we be allowed to continue the momentum of the  
23 Orange County program, because I think I can, hopefully,  
24 convince you that it is delivering the outcomes, the  
25 ecological outcomes, the water quality outcomes that you

1 want to see -- both you and your staff want to see.

2 MS. KALEMKIARIAN: Do you disagree with an  
3 approach that's -- that the staff leads are taking that's  
4 different in asking to look at outcomes and give you  
5 flexible ways to reach at outcomes? You have a problem  
6 with that, I gather?

7 MR. BOON: We're entirely aligned on the outcomes  
8 aspirations. I do think the permit creates some  
9 flexibility -- starts to create some flexibility -- helpful  
10 flexibility where there previously was not. I think it  
11 just needs to go a few extra steps to cement that  
12 flexibility.

13 I also think you really need to do some  
14 soul-searching on land development and whether these  
15 changes to these performance standards are really helpful  
16 when such good progress is already being made.

17 MS. KALEMKIARIAN: That's clearly an issue that is  
18 going to keep being discussed, but the framework is not one  
19 that you disagree with in terms of the approach.

20 MR. BOON: No.

21 MR. BARON: Good afternoon, Chairman Morales,  
22 honorable board members. My name is Ryan Baron, Senior  
23 Deputy, County Counsel, from the County of Orange. I'm  
24 Mr. Boon's monkey wrench for this afternoon. I'd like to  
25 join in the comments. We continue to advocate for the

1 changes that we filed on -- the recommendations we filed on  
2 January 11 on our 500-page filing. I'm not going to go  
3 into that here, maybe just cover two, maybe three issues  
4 now, for purposes of our limited time.

5 I raised procedural objections at the beginning of  
6 this hearing regarding the regional board's ability or  
7 authority to issue a region-wide permit to Orange County.  
8 I'm not going to reiterate the objection, but just sort of  
9 give some context to it, some more substance, and talk  
10 about what exactly the EPA was looking at in its 1990  
11 rulemaking.

12 When Congress passed the 1917 Clean Water  
13 Amendment, EPA was charged with developing permitting  
14 system for storm water discharges. And that rulemaking or  
15 portion of that rulemaking looked at how to define a  
16 system, what was going to be the regulatory definition of  
17 an MS4. What was going to be the regulatory definition for  
18 a medium or large MS4. And a system would be issued a  
19 permit, a system, singular.

20 The rulemaking looked at eight options, but it  
21 only looked at basically two categories in those eight  
22 options; individually owned MS4s, those owned by a city,  
23 county, owned by state transportation authority, and then  
24 MS4s within the same geographic area defined as either  
25 watershed or political boundaries of a discharger, not the

1 regulating entity. Again those examples, state owned  
2 roads, counties or even regional storm water authority  
3 which you have in the Bay Area.

4 Multiple systems could have been defined as a  
5 system based on common physical factors and under sort of a  
6 unified storm water management plan which you would have in  
7 a county or region-wide authority or even Caltrans. But in  
8 only one case was comment sought and did the EPA even  
9 respond to, was we a region-wide permit issued after formal  
10 application by regional storm water management authority.  
11 There is not one single solitary sentence in those comments  
12 that discuss the ability to issue a region-wide permit to a  
13 geographic area as diverse and as large as these three  
14 counties.

15 So Orange County asserts there is no common  
16 physical factors with Riverside or San Diego County. We're  
17 not interconnected in any way. There's different political  
18 boundaries, different political bodies. There is no  
19 region-wide storm water management plan.

20 In fact, Page 1 of the permit recognizes three  
21 separate systems and no unified program, such that we're  
22 only responsible for things that are inside of our own  
23 jurisdiction, not things outside of our own jurisdiction.  
24 Although, we do have a duty to collaborate in common  
25 watersheds. But Orange County does not share a watershed

1 with San Diego or Riverside County. The San Juan  
2 hydrologic unit drains strictly to the Pacific Ocean.

3 Now, Richard Boon talked about some of these  
4 issues already, but there's differences in geography, soil  
5 conditions. Riverside County is inland area, we're a  
6 coastal, drains to the ocean. There's differences in  
7 drainage patterns, types of discharges. There's different  
8 census areas, we're not in the same census area as  
9 San Diego County. And this was discussed in the rulemaking  
10 as well.

11 So adopting a permit that applies to Orange County  
12 would effectively be adopting a general permit without  
13 going through the procedures of adopting it. Now, the  
14 single consideration that was advanced at last summer's  
15 workshops was the regional board permit would apply to all  
16 three counties because it was difficult to read all the  
17 reports that had been filed. And a lot of time was spent  
18 writing permits.

19 And we sympathize with that in local government,  
20 particularly a county that has three million people,  
21 there's a lot of time spent on paperwork. But under the  
22 EPA regulations, cost is not a consideration, only physical  
23 factors are a consideration.

24 So the sole reason that was advanced at those  
25 workshops was to save internal board staff costs. And the

1 sole reason that was advanced by EPA today in their  
2 testimony was to save costs for the Bay Area as well. That  
3 is not a reason or procedural or jurisdictional reason by  
4 which you can issue a region-wide permit.

5           You'll see the urbanized area here, the gray area  
6 at the top of the map that I'm showing. Right here is  
7 about 140,000 acres of federal land comprised of  
8 Camp Pendleton that separates the Orange County permittees  
9 from the San Diego permittees. This area here is Cleveland  
10 National Forest, which was dedicated open space on our  
11 general plan that is also governed by the feds.

12           There is not an interconnected system here, any  
13 common geography or any common jurisdiction. Now, the only  
14 other reason that's been advanced is that there is  
15 adjacent, but you'll see we're not adjacent with 140,000  
16 acres of land to this MS4 system or to the Riverside County  
17 system.

18           So we would assert that there really is no  
19 jurisdictional or procedural basis by which to issue a  
20 region-wide permit. Now, the argument is yeah, it worked  
21 in the Bay Area. But up in the Bay Area, there is also a  
22 Bay Area Storm Water Management Agency Association that  
23 over 90 members are a member of that handle some common  
24 programs throughout the watershed. And every single  
25 permittee in that watershed drains, I believe, to the bay.

1 Here, we drain to the pacific Ocean. And every permittee  
2 in that watershed also, by consensus, agreed to enroll in a  
3 region-wide permit.

4 The second subargument here is that an application  
5 or a report of waste discharge is required by the federal  
6 regulations. And a complete application must be filed and  
7 considered by the, quote, director, prior to its adoption.  
8 That application contains quantitative data and other  
9 evidence by which to make findings, conclusions of law,  
10 establish our programs, and approve a permit to a system.

11 And holding up my finger here for the record, that  
12 application is about three to four inches, it's a big  
13 application. That application has not been filed. The  
14 Orange County permittees have not filed an application for  
15 reported waste discharge, and we're not required to until  
16 18 months prior to 2014, the expiration of our permit.

17 In Administrative Procedures Act terms, and Clean  
18 Water Act terms, that is sort of the administrative basis  
19 by which you issue a permit. You look to that application  
20 in order to determine what kind of progress you're going to  
21 implement, what kind of things the permittees will be  
22 subject to. So without that application being filed, you  
23 cannot issue a permit to Orange County.

24 Now, the argument is well, the original draft of  
25 the order did not contain a route requirement. It now

1 does. And the argument is well, now, it requires it before  
2 you enroll, we will then go through the application  
3 requirement and reopen up the permit. But that's after the  
4 fact.

5           You would be adopting a permit today, or in May,  
6 or in June, or end of this year to have a region-wide  
7 permit without -- that have provisions that are general to  
8 Orange County, with provisions that are specific to Orange  
9 County water bodies without having gone through that  
10 application process. And there is no substantial evidence  
11 under the Administrative Procedures Act to adopt a  
12 region-wide permit to Orange County.

13           We would also contend, by other comments made by  
14 board members, that if a route requirement is also going to  
15 be implemented after the fact, then that route should be  
16 able to open up every aspect of this existing region-wide  
17 permit as to Orange County, and we should have the ability  
18 to comment on every detail of that permit.

19           So what's our request? We respectfully request  
20 that you exclude Orange County. We object to a regional  
21 permit and we're participating under protest. Issue a  
22 permit to San Diego. Let the Orange County programs run  
23 their course.

24           I believe that certain programs have not even  
25 begun. The Model Water Quality Management Plan was

1 submitted in December 2011 and is still waiting approval.  
2 The Hydromodification Management Plan we submitted in  
3 October 2012 is still waiting approval. Those programs  
4 have not yet gotten off the ground or they are in interim  
5 status.

6 So let the Orange County programs run their  
7 course, consistent with what Mr. Boon said here a few  
8 minutes ago, and the co-permittees will consider a  
9 region-wide permit in the 2014 route where we can supply  
10 you the data and quantitative information that you're  
11 seeking.

12 And if we apply for a region-wide permit  
13 consistent with those regulations, we would also ask maybe  
14 at that time to extend our permit to 2017 so you can align  
15 all three permits. At that point, the San Diego permit  
16 will have expired in 2017 and you could do all three  
17 permits in one.

18 The second issue is the WQIP consultation panel.  
19 This I was raised by Mr. Haggerty it improperly delegates  
20 board approval authority to private parties. The panel  
21 will have final authority on what the WQIP says. The  
22 permittee will be required to adopt those findings and be a  
23 condition precedent prior to submission of that WQIP to the  
24 executive officer for approval.

25 Courts have consistently struck down delegation of

1 quasi judicial powers to private groups, specifically in  
2 the aspects of permitting or licensing. There is no blocks  
3 from that discretion and those bodies are not subject to  
4 judicial review.

5           And the third issue, I'll get to, just came up a  
6 moment ago. I think that we would not -- Orange County  
7 would not be comfortable with the idea of a pre-development  
8 standard that is limited by -- in accordance with the laws  
9 on nexus or whatever the constitutional language is going  
10 to be. We believe that would be vague. We would advocate  
11 for pre-project standard consistent with our comments made  
12 on January 11th. But we just -- if it were left that vague  
13 and ambiguous, it would sort of shift us back to find the  
14 bright line, and we don't -- we would prefer that the  
15 regional board establish that bright line as where that  
16 nexus and -- issues are, so we're not having to figure it  
17 out ourselves.

18           Thank you.

19           MR. ANDERSON: Sir, I'm just stunned. I've sat  
20 through these and all the time, the different regions are  
21 always arguing for consistency. In fact, part of  
22 Mr. Boon's objection to this is the fact there's going to  
23 be three regions that have different inconsistent programs.

24           I -- I, especially, thought that a regional wide  
25 permit in this mode would not be a good idea, especially

1 given the way that we were approaching the MS4 permitting  
2 process. The way you make the permits work when you do  
3 a -- a larger area is by making them more flexible, which I  
4 find these -- this permit does.

5 So I'm just stunned, truthfully. And, Counsel, if  
6 you could comment on the no application issue.

7 MS. HAGAN: Well, I think it was included in the  
8 Response to Comments, but the Tentative Order does  
9 require -- acknowledges the federal regulations that  
10 requires submittal of reported waste discharge within 180  
11 days, I believe, prior to expiration. And it provides that  
12 the Board would consider proposals in that reported waste  
13 discharge and make appropriate changes at the hearing.

14 So I disagree that we do not have -- that we're  
15 not meeting the terms of the regulations in terms of  
16 providing the reported waste discharge process.

17 MR. ABARBANEL: Isn't a rational remedy for  
18 Orange County to go to your assembly members and members  
19 of the state senate and ask them to include all of  
20 Orange County in this region?

21 MR. BARON: Or maybe the Region 8. That is a  
22 request that we can make. And I think it's been made in  
23 the past.

24 VICE CHAIR STRAWN: I think I understand your  
25 argument, but I don't believe I understand what it is you

1 really want. So I'm going to ask a different question.

2 MR. BARON: Sure.

3 VICE CHAIR STRAWN: If we were to take this  
4 particular permit and change the name on it to say  
5 San Diego County, and then bring the same permit back to  
6 you next year and say Orange County, what would your  
7 problem be then?

8 MR. BARON: I think that you've heard that we have  
9 had problems with how the WQIP process has been defined.  
10 There are new standards that have been introduced in this  
11 latest iteration dealing with a hundred percent issue.

12 We have issues -- we have a current appeal of the  
13 existing permit on hydromodification, low impact  
14 development. There are issues we have objected to in the  
15 past. I think what we're trying to say is, you know, let  
16 us run these -- like Mr. Boon said, let these programs run  
17 their course before we start over as to certain programs  
18 and whole training sessions and new workshops as to new  
19 standards.

20 And I think because of procedural arguments are  
21 valid reasons that we have to go through in order to adopt  
22 a permit. We would do that in court of law. And if we  
23 don't follow those procedures, then we feel that it's  
24 somewhat arbitrary to adopt this permit as to  
25 Orange County.

1                   VICE CHAIR STRAWN: So the argument that it should  
2 not be a regional one is really a smokescreen over the  
3 specific issues that Mr. Boon's brought up.

4                   MR. BARON: No, I don't believe it's a smokescreen  
5 at all. I think it's a matter of following procedure of  
6 the federal regulations and it's a matter of going through  
7 the application process. Because you can get some of this  
8 information out of past permits, you can get it out of  
9 reports. But the report of waste discharge is the formal  
10 application by which you base a permit on. It says it in  
11 black and white in the regulations.

12                   CHAIRMAN MORALES: Just --  
13 Mary Anne?

14                   MS. SKORPANICH: If I could just add one more  
15 item. Previously, during Mr. Boon's presentation, he was  
16 questioned about whether he's introducing new evidence.

17                   Had your permit for Orange County, that addressed  
18 Orange County, come after our reported waste discharge, we  
19 would have had the opportunity to put that sort of  
20 information in the record, and much more in the record, to  
21 provide substantial evidence for what is working with our  
22 programs and what should continue and what areas we think  
23 we can improve, based on the data that we're collecting.

24                   But because we have short-circuited that process,  
25 we don't really see where there's substantial evidence

1 being presented that you should change our permit and our  
2 program at this time and it's because we have leap-frogged  
3 the -- the legal process laid out by the Clean Water Act  
4 and the EPA.

5 CHAIRMAN MORALES: And I just wanted to make a  
6 real quick comment.

7 I wanted to thank you for telling us that we  
8 shouldn't take cost savings arguments into account.

9 MR. BARON: If you go beyond MEP, you have to take  
10 cost savings into account and there are physical factors  
11 that must be looked at when you define a system.

12 MR. MORALES: My little tongue and cheek.

13 MR. ANDERSON: My interpretation of the cost  
14 savings was not so much that we're saving any cost, but  
15 that more in allocating those monies to more directly  
16 clean up water than generating the reports, and reading,  
17 interpreting the reports.

18 MS. SKORPANICH: You have heard plenty from us  
19 about cost considerations. We're not saying ignore cost  
20 considerations by any means. What we're just saying is --  
21 citing the law where it says you cannot use that as a basis  
22 for issuing a regional permit.

23 MS. KALEMKIARIAN: I have a question that probably  
24 goes back to Mr. Boon, but just to follow up on something  
25 Chairman Morales said. I understand -- I hear there is

1 this difference about the 100 percent, is it the same, is  
2 it not the same. I know we're going to hear a lot about  
3 that.

4 I don't understand that Orange County would have  
5 to change what you're doing, unless it's going to have to  
6 meet these new requirements. I understand that that may be  
7 a difference. But if the LID measures that are being taken  
8 are good measures, they're still going to be good measures,  
9 right, or not? They're not going to be suddenly bad  
10 measures because there is a new permit.

11 MR. BOON: You're going to have to pitch that  
12 question at me again.

13 MS. KALEMKIARIAN: What I'm wondering is, I -- of  
14 course if you're in the middle of doing things that are  
15 remediations for pollution, we want you to continue doing  
16 that. The fact that there's this dispute over what the  
17 hundred percent means, and is it new, is it not, do we  
18 adopt the old language -- I know we're going to be dealing  
19 with that.

20 But I don't understand that dispute to mean that  
21 you're going to be stopped dead in your tracks and have to  
22 go through a whole new planning process and have to come up  
23 with a whole new plan, because you think your plan's  
24 working, so it should continue to work.

25 MR. BOON: The plan that we have in North Orange

1 County that is delivering low impact development has not  
2 been approved for implementation in South Orange County in  
3 the area staff jurisdiction. The argument is we just want  
4 to go ahead and have a single performance standard for land  
5 development for LID countywide.

6 We don't want to put our LID program for South  
7 Orange County on hold for another period while we go back  
8 and reinvent it. We just want to get approval for the  
9 current program and move ahead. And by going from the  
10 storm volume to this hundred percent pollutant removal, we  
11 would have to substantially reconstruct this program that  
12 we have created. And I have technical consultants that can  
13 get into the detail of that.

14 CHAIRMAN MORALES: Okay. I think -- I kind of  
15 understood the question, if I could -- I think of things  
16 very simply, because I have kids, and so I talk in those  
17 terms.

18 I understood the question to be that if you've got  
19 good processes in place in Orange County, I would think  
20 that those good processes will suffice for an outcome-based  
21 program, because you'll hit target levels if you have these  
22 wonderful working programs.

23 And the question being why would you need to  
24 change anything if -- you know, as you describe, you all  
25 are doing really well. And you may be the model for the

1 rest of the region, we don't know, but --

2 MR. BOON: I could share my opinion on that.

3 CHAIRMAN MORALES: So just -- that being just a  
4 simple question, if your programs are working really well,  
5 isn't it likely that you're not going to have to change  
6 anything to get them to hit our standards?

7 MR. BOON: Well, this is the fundamental question  
8 to your staff. I think maybe the -- the piece of  
9 information here that is being overlooked is, two fourth  
10 term permits were issued, Santa Ana region, San Diego  
11 region. We built a land development program, we moved from  
12 the treat and release paradigm to the retention paradigm,  
13 the low impact development paradigm.

14 We have had 18 months of implementation of the new  
15 program in North Orange County. We have stalled in South  
16 Orange County because your staff had the model program  
17 since December 2011, we have not had formal approval.

18 So this program that is delivering LID, which  
19 everybody wants to see, is not moving forward in South  
20 Orange County at the moment, we still have a basic treat  
21 and release requirement.

22 My concern is that that program is going to get  
23 put -- the model program that we have ready to go, that is  
24 going to deliver LID, is going to get put back further and  
25 further as we continue to rewrite it, because you've

1 changed the basic performance standard.

2 CHAIRMAN MORALES: I could see how that would be a  
3 concern, but I'm -- I guess I'm not quite following why  
4 that would be the case because if it really is a good  
5 program, it seems to me you could plug it into the  
6 requirements of this permit and it would work.

7 MR. BOON: Well, I think that's a great  
8 suggestion. If you can plug our model program into this  
9 permit, that would -- that would be a very positive  
10 resolution to this concern -- major concern we have.

11 CHAIRMAN MORALES: Okay. Thank you.

12 MS. KALEMKIARIAN: My question was too complicated  
13 because my kids are grown, Tomas.

14 MR. TAYLOR: Good afternoon, Chairman, members of  
15 the Board. My name is Scott Taylor and I'm RBF Consulting  
16 and I'm representing Orange County. And I think,  
17 hopefully, I can shed a little more light on this issue.

18 I have really two that I wanted to bring to your  
19 attention, primarily for the land development portion. And  
20 the first one being this issue of the BMP treatment  
21 criteria.

22 Fundamentally, I think one of the problems here is  
23 that staff characterized this as a clarification and we're  
24 not reading it as such. The language says that it requires  
25 retention of 100 percent of the pollutants from the storm,

1     whereas our old language said insure on site retention with  
2     no runoff.

3             Now, this is a significant change. And as you can  
4     see on this slide, we have several documents that --  
5     several documents model WQIP, the technical guidance  
6     document, the training modules that we feel would all have  
7     to be revised to incorporate this.

8             There's something on the order of seven million  
9     chemicals that are in commercial use today. So how am I  
10    supposed to demonstrate that I've retained 100 percent of  
11    the pollutants with that kind of a universe that I'm  
12    looking at. The devil is really going to be in the details  
13    of how the guidance on this would be written. And if it  
14    truly -- again, truly was a clarification, I think there  
15    may be a very easy solution to this, which is just to  
16    retain the existing language.

17            If that was -- it's working for us right now  
18    because we prepared our materials for that. And if staff  
19    says there is fundamentally no change in terms of the  
20    performance or how they see it, it's just a clarification,  
21    then we may be talking about this way too much. And if we  
22    just retain the language from our previous permit, I think  
23    everybody's happy. And I think that's what I'm hearing  
24    everybody say.

25            But that, essentially, is our ask on this

1 situation, is to modify Footnote 27 to say the current  
2 fourth term permit BMP criteria and their associated  
3 programs meet the criteria.

4 VICE CHAIR STRAWN: If I can jump in here -- let  
5 me stop the clock a minute -- because I hear two things.  
6 And I share your concern, because when I read this, the  
7 umpteenth time -- and I think the professor will probably  
8 jump in and support me on this -- the term "hundred  
9 percent" scares the wadden out of me. Okay? Any time you  
10 say hundred percent anything, you know, I question that,  
11 just statistically, how do you get there.

12 But hearing Mr. Chiu's description today, it's not  
13 a hundred percent of the pollutants. It's a hundred  
14 percent of the amount that would have been included in that  
15 amount that you used to have to retain.

16 If the wording was changed -- you know, blow out a  
17 hundred percent, just because of all of the emotional  
18 baggage that comes with that, and it said you have to  
19 remove the same amount of pollutants that you would have  
20 held captive under the old rule but -- and the reason for  
21 wanting any change at all was to allow the option for you  
22 to do some green filtering, so to speak, and not have to  
23 retain it all on site. That, I think, is a benefit to you.

24 If that clarification was somehow built in here --  
25 and it takes better wordsmiths than me to do that -- would

1 that satisfy your concerns?

2 MR. TAYLOR: Well, again, the devil is going to be  
3 in the details. I mean, how do you demonstrate this  
4 equivalency when, again, there is potentially, you know, in  
5 the millions of pollutants out there. How do you  
6 demonstrate that? How do you show that?

7 I think the previous work-around before was always  
8 flow-based, you know up-sized your flow base BMP and that  
9 was deemed okay. I think that that is relatively easy to  
10 administrate. And that is one of the issues here.

11 Something like this is just going to be fraught  
12 with technical problems to try to implement on the  
13 practical basis that we can work -- have something workable  
14 over the land development counter with applicants coming in  
15 for development applications.

16 So it seems to us that it wasn't broken and we're  
17 taking a lot of pains to fix it.

18 VICE CHAIR STRAWN: Well, the part that was -- it  
19 was not broken, but the part we're trying to improve is to  
20 allow the option to be able to filter some of that and let  
21 it go and not have to hold it all on site.

22 Is that not correct, Mike? So that, I think, is a  
23 good thing. Seems to me we all have exactly the same  
24 purpose here. The question is in definitions. And it  
25 seems to me that that's something that we should be able

1 to work out -- at least you guys should be able to work it  
2 out. I don't know that I could.

3 MR. TAYLOR: I completely agree with that. I  
4 think this is perfect example of one of the things where,  
5 if we had more time to work with staff where we could talk  
6 about our interpretations of the language and what those  
7 problems and issues are for us on the regulatory side, or  
8 really the land development side, and work with you in  
9 terms of what you want to achieve on the regulatory side,  
10 there probably can be a meeting of the minds. But we  
11 haven't had the time to allow that process to take place.

12 All right. So we'll move on to the next one,  
13 which is streets, roads and highways. And this is my  
14 second item. And what we wanted to point out is that  
15 roadways are just -- are fundamentally different than land  
16 development projects. They have specific constraints and  
17 also specific public benefit.

18 And, really, the land development criteria is  
19 applied indiscriminately to all projects. And we wanted to  
20 talk about some nuances here that could benefit, I think,  
21 the environment, as well as the permittees in terms of  
22 streets and the roads. So this is the -- essentially, what  
23 we're asking for is to be able to apply the U.S. EPA green  
24 street standards to roadway redevelopment projects.

25 Here's an example of a retrofit that we are

1 completing construction drawings on right now. And these  
2 are some of the constraints that we ran into. As you can  
3 see, there are many when you're looking at retrofit within  
4 an existing residential area, which is what this was for  
5 bioretention.

6           There are a lot of competing interests besides,  
7 you know, just getting the flow to infiltrate or be  
8 retained on site. And by way of an example, then, put this  
9 together for a right-turn pocket project. You can see this  
10 is the right-turn pocket that's being added right here  
11 where we're replacing impervious surface that exceeds the  
12 5,000 foot threshold.

13           And because of right-of-way constraints, we can't  
14 have full retention and bioretention within the street  
15 right of way. So we have to go offsite. And going  
16 offsite, and using these numbers right here, which are down  
17 to the penny, and you say wow, that's pretty accurate --  
18 that's because we just finished doing this retrofit project  
19 that I showed you previously -- we get a total capital cost  
20 of this project of \$80,000, and \$20,000 of that is  
21 bioretention cost.

22           Well, if we use the EPA green street's approach,  
23 we can fit a swale in right here within the thin strip of  
24 right of way left over. The project cost -- the total  
25 project cost then drops to \$62,000, and the BMP cost in

1 that case is \$1950. So we have almost 25 percent treatment  
2 per capital project cost versus a 3.1 percent.

3 And the take-home point here, then, is that these  
4 -- you know, this indiscriminate application of this  
5 criteria is going to have the effect of really probably  
6 slowing down or stopping a lot of public work street  
7 improvement projects.

8 And, again, that's really -- water quality is just  
9 one of the things that the permittees need to balance when  
10 they're looking at the need for projects. The others being  
11 public safety and, you know, traffic improvement. We're  
12 not really giving much away by allowing the green streets  
13 approach in this case. Vegetated swales are probably  
14 somewhere on the order of, you know, round numbers, 70  
15 percent efficient. So you allow projects like these to  
16 move forward, more of them at a reduced cost, I think you  
17 improve water quality as well as improve public safety.

18 And so our requested change to the permit is  
19 really then just -- actually a complete modification to  
20 Section E3B3C which would be to allow the use of green  
21 streets in street reconstruction and widening-type  
22 projects.

23 And we would just ask -- this doesn't -- this is  
24 something we, again, could work with staff on. There's a  
25 lot of gray areas and difficulty with this that we could

1 come up with a street development standard-type section  
2 that could be done after the permit is completed but a  
3 placeholder saying these types of standards can be  
4 developed.

5           So we had some other issues and, in interest in  
6 time, I'm not going to go into them in detail. But just  
7 very quickly, some of the things that we would like to  
8 discuss further is the redevelopment projects that have  
9 water quality treatment BMPs. I think we're going to start  
10 seeing this coming to -- you come in to redevelopment a  
11 project that already has some BMPs, they shouldn't be  
12 subject to the PDP requirements.

13           We have already talked about the pre-development  
14 and pre-project for hydromodification. Not well-grounded  
15 in science, I wouldn't think, when you look at the SCCWRP  
16 studies on this issue. The same for the sediment supply,  
17 there's wording in the permit that says that sediment  
18 supply must be unaffected by the project. Again, not  
19 really consistent with the SCCWRP studies and really  
20 somewhat of an impossible standard to have completely no  
21 effect.

22           Flow-through BMPs are required for alternative  
23 compliance projects if the alternative compliance project  
24 also has to have a greater water quality benefit. And, in  
25 interim, if you allow this to occur you have to have

1 temporal mitigation, still have to mitigation before you  
2 get the offset compliance project done. It seems like  
3 there's kind of mitigation on top of mitigation for some of  
4 these offsite projects that maybe could be streamlined,  
5 less complicated. And, again, not giving away much in  
6 terms of environmental protection.

7 So, again, we'd like to work with staff more on  
8 some of these issues. I think that there are solutions to  
9 those and we could arrive at something of a general  
10 consensus on what we need to do.

11 And unless you have any questions, I'm going to  
12 turn it over now to Nancy Palmer.

13 MR. ANDERSON: Did you follow the County of  
14 San Diego's suggestions on this section, or did you -- do  
15 you have a copy of their suggestions?

16 MR. TAYLOR: No.

17 MR. ANDERSON: If you can look at those and see  
18 which ones cover your concerns, that would be great.

19 MR. TAYLOR: Okay.

20 MS. PALMER: Good afternoon, my name is  
21 Nancy Palmer. I'm with the City of Laguna Niguel. And  
22 I've been South Orange County's representative on the  
23 bacteria TMDL Stakeholder Advisory Group for the last ten  
24 years.

25 My comments are specifically directed to the

1 bacteria TMDL provisions that are found in Attachment E of  
2 the draft permit. I have not had the opportunity to  
3 compare notes in advance of this meeting with -- San Diego  
4 presented some comments this morning already. But we'll  
5 proceed anyway and flip through quickly where there is  
6 overlap.

7 We have come a long way on this in the last ten  
8 years. And, really, stakeholders from all sides of the  
9 aisle asked for some of the same kind of changes to the  
10 previous draft of Attachment E to make sure that it was  
11 consistent with the approved TMDLs. The most important of  
12 those changes have already been incorporated, while some of  
13 them are recognized as intending to be revisited later, when  
14 the TMDL reopener occurs as we have some new data.

15 So I would personally like to really thank your  
16 staff for listening to all of us and commend them for  
17 getting this Attachment E really a lot closer to where it  
18 needs to be. And I commend them for some good work.

19 That said, there are still some requirements in  
20 Attachment E that are inconsistent with provisions of the  
21 adopted TMDL basin plan amendments. There are three that  
22 we believe should be corrected before it's adopted. No. 1,  
23 Attachment E does not acknowledge water bodies that are  
24 303D listed. No. 2, final receiving water limitations have  
25 been a bit tinkered with. And No. 3, the exceedence

1 frequency calculations have been a little bit embellished.

2 All these provisions in Attachment E should  
3 reflect what was previously approved by the Board. You'll  
4 recognize all three of these topics as brought up already  
5 by San Diego.

6 I'm going to skip over this little history on the  
7 idea of delisting, which is my first topic. This is the  
8 language currently in the basin plan that specifies that  
9 there were beaches in Orange County and San Diego County  
10 already been dramatically improved and have been 303D  
11 delisted before the basin plan amendments were even  
12 adopted.

13 So here's a little more from the basin plan. It  
14 indicates that the delisted water bodies have to continue  
15 to be monitored so in case improved water quality is not  
16 maintained, the water body would be put right back onto  
17 State 303(d) list.

18 Again, from the approved basin plan text specifies  
19 that the delisted water bodies not subject to any further  
20 action as long as monitoring data continue to demonstrate  
21 and support compliance.

22 I would like to show you the comparable  
23 Attachment E language, but it does not exist. The draft  
24 does not acknowledge water bodies that are formally --  
25 formally delisted and no longer considered impaired, or it

1 does not make a link to monitoring being used to  
2 demonstrate that ongoing lack of impairment.

3           What Attachment E should do and currently does not  
4 is specify that formal 303(d) delisting by the state,  
5 coupled with ongoing monitoring confirming the lack of  
6 impairment constitutes a valid demonstration of compliance  
7 with the TMDLs. And we're asking that such a provision be  
8 added to the permit.

9           My second topic is receiving water limitations.  
10 This is the current basin plan Table 7-48, which shows  
11 receiving water limitations for beaches. The standards are  
12 differentiated between single sample, exceedence  
13 frequencies for wet weather days on the left side of the  
14 table, and then geomean exceeded frequencies for dry  
15 whether days on the right side of the table.

16           This is the comparable table in the draft of  
17 Attachment E, the yellow -- or the red outline there is  
18 something that snuck in there that wasn't in the receiving  
19 water limitations in the basin plan that needs to be  
20 removed. What they put in there is a single sample, zero  
21 percent allowable exceedence frequency for dry weather.  
22 That doesn't -- does not really belong there. And we  
23 really need to stick with the objective as it was stated in  
24 the TMDLs that have already been approved.

25           Basically, the same thing, the previous slide was

1 for beaches, this is the one for creeks. This is out of  
2 the basin plan, shows the same -- the comparable standards  
3 again; single sample for wet weather, geomean for dry  
4 weather. When you get to the draft Attachment E, they have  
5 added in that zero percent single sample exceedence into  
6 the dry weather sample, which is not appropriate. Again,  
7 we need to stick with what it says in the basin plan.

8 Issue No. 3, the -- another issue that's come up,  
9 this is the basin plan's provision having to do with how  
10 the result of a limited number of samples are extrapolated  
11 to calculate the wet weather exceedence frequency for a  
12 year.

13 I want to point out that during the TMDL process,  
14 there is whole series of these requirements. And there was  
15 a lot of arguing about what should go in there and what  
16 should not. And in the end, we all kind of agreed we  
17 really did not have enough data to really answer that  
18 question very well. So the stakeholders and the board all  
19 agreed that we would revisit this subject after more field  
20 research was done, at which point the TMDL and basin plan  
21 would be reopened to change these provisions, if that was  
22 appropriate.

23 And so the first two provisions up there are  
24 exactly as they are in the basin plan, which I expected to  
25 see those and I expected to maybe talk about those again

1 later. But what's interesting here is the third one there  
2 in red, which is sort of a brand new one, but as San Diego  
3 pointed out this morning it extrapolates the storm data to  
4 unsampled storms.

5 And that's probably not scientifically valid, but  
6 maybe the main point is it's brand new, does not belong  
7 there. If we want to talk about that when we have data,  
8 okay, but it should not be there now.

9 So in the end, basically, we're just saying don't  
10 create -- don't create new requirements that are  
11 inconsistent with the basin plan, inconsistent with the  
12 intent of the regional board in approving those basin plan  
13 amendments and that go beyond the requirements of the  
14 adopted TMDLs. And these ones that I've mentioned should  
15 be corrected prior to adopting this permit.

16 The rest of this is basically just a summary and  
17 some of the chapter and verse of the provisions that were  
18 suggested be corrected. So I'll flip on through those. I  
19 haven't seen this one. That's not mine.

20 So with that, I'll just thank you for my  
21 attention and -- or for your attention and let you know  
22 that I'm available for any questions.

23 VICE CHAIR STRAWN: Did you give us a pink card?

24 MS. PALMER: I gave you a green card. I always go  
25 back to that table and I look at that pro versus con and I

1 always think --

2 VICE CHAIR STRAWN: You're a pro kind of person.

3 I'll look for it in that pile.

4 CHAIRMAN MORALES: Anyone else?

5 No.

6 MR. BOON: So it's for me to conclude.

7 I think really there are too many issues for us to  
8 try and resolve today and tomorrow. I think the basic  
9 fundamental request would be for you to direct your staff  
10 to go back to work with the stakeholders, Chairman Morales,  
11 you've continued the possibility of some focus meetings and  
12 come back with a Tentative Order that offers broad support.

13 I just have one last picture of a steam locomotive  
14 but I -- I did want to note that I used these -- the train  
15 coming off the track. Our experience of the stakeholder  
16 process, I think, perhaps was a little different than the  
17 other counties. We were under the impression we believe  
18 that some requests for some meetings through the start of  
19 this year have been declined by your staff. So I think we  
20 came away with a different impression than perhaps  
21 San Diego County. But we look forward to re-railing the  
22 train.

23 Thank you very much.

24 MR. UHLEY: Good afternoon, Chair, members of the  
25 Board. My name's Jason Uhley, Riverside County Flood

1 Control and Water Conservation District. I'm the chief of  
2 watershed protection and I have been sworn in.

3 I understood that you wanted to stop the testimony  
4 at 4:00. We probably have a 45-minute presentation. I  
5 also wanted to check time, if we could.

6 CHAIRMAN MORALES: Yes.

7 Trust me, we're not stopping testimony. We're  
8 just moving on to different testimony at 4:00 but --

9 For the co-permittees, that's right, we had  
10 planned on stopping at 4:00. And I think we would probably  
11 break for a bit prior to beginning the 4:00 session anyway.  
12 So rather than interrupt the flow of your presentation, I  
13 think we'll take you -- my guess is immediately after the  
14 elected officials tomorrow morning.

15 As I had stated earlier, for the co-permittees or  
16 any of the other parties, we are not expecting you to stay  
17 here until 7:00 in the event that we finish up early with  
18 the public testimony portion of the day, but we will expect  
19 you back tomorrow and we will try and work through this.  
20 Okay.

21 MR. UHLEY: That's acceptable to us.

22 Thank you.

23 CHAIRMAN MORALES: Okay. So let's take a short  
24 break and try and figure out how many folks we have got for  
25 our 4:00 and our --

1 (Brief recess taken.)

2 CHAIRMAN MORALES: Okay. I'd like to reconvene  
3 the meeting and begin with the public testimony portion of  
4 the day.

5 And what will happen here is we like to line up  
6 the speakers. So Mr. Strawn will call your name in  
7 advance, you know, one or two speakers in advance of you  
8 coming up. So please be ready to proceed.

9 There have been questions asked by some of the  
10 folk at Orange County -- and this is perhaps best directed  
11 at maybe BIA and the NGO's other parties. Some of the  
12 Orange County folks had asked if anyone intended to  
13 possibly cross-examine them because, if not, it might save  
14 them a trip back up.

15 We don't want to prejudice anybody's right to do  
16 so, but if there's anybody that, you know, feels strongly  
17 one way or another about having anyone in particular here,  
18 now would be a good time to share that with us.

19 So if I could hear first from, let's see, BIA.

20 MR. WINCKEL: Good afternoon, gentlemen and  
21 ladies. My name is Borre Winckel, the president of BIA  
22 San Diego. We do not intend to cross-examine any of the  
23 co-permittees.

24 CHAIRMAN MORALES: Thank you.

25 And NGOs?

1 MR. GARRISON: Good afternoon, Mr. Chair and  
2 members of the Board. My name is Noah Garrison, I'm with  
3 the Natural Resources Council. We do not have questions or  
4 cross-examination for the County at this time.

5 CHAIRMAN MORALES: Thank you.

6 Okay. So let's go ahead and start the --

7 MS. HAGAN: Mr. Chair, excuse me, I'm sorry.

8 I wanted to find out if we could see if the  
9 Coastkeeper representatives also concur that they would not  
10 have any cross-examination of the -- of the co-permittees.

11 UNIDENTIFIED COASTKEEPER: Orange County  
12 Coastkeeper and Inland Empire Waterkeeper do not have  
13 cross-examination at this time. San Diego Coastkeeper was  
14 here. I'm not sure where they stepped to, but --

15 MS. HAGAN: Well, maybe when they come back, you  
16 could --

17 VICE CHAIR STRAWN: She pulled their cards and  
18 said they would be making their presentation tomorrow  
19 morning, so I think they took off for the afternoon.

20 MS. HAGAN: Is Jill Wikowski still here?

21 CHAIRMAN MORALES: Thank you for your patience  
22 folks. I used to make the drive to Orange County opposite  
23 direction daily, so if I can save someone that, I'm more  
24 than happy to do it.

25 VICE CHAIR STRAWN: The order will be Chris Haynes

1 first and then Roger Butow, then Christine Mailloux and  
2 then Livia Borak. And Mr. Butow will have an extra three  
3 minutes.

4 CHAIRMAN MORALES: Miss Wikowski has stepped up.  
5 I was basically conducting a query if anybody was going to  
6 cross-examine the co-permittees that have spoken today.

7 MS. WIKOWSKI: I don't believe so.

8 Thank you.

9 CHAIRMAN MORALES: Thank you. All right.

10 Mr. Haynes?

11 MR. HAYNES: Chairman Morales and members of the  
12 Board, my name is Chris Haynes, and I have taken the oath.

13 You guys have had a busy and very typical day to  
14 understand all these issues. My focus is going to be  
15 pretty small and, hopefully, easy to understand. Thank you  
16 for this opportunity. I want to highlight just one area of  
17 our written comments.

18 This MS4 permit requires toxicity monitoring in  
19 the receiving water. The Navy supports this approach as  
20 consistent with state and federal water quality law and  
21 really protective of water quality beneficial uses.  
22 Monitoring for toxicity of storm water discharges in the  
23 receiving water is also consistent with the framework for  
24 monitoring assessment that this board adopted, I think  
25 December last year. As well as the monitoring done for

1 areas of special biological significance, California's most  
2 pristine and protected water bodies, all of those are  
3 directly in the receiving water when toxicity is evaluated.

4 I want to emphasize that this is testing of 100  
5 percent receiving water, not the storm water that's coming  
6 out of the end of the pipe. Testing of a hundred percent  
7 storm water runoff from nearly every parking lot statewide  
8 would exhibit toxicity, but toxicity is rarely measured and  
9 shown in the receiving environment.

10 By measuring toxicity in the receiving water, this  
11 permit appropriately focuses our attention on the resources  
12 and on protecting those resources from damage from that  
13 storm water discharge. And we then only address areas  
14 where there's a toxic response in the receiving water.

15 In summary -- I told you I'd be brief -- we  
16 support the toxicity testing proposed in this permit as  
17 consistent with the -- with the application of receiving  
18 water toxicity as protective of the water quality end  
19 beneficial uses.

20 We want to thank you for this support -- for your  
21 support of this outcome-oriented approach.

22 CHAIRMAN MORALES: Thank you.

23 VICE CHAIR STRAWN: Mr. Butow?

24 MS. KALEMKIARIAN: I'm sort of surprised because  
25 the Navy's known to be so precise in terms of regulations.

1 So all the comments that were made earlier today, did any  
2 of them echo with the Navy, or you guys are okay with the  
3 permit as drafted?

4 MR. HAYNES: The permit does not directly impact  
5 the Navy so we're okay with it.

6 MS. KALEMKIARIAN: No apartments being planned  
7 anytime soon I guess.

8 MR. HAYNES: I think everybody in this room is  
9 desirous of being very protective of water quality, as was  
10 stated earlier by the Board staff. We want to leave a  
11 clean environment, clean water in the bay and San Diego  
12 County for not all only ourselves, but our children. So we  
13 have no problem with that.

14 MR. BUTOW: Once again, this is Roger Butow. I'm  
15 the founder and executive director of Clean Water Now. And  
16 I want to thank the Board, especially Chairman, for  
17 allowing me to speak at this point in time.

18 Briefly, I would like to establish some boni  
19 fides. One of the things that was perhaps confusing at the  
20 focus meetings and at some of the Board meetings is, I'm  
21 probably -- I'm not sure if there is anyone in this room  
22 with the same boni fides.

23 I am a 40-year builder of both commercial and  
24 residential in South Orange County. I have built not only  
25 an award-winning residence that was voted best

1 architectural project and home by the residents in  
2 South Orange County, by the Guild, Architectural Guild, but  
3 also was water quality advisor to the five-star Conde Nast  
4 Laguna Beach Montage Resort and Spa.

5 I say that because perhaps you can understand why  
6 I bring a different skill set. I am a cross-trained  
7 person, so I understand both sides of the equation, both  
8 builder and as an NGO leader. But I'd also say that the  
9 last 15 years, I've also started building up my  
10 environmental consultancy career and I am a land use and  
11 regulatory compliance advisor. So, once again, I'm not  
12 sure if anybody else in this room has those credentials,  
13 but I think they're critical in some of the comments I'm  
14 going to make to you today.

15 I like to start out, I did provide, by the way to  
16 your XO -- sorry, assistant executive officer Jimmy Smith,  
17 an 8-page comment -- pre-comment kind of outline of what  
18 I'm going to say, but this is actually what's more in  
19 depth, so I'm going to hit you guys with the bullet points.  
20 And once again, thank you for the time frame and the time  
21 slot.

22 First, I'd like to start -- this is out of order,  
23 so Jimmy, I apologize. The water quality improvement plan  
24 panels -- I'm going make a bad joke -- those, to me, are  
25 death panels. I don't really see anything efficacious

1 about those panels.

2 For this board's edification, and perhaps for  
3 staff, the County of Orange already had an unsuccessful  
4 analog very similar to this about ten years or so ago.  
5 What happened is, is that they appointed an NGO rep that,  
6 in fact, rubber-stamped and green-washed all of the BMPs.

7 So we don't have lot of faith, and we now are  
8 asking for that be stricken from this permit. If you want  
9 to create voluntary panels -- I know the County is also  
10 going to claim it's unfunded, so we strongly encourage you,  
11 and once again, the reasons were provided, and in case you  
12 have questions, I'll answer them.

13 But we don't know what the legal basis for this  
14 panel is. Secondly, we really would like to know if  
15 someone from staff could tell us who suggested this,  
16 because we really don't see it being a very efficient way  
17 to do it. This does not work for us, it has not worked for  
18 us in the past. And, once again, the historical analog to  
19 us was an abject failure.

20 If we had not outed this person in the Los Angeles  
21 Times, we don't know what kind of havoc would have been  
22 brought. But once the Times was through with a series of  
23 feature columns, that person was removed from that position  
24 and the panel was put to sleep.

25 We would like to also say that we are curious,

1 legal counsel seemed mildly confused by our questions about  
2 recent adjudications. What we see, Clean Water Now, is  
3 kind of an erosion -- if I can use a phrase -- a kind of a  
4 blurring of the line between point and non-point. And  
5 there have been numerous federal court adjudications. And  
6 we're kind of desirous that there be a little bit more, at  
7 least, feedback from counsel, because we think the line's  
8 being erased by these adjudications. And we know that that  
9 will cause problems for this permit.

10 We do -- believe me, we approve of 99 percent of  
11 this permit, as I said last November. That said, we're  
12 really desirous of this being a defensible permit. We are  
13 not interested in an endless chain of hearings. And once  
14 again, we've actually gone to Sacramento to defend this  
15 staff and this permit at the 2002 occurrence.

16 Moving on -- and we need to X these off. We are  
17 desirous that someone explain to us -- I wish U.S. EPA were  
18 still here -- about effluent-dependent water bodies and  
19 their effect upon aquatic and myparians. We're concerned  
20 that the HMP might in some way affect these  
21 effluent-dependent water bodies, and particularly -- I know  
22 it sounds crazy, counterintuitive, but in some cases, you  
23 can actually kill ecosystems. We have created these  
24 systems as if we were God and we are very desirous of  
25 making sure that they are protected. We know the water

1 should be of high quality, obviously. We are the ones that  
2 got the Steelhead Trout listed through NOAA in Aliso Creek.  
3 So we are committed to aquatics.

4 The other thing we're concerned about are Class 5  
5 injection wells. We did note three of them for the -- for  
6 the Board to be aware of. Once again, U.S. EPA, along with  
7 the NRDC and several other parties, determined that  
8 infiltration trenches, commercially manufactured storm  
9 water infiltration devices, dry wells seepage and improved  
10 sinkholes are determined by U.S. EPA. This was in 2008.  
11 And they're White Paper determined to be, in fact, a form  
12 of a Class 5 well. So we'd like some clarification on that  
13 issue.

14 I'm going to try and move down the highway of  
15 life. Okay. Restoration. Wayne, did appreciate your  
16 comments about restoration, but we are desirous of  
17 understanding a little bit more about why "restore" was  
18 stricken and red-lined. Restore just means to return to a  
19 previous state or put something back. Cindy Liu, of U.S.  
20 EPA, at one of the focus meetings -- and I like what she  
21 said, "We're not asking for Jurassic Park here," and I  
22 think Wayne used "Pre-Columbian conditions." I think she  
23 said 50 years -- that's about the time I graduated from  
24 high school.

25 So we would like to know why "restore" was taken

1 out. We kind of like that. We liked the idea of natural  
2 restoration to the maximum extent practicable. So we would  
3 like some guidance from staff as to why "restore" was  
4 removed. We're not sure under what circumstances that  
5 petition was successful. And, in fact, that's part of the  
6 reason we want to know who came up with the water quality  
7 improvement plan panels, because we like to know who we're  
8 dealing with.

9 I will say this, and it is rather interesting.  
10 Richard Boon said that darn, his name did not get mentioned  
11 or the County get credit for Aliso Creek. Sure, there's 20  
12 percent less pollutants. If you don't know why, your staff  
13 knows why. Clean Water Now was the sole petitioner around  
14 2001. We wanted a cleanup and abatement order for the  
15 entire Aliso Creek watershed.

16 Around 2001, the Clean Water Code 13225 directive  
17 was imposed, we'll say. This was a compromise. But that  
18 imposition is the reason that the County is in compliance  
19 in Aliso Creek. When it came up for renewal five years  
20 later, we were the sole petitioner, with other NGOs sitting  
21 in the audience, to make sure that was renewed.

22 Your permit, this NPDS, is actually remarkably  
23 similar to that directive. That's part of the reason we  
24 support it the way that we do, because this directive has  
25 increased. There's your results that you're hearing people

1 complain about.

2 Mr. Boon, you're right, that worked in Aliso  
3 Creek, 20 percent reduction. So I say that the metrics are  
4 there in place. Ten years later, Aliso Creek is 20 percent  
5 better. I consider my life, personally, for the last 15  
6 years to be a hundred percent success because I actually  
7 made a difference.

8 Thank you, Chairman Morales. Unless you have any  
9 questions, or someone else, I'll happily answer them.

10 CHAIRMAN MORALES: Thank you, Mr. Butow.

11 MS. MAILLOUX: Good afternoon. I have not been  
12 sworn in. I don't know if that matters, if you're doing  
13 all the public.

14 MS. HAGAN: Since lot of the public was not here  
15 earlier, you might just administer a new oath to those that  
16 haven't take it already.

17 CHAIRMAN MORALES: Sure.

18 Thank you for pointing that out, Ma'am. For those  
19 of you that are going to speak -- I think we have probably  
20 got, oh, 20 some odd comment cards -- if you were not here  
21 in the morning session, I'm going to ask you to come toward  
22 the front, and I'm going to administer an oath. And then  
23 when you do come to the mic, please state your name for the  
24 record and that you have taken the oath. Now, after I make  
25 the statement, just please say "I do."

1           Do you swear that the testimony you will provide  
2 is true and correct. If so --

3           "I do."

4           CHAIRMAN MORALES: Thank you.

5           MS. MAILLOUX: Good afternoon. My name is  
6 Christine Mailloux, M-a-i-l-l-o-u-x, and I have been sworn  
7 in. I'm currently a board member of the Friends of Rose  
8 Canyon and we submitted comments earlier in January, a very  
9 short letter in response to the Tentative Order.

10           Rose Canyon in the UTC area is a critical linkage  
11 between the eastern part of the city and Mission Bay,  
12 allowing wildlife, native plants, and recreation, a  
13 corridor to flow through that area in order to an enjoy the  
14 canyon and to have those three elements peacefully  
15 co-exist.

16           I'm here to speak in favor of Agenda Item No. 8.  
17 The storm water runoff is a critical issue for those that  
18 rely on canyons like Rose Canyon. We appreciate the focus  
19 that this current agenda item, this current permit, has on  
20 watershed-based plans as Rose Canyon is an integral part of  
21 the Rose Creek watershed. And we also appreciate the  
22 increased emphasis on public participation.

23           I'm not sure that the earlier speaker was talking  
24 about that, but we believe that San Diego will have a very  
25 different experience with the increased emphasis on public

1 participation and stakeholder input. San Diego has an  
2 incredible brain trust of talent here on these issues, on  
3 the environmental issues. And specifically because of the  
4 diversity of the ecosystem in the county, all the different  
5 canyons and mountain areas and beach areas, the public  
6 input that coordinates those expertise would be incredibly  
7 valuable.

8           Specifically, however, Rose -- Friends of Rose  
9 Canyon encourage you to remove the safe harbor provisions  
10 from the current permit. From a cost benefit perspective,  
11 we believe that the minor installation from potential legal  
12 action that apparently the safe harbor would provide to  
13 some stakeholders is not worth the sacrifice that that safe  
14 harbor provision may entail from measurable concrete  
15 protections and results for the actual water quality  
16 improvement in San Diego.

17           Thank you very much.

18           CHAIRMAN MORALES: Thank you.

19           MR. STRAWN: Livia?

20           MS. BORAK: Good afternoon, board members. Livia  
21 Borak, Coastal Environmental Rights Foundation. I took the  
22 oath this morning.

23           I would like to echo some of the comments made by  
24 the environmentalists and agree that this permit was  
25 something that we could support and something did go awry

1 on March 27th when the safe harbor provision was added into  
2 the permit.

3           There are specific areas where we had a few  
4 concerns, such as the monitoring and the hydromod, but  
5 really the poison pill for this permit is the safe harbor.  
6 This regional board has a legacy, and until today, and  
7 potentially continuing, legacy has been as a strong  
8 regional board with strong MS4 permits.

9           And as the EPA mentioned, this permit is a  
10 significant departure from previous iterations and previous  
11 permits because of the safe harbor and because of the way  
12 the receiving water limitations have now been addressed in  
13 this permit.

14           There have been attacks to the previous permits.  
15 The BIA sued in 2004 and lost, arguing, essentially, the  
16 same thing, that you can't have MEP and have water quality  
17 standards. The Court said yes, you can, and you can attain  
18 those. And there's been no evidence that that can't be  
19 attainable. I'm sure your counsel has that case. And  
20 probably the BIA remembers that, because that was a sound  
21 beating.

22           The departure now is something that is premature.  
23 The State Water Board has, you know, received numerous  
24 requests for safe harbors from everybody in response to the  
25 NRBC case, as if this was something new. The receiving

1 water limitations have always been enforceable. We could  
2 have sued. We didn't. We haven't sued. There has not  
3 been a proliferation of lawsuits. Yet, we here the same  
4 argument, the sky is falling and you can't have the  
5 receiving water limitations in the permit. It's not a  
6 realistic threat and you should not be rushed into putting  
7 something into the permit when the State Board is  
8 considering that.

9 Do the best you can now. Approve a permit that's  
10 protective of water quality now. We know we have more and  
11 more water bodies on the 303(d) list. We haven't been able  
12 to go into the water for 72 hours after it rains. We're  
13 not go doing a good job. Do not reward the municipalities  
14 for doing a bad job by giving them an out or a potential  
15 out.

16 The burden that you will put on your staff in  
17 assessing these new models, these new compliance  
18 alternatives, is it worth it? Do we need numeric goals to  
19 replace the receiving water limitations? You have numeric  
20 goals, you have water quality standards and receiving water  
21 limitations.

22 I urge you to take out the safe harbor, follow in  
23 the footsteps of the previous boards, keep your legacy  
24 intact. Approve a permit that is protective of water  
25 quality and please remove the safe harbor.

1 Thank you.

2 VICE CHAIR STRAWN: Julia Chunn-Heer, followed by  
3 Adam and then Matt O'Malley will be next.

4 MS. CHUNN-HEER: Good afternoon, members of the  
5 Board. I'm Julia Chunn-Heer. I'm the campaign coordinator  
6 for Surfrider San Diego and I'll be speaking on their  
7 behalf today. I have also taken the oath earlier this  
8 morning.

9 First of all, I'll like to get started by pointing  
10 out the crowd -- if they could all hold up their signs --  
11 who have come to voice their opinion about the storm water  
12 permit. And as of 12:00 today, your staff has received 215  
13 letters from our members following the revised version of  
14 the draft permit. I'd also like to acknowledge your staff,  
15 who has done a tremendous job through this process. It's  
16 been very time-consuming and I've been utterly impressed.

17 I, along with my environmental colleagues, have  
18 sat through the all-day workshops leading up to this point.  
19 We've looked into the tremendous complaints and concerns  
20 from the co-permittees and the BIA that accommodated the  
21 last two permit cycles. And like your staff acknowledged  
22 earlier this morning, at some point, there is just not  
23 going to be complete agreement.

24 I hope you don't continue to hear, but if you do  
25 continue to hear the complaints about potential new cost, I

1 would suggest that the reality is that we should all be  
2 more concerned about the cost of non-compliance. There is  
3 a great example up in Orange County in Aliso Creek, where  
4 hundreds of millions of dollars are spent just to stabilize  
5 the creek, not to restore it, because it was public --  
6 public infrastructure was threatened.

7 Your own document, in Attachment F, Section 6,  
8 states that this permit is not more strict than the federal  
9 regulations, so the cost consideration should not be taken  
10 into account, although you have done extensive examination  
11 of those cost considerations.

12 Surfrider San Diego is supportive of the new  
13 regional structure. We are supportive of the  
14 watershed-based approach. We support the shift to become  
15 an outcome-oriented instead of action-oriented permit, the  
16 increased reliance on BMPs and low impact development and  
17 the increased stakeholder and public participation in the  
18 water quality improvement plan process.

19 However, we were very disappointed by the last  
20 minute addition of the safe harbor clause in the recently  
21 released revised version of the permit on March 27th. If  
22 that clause remains, we will have to oppose the permit.  
23 It's a poison pill and must be removed.

24 The safe harbor takes the teeth out of the permit.  
25 And we know from experience that without the potential

1 threat of litigation, storm water permits can be completely  
2 ineffective. No one wants an overly litigious environment.  
3 Litigation is extremely resource-intensive for us as well  
4 and reserved for only serious violations. But members of  
5 the public and environmental organizations deserve to  
6 maintain their right to sue for egregious violations.

7           If co-permittees are truly acting in good faith  
8 throughout the process, I'm sure they will have little to  
9 fear. Furthermore, I'd encourage you to ask them how much  
10 money they have spent on litigation in the last 12 years in  
11 the San Diego region.

12           When faced with competing multiple priorities,  
13 such as budget cuts and lowered staff, co-permittees will  
14 likely be under pressure to pursue the cheapest and easiest  
15 ways to comply with the permit. We need to maintain our  
16 potential for litigation to keep them motivated and  
17 accountable where necessary.

18           The safe harbor clause is a dangerous  
19 get-out-of-jail-free card. And there have been enough  
20 comprises that were reached in this revised version so the  
21 safe harbor is unnecessary and it should be removed. If it  
22 remains, Surfrider will have to oppose a new permit, like I  
23 mentioned. We believe that it's a step backwards and is  
24 most likely illegal, which you'll hear more about later.

25           I would applaud all the efforts that have gone in

1 so far to make this more of an outcome-based approach as  
2 opposed to action-based. But with the safe harbor clause  
3 left in there it remains action-based. So please don't go  
4 backward on that progress. This is an adaptive iterative  
5 process and with several edits that were made in this  
6 revised version softening the permit, it is no longer  
7 needed and I would urge you to remove it.

8 Thank for your time and consideration.

9 MR. O'MALLEY: Afternoon members of the Board. My  
10 name is Matt O'Malley. I've taken the oath.

11 I live here in San Diego. I'm also a Surfrider  
12 member. And you have one of my green cards up there, I  
13 believe.

14 I want to start off by saying I really am  
15 encouraged by the outcome-oriented approach of this permit  
16 as opposed to just tracking actions. I've had some  
17 experience with those tracking actions MS4s and know they  
18 just become a checklist and not really evolve into  
19 anything. So I'm very encouraged by that. That's a start.

20 I'm also hopeful that this permit can really begin  
21 to make a dent in the remaining issues that we face in our  
22 region here. But I did you give you a green card on this.  
23 I support the permit only with the removal of the safe  
24 harbor. And the reason for that is because I believe that  
25 provision violates Clean Water Act regulations. In

1 particular, the anti-backsliding law 40CFR122 expressly  
2 states that renewed or reissued permits must contain  
3 limitations, standards and conditions at least as stringent  
4 as the previous permit. The new language of the safe  
5 harbor, to me, is too similar to the functional equivalent  
6 language of past permits which essentially said  
7 implementation of certain measures aimed at improving water  
8 quality was compliant even though water quality standards  
9 were not being achieved.

10 By resurrecting this functional equivalence for  
11 compliance alternatives containing less stringent standards  
12 and conditions than previous permits, this new permit  
13 violates anti-backsliding regulations. Instead of  
14 compliance meaning clean waters, it would mean studies,  
15 models and schedules.

16 Furthermore, the new language allows for more time  
17 to meet water quality standards by its very nature,  
18 something EPA administrators expressly stated violates  
19 anti-backsliding regulations.

20 From a more practical standpoint, I kind of think  
21 it just starts off on the wrong foot. Basically, we have  
22 beefed up public participation provisions, which we're very  
23 much in support of, and that would hopefully allow us to be  
24 more collaborative to reap the goals we want to get to.

25 By putting the safe harbor provision, it is sort

1 of telling us right up front that we should be divided over  
2 the issue. And also, staff earlier alluded to the idea  
3 that part of the reason for putting this in is the fear  
4 of citizen suits. So basically, we're hearing right up  
5 front that NGO participation wants to be limited, even  
6 though, to my knowledge, I don't know that there have been  
7 any environmentally-funded legal actions against MS4  
8 permits in San Diego.

9 We also heard a few people talk about watershed  
10 panels, which we support. We think it's great that we  
11 might have some say in some of these matters. But if, in  
12 fact, they are an improper delegation of authority, that  
13 further limits our ability to take part in it.

14 So by implementing a safe harbor, you're taking  
15 away some of our ability to participate and if, in fact,  
16 these watershed panels are not allowed, further degrading  
17 our ability to participate in the process. So just  
18 starting out from the beginning knowing that that's sort  
19 of, you now, the starting point in this permit, it's not  
20 really encouraging for us.

21 However, that said, with removal of the safe  
22 harbor provision, we are, and I am generally, in favor of  
23 this permit as a whole.

24 So I want to thank you for taking the time to hear  
25 us today, appreciate it.

1                   MS. KALEMKIARIAN: Chairman Morales, just a  
2 clarification from this group. I'm a little confused,  
3 because I know there was a -- there was some back and forth  
4 with the co-permittee about safe harbor and that certain  
5 things would not constitute safe harbor.

6                   Can you all be a little more specific for me about  
7 what aspects of the safe harbor in the permit you're  
8 objecting to. Because my understanding is it's rather  
9 limited, but I want to get a better understanding of that.

10                  MR. O'MALLEY: I can speak for myself. And,  
11 basically, the aspect of what I call the safe harbor is  
12 compliance alternatives. So by allowing some other process  
13 to basically equal compliance, like I said, sort of a  
14 functional equivalent, you put in these BMPs, you follow  
15 this process, you are deemed in compliance. Well, my idea  
16 of compliance is water standards are met.

17                  So you're basically substituting that compliance  
18 with a new compliance. To me I say, well, that's  
19 anti-backsliding. And I think the regulations are very  
20 clear. You're changing standards and conditions, which is  
21 a language of the actual federal regulations.

22                  Those standards and conditions are actually  
23 backtracking. Instead of saying that the water quality  
24 standards are now what is your final compliance, you're  
25 now saying some other process, some process that's sort

1 of more studies, more schedules, you know, the eventuality  
2 that you will meet these water quality standards.

3 But in the previous permits, it's the water  
4 quality standards which are actually compliant. So I see  
5 it as -- I think it's pretty clear, and even EPA has  
6 spoken, that allowing more time for compliance when a  
7 previous permit, you know, required compliance now, would  
8 violate anti-backsliding.

9 MS. KALEMKIARIAN: So do you have another  
10 perspective on how you accommodate what appears to be an  
11 acknowledged need for flexibility, meaning if the people  
12 are making -- if a co-permittee is making an effort --

13 MR. O'MALLEY: Sure. Generally, the iterative  
14 process does allow for that. Even now, it allows for that.  
15 I mean, the fact that we have --

16 MS. KALEMKIARIAN: Slow down a bit. She's going  
17 to faint.

18 MR. O'MALLEY: The fact that we have come how many  
19 years with this process, we understand that there are  
20 changes. You know, earlier, they talked about the change  
21 in goalposts. I can definitely understand, you know, that  
22 issue, but the goalposts change because we're seeing  
23 progress. If you always had the same goalpost, then once  
24 you reach it, you would never need to go further than that.

25 We haven't met water quality standards. So as far

1 as I'm concerned, that goalpost needs to be changing until  
2 it's at the water quality standards. So I think the  
3 iterative process takes into account all of these sort of  
4 changes and adaptive strategies that need to happen. And I  
5 encourage that, I think it's great. Hopefully we can be  
6 part as NGOs helping out that process.

7           And there's -- in the past, we have made a lot of  
8 statements about how that might go forward, whether  
9 accepting some of our permitting -- sorry, some of our  
10 monitoring data, just having more meetings, more inclusive.  
11 And I do think the public participation process are  
12 encourage ing. But the safe harbor, I think, pretty much  
13 kind of knocks out a lot of that, especially then if these  
14 water panels are deemed -- you know, if they're considered  
15 not to be or anti-- or improper delegation, it even further  
16 limits us.

17           So I think without -- I mean, I don't know that  
18 the process now isn't adaptive and isn't changeable. I  
19 think it is. I think that's kind of what we have seen over  
20 time. Because if they're talking about changing goalposts,  
21 it obviously has been changing over time. So I think it  
22 allows for that. But I don't think that, basically,  
23 substituting actual compliance for some sort of, you know,  
24 agreed upon scheduling or monitoring that may be imprecise  
25 or -- that's not something we think is acceptable.

1           Otherwise, in the permit, though, yes, I think  
2           that it does allow for the iterative process and adaptive  
3           process to go forward.

4           Thank you.

5           VICE CHAIR STRAWN: Next two speakers will be  
6           Paloma Aguirre and Haley Haggerstone.

7           And while they come up, I'd like to remind  
8           everybody, at this point, we have almost 80 speaker cards,  
9           so we're going to be here till late tonight. Speaking fast  
10          only wears out our court reporter.

11          So I strongly encourage you to keep in mind who  
12          has gone before you and who is coming after you if you're  
13          part of a group and don't repeat each other. We have read  
14          most of this, we appreciate you coming today, but you don't  
15          all have to feel like you need to use your full three  
16          minutes or we're going to be here a long time.

17          Thank you.

18          MS. AGUIRRE: Good afternoon, members of the  
19          Board. My name is Paloma Aguirre and I'm the Coastal  
20          conservation program manager for WildCoast. WildCoast is  
21          an Imperial Beach-based nonprofit organization that  
22          conserves coastal and wildlife. I'm also a local surfer.  
23          I have been surfing Imperial Beach for over ten years and  
24          have to deal with the constant beach closures caused by  
25          ocean pollution.

1 Imperial Beach is predominately a working-class  
2 community that has limited access to open space  
3 recreational opportunities. For many underserved children,  
4 ocean recreation is one of their only outdoor recreational  
5 means to have a space.

6 We need to insure our Coastal waters are safe for  
7 our community's use. We hope the Board considers issuing a  
8 strong permit that will insure the beneficial uses and  
9 health of all ocean users is protected.

10 Thank you.

11 VICE CHAIR STRAWN: Thank you for being brief.

12 MS. HAGGERSTONE: Hello, my name is Haley  
13 Haggerstone, chapter coordinator with Surfrider Foundation  
14 San Diego County chapter.

15 As Julia, my coworker, mentioned, you should have  
16 received 215 versions of a letter, an action alert that we  
17 sent out to our members, supports and activists. I'm going  
18 to read that letter into the -- to you today.

19 "Dear members of the San Diego Regional Water  
20 Quality Control Board, as an ocean user and an ocean lover,  
21 I'm writing to inform you that I support the comments made  
22 by Surfrider San Diego and the other environmental  
23 organizations in relation to the draft MS4 permit.

24 "I am dismayed by the ease with which all of us  
25 have come to accept post-storm beach closures as a fact of

1 life. Furthermore, pollution from dry weather flows are  
2 constantly polluting our ocean every day. That is why we  
3 need a strong permit.

4 "We just celebrated the 40th anniversary of the  
5 Clean Water Act and we're still not meeting those goals.  
6 You have heard many of the same complaints from  
7 co-permittees and the building industry for the past ten  
8 careers. The time to act is now and to be aggressive.

9 "The co-permittees are advocating for an MS4  
10 permit they can easily comply with, but as the agency  
11 tasked with protecting the beneficial uses of our waters, I  
12 urge you to push the envelope. Our local waters are  
13 polluted and we want to move away from the 72-hour rule  
14 following rain storms. Our local water bodies contribute  
15 too much to our quality of life and tourism economy to take  
16 this matter lightly.

17 "I'm excited by the new regional MS4 permit that  
18 moves toward outcome-oriented and watershed based  
19 management. Please hold the line to protect water quality,  
20 restore our local waters and get rid of the unnecessary  
21 safe harbor clause.

22 "This new permit needs to be a step forward not  
23 backwards. I urge you to consider the thousands of beach  
24 users and water advocates as you make this decision and not  
25 just the co-permittees tasked with implementing these

1 regulations. Co-permittees have had the same complaints  
2 for years and our water is still dirty.

3 "Thank you in advance for taking a strong stand in  
4 favor of clean water for the citizens and tourists of  
5 San Diego."

6 VICE CHAIR STRAWN: Allison Prange and Alison  
7 Hindley and Sandra Moore and Lyle Beller.

8 MS. PRANGE: Hello members of the Board. My name  
9 is Allison Prange and I have been sworn in.

10 I live in PB and -- Pacific Beach and I'm a  
11 volunteer with Surfrider. Please excuse the scrubs. I  
12 actually got off work early, made arrangements so that I  
13 could be here today.

14 I currently live two blocks from the beach -- I'm  
15 very lucky. And to say that it's part of my life is an  
16 understatement. In my line of work at the San Diego VA  
17 Hospital in the OR, I need a place to unwind that is calm  
18 and peaceful. I.

19 Have been able to count numerous times, especially  
20 in this last year, where the water in PB was incredibly  
21 dirty, replacing the beauty of the beach that I've grown to  
22 love so deeply, hearing the waves every single night and  
23 every morning. The beauty of the beach was replaced with  
24 trash and filthy water, making it impossible to swim  
25 without getting sick.

1           I'm an avid swimmer, been swimming since I was a  
2 little kid. And I walk, I run every single day pretty much  
3 on the beach. In my 19 years in health care, we try to  
4 focus on prevention and protection of our patients when it  
5 comes to disease and illness. I ask why wouldn't we do the  
6 same when it comes to our water quality. Health and  
7 healthy water go hand in hand.

8           We do need a strong permit. Thank you very much.

9           MS. HINDLEY: Hello my name is Alison Hindley and  
10 I've been sworn in earlier with the group.

11           I wanted to say I approve of the new MS4 storm  
12 water approach. I'm also a Surfrider member and I'm here  
13 because I'm very concerned that this new permit, although  
14 it sounds good, is not going to be strong enough. And I  
15 want to make sure that I can safely go out in the water, go  
16 swimming and go surfing snorkeling, not to worry about oh,  
17 when did it last rain, oh no, I can't go, 72 hours.

18           I mean, that's not good enough. I think we can do  
19 better than that. In my opinion, the storm water drains,  
20 they should only really be there for storm water, that's  
21 why they're called storm water drains. They shouldn't be  
22 used as, like, a trash disposal, you know. They should be  
23 free of all the pollutant and contaminants.

24           I'm just here to support clean water and hope that  
25 the permit's going to enforce those uses.

1 Thank you.

2 MR. BELLER: Good afternoon. My name is  
3 Lyle Beller. I live in the Ocean Beach community of  
4 San Diego.

5 I feel that your requirement for a watershed-based  
6 storm water management planning just makes sense. And it's  
7 sorely needed if we're ever to reduce storm water-based  
8 induced contamination of the oceans.

9 I surf and swim in the ocean. I experience  
10 frequent ear infections. First half of my life, I spent  
11 living in and on Puget Sound, never got an ear infection.  
12 The later chapter, I spent five years in the Indian Ocean  
13 off West Australia, dove a lot, swam a lot, never got an  
14 ear infection. Here I get them every year. My doctor  
15 tells me that's from the ocean. So anything you can do to  
16 clean that up, I will really appreciate it.

17 I had the recent opportunity to observe the  
18 process and comment on development of a drainage plan done  
19 by one of our municipal agencies. And I was just totally  
20 flabbergasted that the professionals involved could not  
21 look outside their own geographical area of influence for  
22 solutions to the problems even though all the waters coming  
23 from up there, uphill, throwing through. They just weren't  
24 allowed to look at that or consider it. That's why I feel  
25 so strongly that watershed-based planning is sorely needed.

1           My past life, I worked for a government agency for  
2 almost 40 years in the facility planning and engineering  
3 shops. I know it's really hard for these agencies who do  
4 things that are not required. So that's why I'm asking  
5 that you require them, please, because that's what will  
6 motivate them and basically give them the reason to do this  
7 watershed-based planning.

8           And I would like to see that requirement done, no  
9 wiggle room with no safe harbor clauses because, as a  
10 bureaucrat, that's the first thing I looked for was, do I  
11 really have to do this, can I save my agency some money.

12           So please, make this as strong as you possibly  
13 can. And also I'll just -- members of Surfrider and  
14 everything they have said, I just agree with.

15           Thanks.

16           VICE CHAIR STRAWN: Next Jamie Ortiz, Harry  
17 Orgovan, and Mr. Peugh.

18           MS. MOORE: Good afternoon, my name is Sandra  
19 Moore. I'm new to this area. I recently moved here from  
20 North Carolina, where I did work with the Division of Water  
21 Quality for the State of North Carolina. And I do  
22 understand the problems with storm water runoff, we had  
23 them there, and obviously, we're having them here as well.

24           I recently volunteered to help the San Diego  
25 Coastkeepers with their monthly water quality monitoring.

1 And I'm here today to support them and to support the  
2 changes that they would like to have made to the permit.

3 I would also like to share that my husband and I  
4 walk on the beach almost every day in La Jolla Shores, and  
5 we enjoy swimming, kayaking, and we used to enjoy surfing  
6 when we could. But we also enjoy watching the other local  
7 residents, the tourists and the wildlife on the beach in  
8 the ocean.

9 And when we walk down to the beach every day, we  
10 are met with the sign that says -- where the storm water  
11 drain is that says, don't come into contact with this water  
12 or anything that's coming out, and don't swim two or three  
13 days after a rainfall. And I think we all know why and we  
14 know what the problems are. We know what we need to do.  
15 We know that it's going to cost some money. But we also  
16 know that it's worth every penny to protect the vital  
17 resources because it's a lot easier to protect it and it's  
18 going to cost less to protect it than to clean it up.

19 And I think everybody else has said all that  
20 really needs to be said. And I appreciate your hard work.  
21 And thank you very much.

22 MS. ORTIZ: Hello. Thank you for hearing from me  
23 today. My name is Jamie Ortiz and I was sworn in.

24 I'm a homeowner in Ocean Beach. I'm a triathlete  
25 and swim in the Pacific Ocean and in Mission Bay. I'm

1 going to do a little history here.

2 In 1966, Henry Ford, II is famous for his speeches  
3 about how his company was going to close when federal  
4 regulations required safety requirements like seatbelts.  
5 As we all know today, Ford is still in business. And if we  
6 watch advertisements, I don't think there is one car  
7 company that does not leave with safety standards as one of  
8 its top selling points.

9 In 1977, the industry cried foul play over  
10 requirements to phase out ozone-destroying CFC emissions in  
11 aerosols. The day after the regulation was put in place,  
12 the original inventor of aerosol found a solution.

13 In 2007, decision makers said no way to federal  
14 laws to approve efficiency standards in light bulbs. Yet I  
15 doubt one person here today does not energy efficient light  
16 bulbs in their homes because that's all you can find on  
17 shelves.

18 In 2013, industry and decision makers stood before  
19 the regional board saying the storm water permit is  
20 infeasible and costs too much.

21 I'm a small business owner and I've designed my  
22 business to work with other businesses and colleagues that  
23 want to leave this region a better place. And I'm here  
24 telling you that San Diego is still full of businesses that  
25 are creative, innovative, problem solvers that can

1 implement this permit, thrive and continue to be successful  
2 businesses in San Diego.

3 Please let us learn from history. I urge you to  
4 adopt the storm water permit with the amendments because  
5 regulations spurs innovation. And clean water is worth it.

6 Thank you .

7 MR. ORGOVAN: My name is Harry Orgovan and I have  
8 lived four blocks from South San Diego Bay for 60 years. I  
9 own and operate a kayak business operating in South  
10 San Diego Bay offering Kayak rentals and wildlife tours  
11 utilizing the San Diego National Wildlife Refuge and the  
12 Chollas to Wildlife Reserve.

13 My business brings me in direct contact with storm  
14 water and urban runoff. I cannot operate my business after  
15 a rainstorm because of bacterial contamination and the  
16 risks to human health. The economic impact to our region  
17 in regards to the tourists' perception of our region's  
18 ability to maintain a safe environment in which to bring  
19 their families and vacation is at risk.

20 I strongly urge you to approve the new regional  
21 MS4 permit, but not to include the safe harbor clause. Our  
22 storm water and urban runoff systems run through channels,  
23 rivers, streams and a lot of out of site conduits and empty  
24 into marsh and wetlands, where they still do exist.

25 If the general public realized the pollutants and

1 hazardous contaminants that we were willing to let spew  
2 directly into our bays and ocean, would they be so  
3 tolerant.

4 I want to thank you for your time and the work  
5 this board has done to protect our children and  
6 grandchildren, the environment and wildlife.

7 Gary, before you start, I'll get the next few  
8 people in line, Roderick Michener, Belinda Smith, Shauna  
9 McKeller and Mark West.

10 MR. PEUGH: I'm Jim Peugh. I'm the Conservation  
11 Chair for the San Diego Audubon Society.

12 Our wildlife are suffering huge impacts from  
13 global climate change and from water pollution. We don't  
14 seem to be smart enough to do anything about global climate  
15 change. But if this permit is implemented, we will be  
16 smart enough to do something about pollution.

17 We strongly urge removing the safe harbor  
18 provision. Just looks like it's substituting clear water  
19 quality for bureaucratic charts, you know, with boxes,  
20 arrows and diamonds on them. And it just is not the kind  
21 of trade off this body ought to be making and not a trade  
22 off the public should accept.

23 I'd like to talk a lot about the exemption for  
24 hydromodification for our concrete channels. I strongly  
25 urge you to put -- return that as not being in this permit.

1 One simple reason is a lot of our channels -- even if  
2 they're cleared, and mostly they're not because of  
3 expense -- flood when it rains. Hydromodification permit  
4 will at least allow some provision for reducing that  
5 flooding during rainstorms and that has a huge water  
6 quality impact.

7           When channels -- you know, when the water leaves  
8 channels, washes across lanes and through driveways and  
9 through parking lots, that's bringing in -- then comes  
10 back, eventually ends up back in our receiving waters,  
11 that's bringing pollutants into the receiving waters. So  
12 this flooding issue has direct impact on water quality.  
13 And the hydromodification provision will allow you to begin  
14 to fix that.

15           But the secondary reason, which I think is  
16 probably more important, the permit, in a number of places,  
17 acknowledges the rehabilitation of the creeks, you know,  
18 taking channels, concrete channels and turning them back  
19 into creeks. It is an important way of improving water  
20 quality. And we know it's the most natural way, it's  
21 probably the most cost effective way, letting nature do it  
22 instead of having gadgets doing it.

23           But this provision for existing projects from it  
24 will basically give you a dedicated stakeholder group to  
25 prevent the rehabilitation of channels. All the property

1 owners, all the potential developers that drain into this  
2 channel will want to make sure that channel stays concrete  
3 so they can be exempt. And so you're just guaranteeing a  
4 way out constituency to prevent it.

5           How can they prevent it? All sorts of ways;  
6 lobbyists talking to people trying to divert -- keep  
7 restoration projects from being funded, they could file  
8 SEQUA lawsuits, run the clock out so the restoration money  
9 couldn't be spent by the time it had to. There's all sorts  
10 of ways that clever business people can figure out to keep  
11 from rehabilitating streams.

12           So it's just -- the unintended consequences of  
13 that measure are just huge. So I hope you will not include  
14 that in the permit. And finally, if you are going to have  
15 watershed panels, I would love to participate from  
16 Mission Bay San Diego.

17           MS. KALEMKIARIAN: Chairman Morales, can I ask for  
18 clarification?

19           CHAIRMAN MORALES: Because we have got community  
20 folks here and government people here, Wayne or your staff,  
21 can you, just in a minute or two, address the safe harbor  
22 issue while everyone is here listening? I'm looking  
23 through the permit and the fact sheet and I don't see where  
24 there's a huge hole here. So maybe I'm missing it.

25           MR. CHIU: I think there's a difference of opinion

1 of what the term "safe harbor" means. One view of it is  
2 that, you know, if -- if somebody is provided safe harbor,  
3 they are, you know, free of any potential for a lawsuit or  
4 any, you know, adverse impact to them because they have  
5 been provided a safe harbor.

6 Another view is that, you know, if you know  
7 they're allowed to do something and -- this gets to the  
8 functionally equivalent question. If they're allowed to do  
9 something and then, you know, that something is vague, then  
10 that safe harbor would be hard to enforce, I guess, or not  
11 enforce.

12 So then, in our situation, what a lot of people  
13 are calling a safe harbor, we don't view it necessarily as  
14 a safe harbor, we view it as a more clear process to  
15 achieve water quality standards that provides a transparent  
16 process and a transparent understanding of how we will  
17 achieve water quality standards. Because at this point, I  
18 think everybody acknowledges that the likelihood of  
19 violations of the Provision A requirements is actually  
20 happening already so, you know, compliance is not being  
21 achieved right now.

22 What we have provided in our compliance option is  
23 a very detailed process and set of requirements that we  
24 believe is -- sets a very high bar to demonstrate that they  
25 will achieve -- in fact, achieve compliance at some date

1 that is provided to us.

2 Currently, you know, the MEP standard is what is  
3 allowed. And the MEP standard is supposed to, like I said,  
4 evolve over time. And it's supposed to get us to  
5 compliance somehow. I believe it was Livia who spoke to  
6 this a little bit, who said we can have MEP and we can  
7 achieve compliance.

8 Well, the problem is we have MEP right now. We  
9 are not achieving compliance. And what we want to do is  
10 utilize MEP and push that forward to actually achieve  
11 compliance. And actually have a clear understanding of how  
12 we will get there versus, you know, just saying we will  
13 rely upon the MEP standard and, you know, each permit will  
14 tell us at what point MEP is the next step of enough.

15 We want to make it so that MEP is truly the way we  
16 will get to compliance and they will tell us how they will  
17 use MEP to get us to compliance. And so the compliance  
18 option we have in there kind of details, you know, tell us  
19 what you will implement, tell us what you will monitor,  
20 tell us what you will assess, tell us when you plan on  
21 getting there, tell us what, you know, goals you plan on  
22 achieving.

23 And in my mind, if they were not to comply with  
24 any of those elements, and at some point we were to  
25 determine that they are no longer implementing that, we

1 could enforce. And I think anybody from the public who saw  
2 that they were not implementing what they said they were  
3 going to implement could also, you know, sue because they  
4 don't see them implementing it.

5           And the other aspect of this is, you know, because  
6 it is part of the water quality improvement plan, this  
7 compliance option is really intended to be something where  
8 all the stakeholders do have a say in whether or not that  
9 compliance option is acceptable.

10           All right. So it's not that we're trying to  
11 provide a safe harbor that says, you know, as long as  
12 you're doing this, you will be free of any potential for  
13 enforcement because actually, it creates a lot more  
14 opportunities for enforcement if they are not complying  
15 with that compliance option.

16           And it also provides that clear accountability of  
17 what they are expected to do because they laid out their  
18 plan. So, you know, I think there's just, like I said, a  
19 difference of opinion of what safe harbor means. And in  
20 this situation, you know, I think you've heard a lot of  
21 statements that this is a safe harbor and, you know, it can  
22 be interpreted that way.

23           But I would also say that, you know, it does state  
24 a very rigorous set of requirements that does provide an  
25 additional level of accountability. And it will, I

1 believe, push forward the MEP standard much quicker.

2 That's my opinion.

3 MR. MORALES: We're going to need to take a quick  
4 break because we have got a new court reporter that's going  
5 to set up.

6 MR. CHIU: Thank you.

7 CHAIRMAN MORALES: I think we have run our first  
8 court reporter into the ground.

9 Thank you.

10 (Whereupon, at 5:02 the hearing was adjourned.)

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1 STATE OF CALIFORNIA, )  
2 COUNTY OF SAN DIEGO. ) SS.

3

4 I, Tammy L. Rampone, a Certified Shorthand  
5 Reporter, in and for the State of California, Certificate  
6 No. 6511, do hereby certify that the statements from this  
7 Public Hearing were recorded and transcribed true to the  
8 best of my ability by electronic transcription supervised  
9 by me.

10

11 IN WITNESS WHEREOF, I have hereunto set my hand  
12 on this 4th day of September 2013.

13

14 \_\_\_\_\_

15 Tammy L. Rampone, CSR  
16 Certificate No. 6511

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