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STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION  
WEDNESDAY, APRIL 10, 2013  
ITEM 8, VOLUME 1  
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: Eric Anderson  
Henry Abarbanel  
Sharon Kalemkiarian

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

STATE BOARD STAFF

COUNSEL: Catherine Hagan

ALSO PRESENT: Roger Mitchell  
Chris Witte  
Julie Chan  
Christina Arias  
Kristin Schwall  
Michelle Mata  
David Barker  
Barry Pulver  
Mascio



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1 San Diego, California, Wednesday April 10, 2013

2 5:00 p.m.

3

4 (Break while court reporters switch places.)

5 (Back on the record.)

6 Chairman MORALES: Okay. Folks, let's get  
7 started.

8 Our new court reporter is queued up and ready  
9 to go, so let's go with the next folks in order.

10 And while we do appreciate all the comments, we  
11 also appreciate when those of you that come up give us  
12 new information and tell us you agree with previous  
13 comments rather than have to reiterate them. We've got a  
14 huge stack of cards of folks that still want to speak, so  
15 don't feel compelled to take your full three minutes;  
16 thank you.

17 VICE CHAIR STRAWN: I think we're up to  
18 Roderick Michener and then Belinda Smith, Shauna McKellar  
19 and Mark West.

20 MR. MICHENER: My name is Roderick Michener,  
21 and I have been sworn in. I am Vice Chair of the  
22 Executive Committee of San Diego Certified Chapter.

23 The reason why I'm here, though, is that I'm an  
24 avid surfer, long-time San Diego resident and I've been  
25 with the same sort of things that -- same as the problem



1 with ear infections after rains, as we mentioned earlier.

2 But beyond that, I've been in the  
3 hospitality/tourist business in this town for 20 years,  
4 and nothing is more upsetting to me than having to  
5 explain to tourists who come to see us in January and  
6 February during the rainy season, they go to the beach  
7 and they want to know what those yellow triangles are and  
8 why they can't go to the water. I have to explain to  
9 them, that even though the Clean Water Act was passed  
10 four years ago, that we still can't manage to keep our  
11 oceans clean after it rains.

12 So what I'm asking, is that I really like this  
13 new watershed approach to the MS4 Permit, but the Safe  
14 Harbor clause kind of takes out what we see as the  
15 enforcement part of it, and I'd like to see it passed  
16 (inaudible) with that; thank you.

17 MS. SMITH: Hi, my name is Belinda Smith, and  
18 I'm here as a Surfrider activist, a business owner, local  
19 community person. I sit on my local town council and I'm  
20 the former Chair of the "Know Your H2O Program" for  
21 Surfrider, which is a program we use to educate the  
22 general public about how fresh water management impacts  
23 our oceans' waves and beaches, and this MS4 Permit is a  
24 really great example of that.

25 We basically look for practical solutions to



1 integrated water management, and as a grassroots  
2 activist, I've talked to hundreds of people over the  
3 years, and most people really have no idea why water  
4 quality is so important to their health and their  
5 lifestyle until they get sick.

6           Eight years ago I was learning to surf, kind of  
7 an older adult surfer I guess, and I kept getting sick  
8 after every session. I couldn't understand why and I  
9 found out. It's because the water is so polluted. And  
10 if you think about it, if it rains, you know, every few  
11 days and we can't go in the water until 72 hours after  
12 it's rained, that means if it rains every few days, you  
13 can literally be out of the water for weeks on end if you  
14 have intermittent rain throughout the winter and spring.

15           So I got involved with Surfrider, because I  
16 kept getting gastroenteritis every time I surfed. And,  
17 you know, people complain about the cost to implement  
18 these higher standards on these permits, this MS4, but  
19 think about the costs that are associated with people who  
20 miss work or show up to the doctor or the hospital  
21 because they're sick. I mean, it's no fun having  
22 constant ear infections or gastroenteritis or skin  
23 diseases or whatever other disorders people are getting.

24           I really like the MS4 Permit, because it will  
25 greatly contribute to the goals of integrated water



1 management. If we take a watershed-based approach, we  
2 will greatly reduce runoff, which, to this day, is the  
3 single, biggest problem affecting our water quality.

4 Jim Chiu was talking to me during the break.  
5 He had to go, but he said he wanted me to emphasize that  
6 we should not allow the exemption from hydromodification  
7 for concrete channels and what he's really trying to get  
8 to, is that we want the ability to be able to restore our  
9 creeks and our little streams and our little estuaries,  
10 and if we allow that exemption, we won't have the ability  
11 to restore those little creeks and channels because none  
12 of the NGO's will have the ability to apply for those  
13 grants.

14 I wish he was here, but it is really important  
15 that we not keep channelizing and concreting over all  
16 these areas and continuing that practice.

17 Anyway, to get to the end, I support the MS4  
18 Permit, obviously, and I support it without the Safe  
19 Harbor clause. I really wish that the enviros had been  
20 able to give a presentation about that particular issue  
21 so you're in the loop, but hopefully you can hear about  
22 it soon; thanks.

23 Oh, can I enter anything into the record from  
24 one of our staff members from our Surfrider headquarters?

25 CHAIRMAN MORALES: No.



1 MS. SMITH: Okay; thanks.

2 MS. MCKELLAR: Good evening, Board Members. My  
3 name is Shauna McKellar. I've been sworn in.

4 I have been a resident of San Diego for seven  
5 years now, during which time I've been very involved in  
6 water quality issues in our County. I am a volunteer  
7 with Surfrider's Ocean Friendly Gardens Program where we  
8 educate the community about our three main principals:  
9 CPR, which is "Conservation, Permeability and Retention,"  
10 which is technically what you have in your permit, what  
11 is known as "Low Impact Development." I consider Low  
12 Impact Development to be one of the more holistic  
13 approaches to water quality. I think it can solve our  
14 water-quality issues as well as our water-quantity issues  
15 in our County, and it's very important to me.

16 I have been very disappointed in the past few  
17 permit cycles how much LID has not been implemented in  
18 the County. I think it could have been implemented much  
19 better. I am one of those crazy people that run around  
20 parking lots, staring at surface drainage on my own time  
21 for fun, which it's kind of crazy but that's how much I  
22 am into it. I have family in Northern California and I  
23 go home to visit them, and I see LID everywhere I go.  
24 You can't go to a parking lot without seeing LID. You  
25 can't go to a condo place without seeing LID. And I come



1 home to San Diego and I just don't see it here at all.  
2 It's so rare and I just don't want to see that continue.

3           And so, when I was reading the draft permit and  
4 I saw that there was kind of this shift and there was a  
5 lot of talk about LID, there's even some talk about doing  
6 some (inaudible) projects. I was really encouraged by  
7 that, and I'm really excited to see that that will happen  
8 under the new permit. I am a little discouraged by the  
9 inclusion of this alternate compliance clause, or what  
10 you might have heard as the "Safe Harbor clause," that  
11 it's going to allow cities to ignore LID and maybe pick  
12 an easier or less expensive method to try to reach their  
13 water quality goals, and I really don't want to see that  
14 happening. I want to see a lot more LID here.

15           That said, I want to say I'm really looking  
16 forward to working with the copermittees during the next  
17 permit cycle to try to find ways to increase the LID in  
18 our communities and, you know, educate the community as  
19 to why it's important and what it can do to help water  
20 quality, because, after all, we all want the same thing:  
21 We want cleaner water and a healthier environment to live  
22 in.

23           So thank you very much.

24           CHAIRMAN MORALES: After Mark, it will be  
25 Kristin Brinner, Mark Corcoran and Todd Cardiff.



1                   MR. WEST: Good afternoon, Ladies and Gentlemen  
2 and general public. My name is Mark West. I live in  
3 Imperial Beach, California.

4                   I want to start out and say I do support the  
5 MS4 Permit, but I would like to see the removal of the  
6 Safe Harbor term. I'm a Surfrider activist, retired  
7 Naval officer, surfer, concerned member of the public.

8                   Recently my life journey took me to the  
9 University of Colorado where I earned an Executive  
10 Master's in Public Administration, and I've been  
11 specifically doing a capstone project talking about water  
12 quality here in San Diego. Part of the research,  
13 actually, was interviewing surfers from Oceanside all the  
14 way down to Imperial Beach. It was amazing. All of them  
15 knew about pollution issues in their home break, and each  
16 one of these guys had stories about illnesses. It was  
17 either sinus, ear but two of them actually had hepatitis  
18 stories, kind of scary, and they all attribute it to  
19 water quality.

20                   I think that when our cities are getting sick,  
21 it becomes more than just a public nuisance. It becomes  
22 a public policy that really needs to be addressed.

23                   Everybody in the room already knows how  
24 important water quality is. Research that I have done on  
25 this capstone project shows that 32 million visitors



1 here in San Diego come to the beaches; thirty-two  
2 million, that's eight billion dollars annually. That  
3 translates to an economic impact in our County of 18  
4 billion dollars.

5           Tourism is our third largest industry in the  
6 County. If our water bodies and beaches continue to  
7 climb like the latest Equinox Quality of Life Dashboard  
8 said it did, this eventually will impact our tourism.  
9 This is not what we want. We want to make sure  
10 stormwater compliance is given top priority now, so we  
11 don't regret it later.

12           Lastly, during my 24 years of Naval service,  
13 the term "Safe Harbor" was a term of endearment, a place  
14 where weary sailors, after months at sea, could actually  
15 go and find a little respite. I'm not going to say what  
16 we did. I think we found this Safe Harbor clause, it's  
17 not a term of endearment now. In fact, I think it's a  
18 term of confusion. If there's confusion about the term  
19 now, think when somebody doesn't comply to this and our  
20 litigious society gets ahold of that. It's going to  
21 cause problems. The environs tomorrow will give a report  
22 that will address some of our Safe Harbor concerns, so I  
23 think that we should wait and really look at what they  
24 want to say.

25           I'd like to finish by saying, you know, we do



1 need to press forward. This MS4 Permit is fantastic in  
2 many ways. It's the right thing to do. It's the right  
3 thing to do now. But we need to make sure that we hold  
4 the copermitttees accountable; thank you very much.

5 Thank you for the future of our families and  
6 friends in San Diego.

7 CHAIRMAN MORALES: I do have a quick question.

8 What were you referring to, that suggested that  
9 our "water quality was deteriorating"?

10 MR. WEST: The Equinox Quality of Life reports,  
11 the recent one. It actually said that our beach closure  
12 has actually increased from the previous year to this  
13 year. I'd be more than willing to give it to you. I've  
14 got it on my desktop, if you'd like.

15 CHAIRMAN MORALES: Yeah; it's a public comment.

16 MR. WEST: That's fine. Yeah, great; thanks.

17 MS. BRINNER: My name is Kristin Brinner. I'm  
18 a resident of Solana Beach and also a member of  
19 Surfrider. I agree with everything that Surfrider has  
20 had to say so far, so I just want to share a personal  
21 story with you.

22 My husband and I love our local beaches. He  
23 went surfing once after it rained; big mistake. Several  
24 days later, we were in Urgent Care. He had hives all  
25 over his head. His eyes were almost swollen shut. He



1 had very bad, flu-like symptoms, of course, a steroid was  
2 required. This happens too many times to people who go  
3 in the water after it rains. It doesn't have to be like  
4 this.

5 Please don't take the teeth out of this permit,  
6 remove the Safe Harbor clause. If that clause is not  
7 removed, I oppose the MS4 Permit as it currently stands;  
8 thank you.

9 MR. CARDIFF: Hi, my name is Todd Cardiff.  
10 Thank you very much for allowing me to go out of order.

11 CHAIRMAN MORALES: And who's that with you?

12 MR. CARDIFF: This is Gregory Cardiff, but I  
13 don't know if he's going to make any comments or not.

14 So I just wanted to make one comment. This is  
15 what was prescribed to me this last winter. It's called  
16 "Ciprodex." It costs \$140 with insurance -- I think it's  
17 like \$210 without insurance -- for 7.5 milliliters;  
18 that's what was required when I came down with repeated  
19 ear infections this year. This is a serious, serious  
20 problem.

21 And thank you very much for holding the line.  
22 We really appreciate you passing this tough MS4 Permit;  
23 thank you.

24 MR. CORCORAN: Hi there.

25 I'm Mark Corcoran. I'm a resident of the City



1 of Del Mar. I'm here in support of Surfrider. I just  
2 wanted to thank you for all your hard work on the MS4  
3 Permit so far.

4 And considering this stated ambiguity about  
5 this so-called Safe Harbor clause, I'd like you to  
6 revisit it, if possible, and maybe flush this out a  
7 little bit better.

8 And then one other thing. I'd like to ask all  
9 of the environmentally-minded folks in the audience right  
10 now, to raise their hands and their cards and for you to  
11 realize that all of these people are here for no better  
12 reason than to see cleaner water in San Diego; thank you.

13 CHAIRMAN MORALES: Did I call a "Megan  
14 Baehrens"? No?

15 Travis, you're next I guess, and then Sean  
16 Karafin.

17 MS. BAEHRENS: Good evening; thank you.

18 My name is Megan Baehrens. I am the Executive  
19 Director of San Diego Coastkeeper. I am a native San  
20 Diegan, a surfer, a swimmer and very pleased to be here  
21 this evening.

22 First, I wanted to applaud the Board and thank  
23 you for holding this evening session that gives us more  
24 opportunity to hear from a community of people who don't  
25 get paid to sit for eight hours in a room like this and



1 still have very valid and important opinions.

2 CHAIRMAN MORALES: You mean like us?

3 MS. BAEHRENS: Like me.

4 Environmental groups; like everybody else in  
5 the community, want clean water and a vibrant economy.  
6 We bring to bear powerful but limited number of tools and  
7 so, I wanted to address this provision, this thing called  
8 a "Safe Harbor Provision," just briefly.

9 The inclusion of this provision takes away one  
10 of those tools that we have. The problem is, that the  
11 acceptance or approval of the alternative compliance that  
12 it implies is done through a consultation panel that  
13 includes only a single environmental representative and  
14 that voice, the voice of the water can be drowned out in  
15 a reasonably easy fashion.

16 So for groups like Coastkeeper and Surfrider  
17 and others with those concerns and playing that role, we  
18 would have no further recourse to help support the  
19 objective that this permit is intended to achieve.

20 So please exclude that provision, in which  
21 case, we would be very proud to support this permit.

22 Thank you for your time.

23 CHAIRMAN MORALES: Okay.

24 MS. BAEHRENS: Mr. Chairman?

25 CHAIRMAN MORALES: Go ahead.



1 MS. BAEHRENS: I just wanted to point out,  
2 Coastkeeper is a member of the coalition that's  
3 speaking -- or the group that's speaking tomorrow, and  
4 it's perfectly fine for Coastkeeper members to speak on  
5 their own behalf, but to the extent speakers are speaking  
6 on behalf of the organization, it should be counted as  
7 part of the coalition. The group's testimony tomorrow.

8 CHAIRMAN MORALES: Okay.

9 MR. PRITCHARD: What does that mean for me?

10 MR. CHIU: Speak for yourself.

11 MR. PRITCHARD: Okay. I'll speak for myself.

12 My name is Travis Pritchard, and I don't know  
13 if I can say this, but I am a lab manager at San Diego  
14 Coastkeeper, and I actually don't know anything about the  
15 Safe Harbor provision or anything, so I'm not going to  
16 talk about that.

17 What I do find encouraging in the permit, is  
18 the fact that it encourages corporate entities to work  
19 with environmental groups and watershed groups, and other  
20 groups have been collecting valuable water quality data.

21 What we do is -- you know, my program, we have  
22 30 sites around the County -- we monitor monthly, and  
23 that data can be used for compliance purposes. I mean,  
24 it's good data. It's able to be used and we want to  
25 help. We want to not stand in the way of copermittees.



1 We want to help them figure out how to achieve clean  
2 water in San Diego.

3 So there's too many -- I just got back from a  
4 conference with EPA and a bunch of state representatives  
5 from other states about utilizing volunteer data, and it  
6 turns out, that most of the states really suck at it, and  
7 California does a pretty good job. So it's encouraging  
8 that this permit encourages corporate entities to work  
9 with our group.

10 Also, I grew up right near Forester Creek, and  
11 last year Forester Creek was -- so I'm glad that I don't  
12 have any third arms or six noses. I want future  
13 generations to play around, splash around in freshwater  
14 systems, as well as salt water systems.

15 MR. KARAFIN: Hello, my name is Sean Karafin.  
16 I'm the Economic Policy Analyst for the San Diego County  
17 Taxpayers Association.

18 I almost didn't come today and the truth is,  
19 because I know it's rare for significant changes to be  
20 made so late in any public process. But I'm here, and I  
21 came because I decided that that's -- it's an excellent  
22 challenge that I can pose to this Board. So my challenge  
23 is to do better.

24 I really do think we're all here for the same  
25 thing: We want a higher quality of life. And I just



1 heard some really novel ideas, a lot that I can agree  
2 with.

3           And it really frustrates me when people say  
4 "Raise your hand if you're an environmentalist" to show  
5 one thing or the other, because I wanted to raise my  
6 hand. I consider myself an environmentalist. I know a  
7 lot of people don't. But, you know, I do, and I think  
8 about things and I change the way I live to be more  
9 environmentally-friendly.

10           But I believe that as written, this permit  
11 could do better from an environmental perspective and  
12 that it can be done without the economy shouldering so  
13 much burden, without taxpayers being on the hook for  
14 massive monitoring costs. I think the permit can be  
15 better on all fronts.

16           I know that a lot of work has gone into this  
17 permit and I know that this Board has a lot of  
18 responsibility and that each of you take it very  
19 seriously.

20           But as written, I worry this permit makes  
21 improvements on the environmental front, but at the  
22 expense of the health of our economy and the backs of  
23 taxpayers to unreasonable degrees.

24           So lastly, I'd like to just remind this Board  
25 that when we talk about industry, we should be hearing --



1 we should be hearing the economy. We should be hearing  
2 jobs, you know, I've been unemployed. I know how  
3 important the economy is, how important jobs are.

4 And in putting back on my taxpayers' advocate  
5 hat, when you hear committees, you should be thinking  
6 taxpayers. This shouldn't be such a trade-off between  
7 industry, surfers and bureaucrats. That's not what this  
8 should be about. We can do better on all these  
9 differences.

10 So thanks for your attention and for your  
11 service. I appreciate it.

12 CHAIRMAN MORALES: The next speaker is Randall  
13 Iwai.

14 I'm sorry, I tried to get you in by 5:30. We  
15 almost made it.

16 He'll be followed by Crystal Carson and Micah  
17 Mitrosky.

18 MR. IWAI: Hi, my name is Randall Iwai and I've  
19 been sworn in.

20 Thank you for allowing me this opportunity to  
21 just speak. I am a member of Surfrider, but I'm going to  
22 speak from my heart today as a resident here in San Diego  
23 since 1985.

24 I grew up in Hawaii and I love our local  
25 environment, everything about it. I surf-and-swim in the



1 ocean. I was born and raised next to it. I love hiking  
2 in our local mountains and even our urban trail areas.

3 We all pay a high cost of living here in San  
4 Diego, some say for sunshine but also because of the  
5 proximity to our beautiful water bodies. But those water  
6 bodies have been threatened and impaired for multiple  
7 permit cycles.

8 Please act today, act aggressively and only  
9 adopt this MS4 Permit if the Safe Harbor clause is  
10 removed. We are all responsible and should be held  
11 accountable for our local resources.

12 Thank you for your time and consideration.

13 MS. CARSON: Hello, my name is Crystal Carson.  
14 I'm here from Surfrider Executive Committee. I have been  
15 sworn in. Thanks for taking the time to listen to all 80  
16 of us today.

17 I've been taking full advantage of San Diego's  
18 beautiful beaches and incredible waves for almost 25  
19 years. When I was younger, my mom would tell me to soak  
20 my scabs in the ocean because the ocean heals everything.  
21 And as the population doubles and more concrete is  
22 poured, I've seen the quality of the water that I surf in  
23 take a big hit. I don't think that moms are telling  
24 their kids that anymore. I'm just telling you this story  
25 today, to make it known that we do have a little bit more



1 work to do for improvement purposes, implement more Low  
2 Impact Development.

3 I support everything Surfrider is saying,  
4 remove the Safe Harbor clause, and you've got my support  
5 for this also. For the people working, thanks.

6 CHAIRMAN MORALES: "Micah"?

7 STAFF MEMBER: She had to leave.

8 CHAIRMAN MORALES: Okay.

9 Ravi Bajaj and then Natalie Shapiro.

10 MR. BAJAJ: Good afternoon.

11 My name is Ravi Bajaj. I work as a project  
12 coordinator with the U.S. Green Building Counsel, San  
13 Diego Chapter. I'm here to say thank you, first and  
14 foremost, to the Board for pushing forward the MS4  
15 tentative order. We support the approach to move our  
16 regulations more towards a watershed approach.

17 In the interim process, I think I'm only going  
18 to end up repeating many of the points today. Our goal  
19 is to improve water quality.

20 While many comments have been made about the  
21 trade-off between the industry and the environment, we  
22 fail to understand why there is a right to pollute. So  
23 while this is a stringent regulation, this is a stringent  
24 requirement to reduce your pollutants. We take the  
25 approach, that if you are not going to mitigate your



1 pollutants before they enter the water stream and the  
2 water bodies here in San Diego, then you shouldn't be  
3 creating pollutants.

4           So with that approach, we support many of the  
5 comments from Surfrider, from Coastkeeper and our  
6 submitted comments in advance. There is a cost to the  
7 development and a long-term cost. So this approach of  
8 moving to a watershed-based approach, allows us to look  
9 at those long-term impacts earlier on.

10           So I support all the comments of the enviros  
11 and we support the comments of the Taxpayers Association  
12 as well, but we do feel that the water quality is the No.  
13 1 goal here.

14           So everything we're doing in this interim  
15 approach, I think moves forward our goal for water  
16 quality.

17           Thank you for your time.

18           CHAIRMAN MORALES: Natalie and then I think  
19 next is a Roger -- I'm having trouble with the first  
20 letter -- and then Jonathan Parkinson and Izzy.

21           MS. SHAPIRO: Hi, I'm Natalie Shapiro and I've  
22 been sworn in.

23           And thanks for having the hearing; accepting  
24 comments.

25           So I spend a lot of time recreating throughout



1 San Diego County. I'm also a volunteer with Coastkeeper  
2 and I collect water-quality samples for them, so I see  
3 firsthand, the impact of stormwater pollution throughout  
4 all our watersheds, and I have these comments on the MS4  
5 stormwater permit.

6 I really like that the permit has increased  
7 opportunities for public participation. As a citizen  
8 scientist, I'm excited to be able to be involved in  
9 crafting, reviewing Water Quality Improvement Plans. I  
10 oppose the so-called Safe Harbor provision for the same  
11 reasons that other speakers have stated, so please remove  
12 this. We need strong enforcement mechanisms that  
13 citizens can use.

14 And also, please remove the hydromodification  
15 exemption for concrete-lined channels. These are  
16 actually streams and their beneficial uses should be  
17 protected.

18 So thanks. I want to acknowledge all the hard  
19 work that you've done on this permit; thank you.

20 And please implement it as soon as possible  
21 with the Safe Harbor and hydromodification exemption  
22 removed; thank you.

23 CHAIRMAN MORALES: Roger Kube.

24 MR. KUBE: My name is Roger Kube. I'm a  
25 volunteer activist, Chair of the Surfrider Foundation,



1 San Diego County Chapter. I just want to thank you first  
2 for the opportunity to speak to you this evening. I also  
3 want to thank you for all your hard work on this permit.

4 I've also been a resident of San Diego County  
5 for about 12 years now. I'm a surfer, diver, open-water  
6 swimmer. I have a son who also uses the ocean. I use  
7 our beaches and our ocean on a regular basis.

8 The Surfrider Foundation's mission is the  
9 protection and enjoyment of our ocean's waves and beaches  
10 through a powerful activist network; everything we do is  
11 aimed at this cause, and as one of the leading  
12 organizations in San Diego County protecting our  
13 coastline, we see firsthand the negative impact of  
14 stormwater runoff. As you know, it's the No. 1 source of  
15 water pollution in our oceans.

16 And while we have hundreds, if not thousands of  
17 volunteers that have tirelessly addressed this problem  
18 through multiple programs, our "Ocean Friendly Gardens  
19 Program," our "Know Your H2O Program," our "Blue Water  
20 Task Force Program" and our "No Border Sewage Program,"  
21 we need your help. That powerful activist network that  
22 you've seen here today that I just previously mentioned,  
23 members of our community, are here today asking for you  
24 to hold the line in protecting clean water in San Diego  
25 County.



1           As most have mentioned, I'm very encouraged in  
2 general, by the permit. The new regional structure of  
3 the permit provides a uniformed approach in our  
4 watershed. I'm especially excited that the new permit  
5 moves us away from an action-oriented approach and  
6 towards one that is outcome-based. That shift is greatly  
7 welcomed.

8           However, as it's been mentioned, the Safe  
9 Harbor clause impacts the enforceability of the new  
10 permit. I encourage you tonight to go home, read Page 31  
11 and see exactly what we're talking about. Tomorrow  
12 in the formal presentation that you will be given; you'll  
13 also hear more information about that Safe Harbor clause.

14           Without the threat of potential enforcement  
15 actions, a high level of accountability -- let's not kid  
16 ourselves -- this stormwater affirmative will be largely  
17 ineffective.

18           Therefore, if it's not removed on behalf of the  
19 Surfrider Foundation San Diego County Chapter, we're  
20 adamantly opposed to the adoption of this permit.

21           Please, clean water. It shouldn't be a luxury.  
22 It's what we all deserve; thank you.

23           MR. PARKINSON: Hi, everyone. I'm Jonathan  
24 Parkinson.

25           I'm an analytical chemist in the pharmaceutical



1 industry here in San Diego and I do some volunteering for  
2 Surfrider, but all through beach cleanup, originally.  
3 But most importantly, I've been a resident of San Diego  
4 for about seven years now. I love it here.

5           The weather is a lot better than Colorado where  
6 I grew up. And I'm kind of concerned by the whole issue  
7 of ocean water pollution. I don't pretend to be familiar  
8 with the terms of the permit. I would hope you are more  
9 familiar than I am with the terms of the permit,  
10 hopefully.

11           But from what I understand, the approach has  
12 traditionally been action-oriented in terms of  
13 copermittees are entitled to measure complaints based on  
14 the actions they take, rather than outcomes and to me, as  
15 an analytical chemist, that doesn't make any sense. It  
16 should be outcome-oriented is the way I would think, you  
17 know, in terms of measuring specific levels of  
18 contaminants and then setting goals is what you want to  
19 achieve.

20           So I just really want to express my frustration  
21 with the ocean water quality situation we have right now  
22 and to encourage you to really adopt an outcome-oriented  
23 approach to the extent that you can.

24           And again, I'm not familiar with the terms of  
25 the permit, you are; keep that in mind when you're



1 working on this thing; thank you.

2 CHAIRMAN MORALES: Izzy Tihanyi and then Cathy  
3 O'Brien and Terry Rodgers after that.

4 MS. TIHANYI: Good afternoon.

5 I'm Izzy Tihanyi, and I'm the founder and  
6 co-owner of Diva Surf School. We're located at La Jolla  
7 Shores, California.

8 We've been in business since 1996. We've  
9 taught thousands of women, men and children how to surf,  
10 stand up on a board and body board. We employ over 50  
11 surf instructors on a year-round basis. We're obviously  
12 much busier in the summer.

13 But our concern is with the fact, that when  
14 there is a rain event, we have to cancel class. I have  
15 to send children home and I have to send surf instructors  
16 home with no pay, and they rely on clean water to support  
17 their family. So when the gentleman earlier said, "Think  
18 of the taxpayers; think of the jobs," well, these are the  
19 jobs.

20 And there's many more of me that hire hundreds  
21 of kayak instructors, scuba guides, surf instructors, and  
22 these people are counting on the ocean, not just as our  
23 recreation, our way of life, which it is, but those of us  
24 that count on it for employment as well.

25 The other thing is, I'm the founder of the La



1 Jolla Shores Merchants Association. We represent 143  
2 small businesses at La Jolla Shores, and when the ocean  
3 and the beaches are closed, there's no one in the  
4 restaurants. There's no one in the shops. There's no  
5 one renting equipment, and it's a big cycle.

6 So, you know, when people are saying, "Well,  
7 think of the jobs," well, yes, there are people that are  
8 counting on clean water.

9 On a personal note, I just got back from a  
10 family trip. We were camping and we stopped at the  
11 Salton Sea, and I had to explain to my five-year-old why  
12 there were dead fish all over the place and why it's  
13 green and no one would go in there. If our ocean ends up  
14 looking like that, we're all in trouble. We might as  
15 well not even live in California anymore.

16 So I just hope you support this.

17 Thank you for your time today.

18 CHAIRMAN MORALES: No "Cathy O'Brien"?

19 (No verbal response from Ms. O'Brien.)

20 MR. RODGERS: Terry Rodgers. I know the song.

21 There he is.

22 MR. RODGERS: Hi, everybody. I'm Terry  
23 Rodgers. I'm on the Executive Committee of the San Diego  
24 Surfrider Foundation.

25 First, I'd like to go back in history a little



1 bit and remind you, that this Board has been the leader  
2 of the pack. This has been the best, most progressive  
3 Regional Board in the State of California. You have the  
4 toughest stormwater permits in history, and all the other  
5 regional Boards look to you. You guys set the agenda on  
6 this and you always have. You've always had courage when  
7 it counted, and this is another time when it counts.

8 I'm in favor of the proposed stormwater permit,  
9 but I oppose including an escape clause so that folks can  
10 slide around these regulations. Polluters, even passive  
11 ones, should be held accountable. So no Safe Harbor  
12 clause for me.

13 And what does "hydromodification" mean? It  
14 means, that we've paved too much of paradise and now  
15 we're paying the price.

16 So the standard here that you are charged with,  
17 is for receding waters to be fishable and swimmable. And  
18 so more than just surfers and kayakers, like here, are  
19 going to benefit from this place: Fishermen and the fish  
20 and everybody else that uses rivers, lakes and streams.  
21 This isn't just about the ocean.

22 So please stick to your guns and support the  
23 Staff recommendations. You know the building industry's  
24 objective is really to maximize their profits, not to  
25 protect public health.



1                   So from my point of view, the only Safe Harbor  
2                   should be a clean harbor; thank you.

3                   VICE CHAIR STRAWN: Cheap shots about fishing  
4                   there, Terry.

5                   CHAIRMAN MORALES: At this point, we have a  
6                   huge stack of red cards.

7                   And I know, Barry Grigg, I'm going to get to  
8                   you in just a second. But before we -- in fact, you can  
9                   come on up because you're going to be next.

10                  Rather than me calling out all these names, it  
11                  just doesn't look like -- we were told most of these  
12                  people aren't here.

13                  Can I see a show of hands of how many people in  
14                  this red card stack are actually here?

15                  (Public speakers comply.)

16                  What I'm going to ask you to do, is just after  
17                  Barry, come up. I think --

18                  VICE CHAIR STRAWN: Actually, you've got a lady  
19                  that wanted to submit one but was embarrassed to bring  
20                  it, when it was during --

21                  CHAIRMAN MORALES: Okay. So we'll add that  
22                  one.

23                  If you'll just come up and identify yourself  
24                  and you can pick your own order out there and give me a  
25                  minute to pull your card out of the stack, and we'll go



1 forward that way, if that works for everybody.

2 MR. GRIGG: Works for me.

3 I've been surfing, by the way, just as a  
4 byline, since 1959. I get to, on our beaches, surf.  
5 Although I don't belong to the organization, with my  
6 grandkids and my son, I've been doing it since they've  
7 been about 10 or 12 years old. I like it. I want to  
8 keep it that way.

9 I'm going to read something, if you don't mind.

10 And I'm not a politician or a speaker, so if I  
11 get nervous, just forgive me.

12 The following is a summation of the current  
13 state, California, legislation that will financially  
14 impact all of California communities, private and public  
15 sectors.

16 "Local community responsibilities and  
17 liabilities are to be determined by the second quarter,  
18 April to date of 2013. Implementation program shall  
19 begin third quarter, June 2013, with full and verified  
20 compliance to immediately follow.

21 Each community will be individually responsible  
22 for implementation monitoring and enforcement of  
23 watershed runoff within its community's boundaries as  
24 directed within the Copermitttee Management Program.

25 Watershed is all land or area that contributes



1 to or that affects or will affect existing and new  
2 proposed stormwater drainage systems through stormwater  
3 and designed irrigation runoff.

4 The permit requires the elimination of all  
5 defined pollutants. Monitored compliance and enforcement  
6 by each community and reduced total emissions volume,  
7 including rainwater into stormwater systems. New and  
8 existing commercial and residential private sector  
9 properties and public sector property will be financially  
10 affected with the approval of the permit."

11 No matter what happens, it's going to get  
12 affected.

13 "Each California community shall provide all  
14 necessary funds for implementation and enforcement of the  
15 Copermittee Management Program without exception or  
16 excuse to cost. Implementation of the permit commits  
17 each community to (inaudible) compliance in meeting or  
18 exceeding watershed discharge methods, volumes and  
19 contents within its geographical area.

20 All methods of design, are processed to achieve  
21 the watershed's area elimination of runoff have not been  
22 determined or defined. Benefits of implementing the  
23 reduced volume of water and stated contaminants is not  
24 based on any study or research and are not available.

25 Fund procurement may be obtained and/or levied



1 by copermittee --" I hope I pronounced that right --  
2 "members without community elected official approval.

3 Total increase cost within California has been  
4 estimated to be over a trillion dollars. A low estimate  
5 from San Diego County Supervisors is over 200 million,  
6 which does not include the cost of the 30 other  
7 communities involved. Total actual or real are not known  
8 by those implementing the requirements of the permit and  
9 cannot be calculated with any of the information  
10 available or yet provided.

11 As of the date of this summary, local and state  
12 elected officials do not have the ability or will to  
13 challenge the option of the permit and will have no  
14 ability to control public fund procurement or commitment  
15 by copermittee memberships."

16 You called for time out?

17 VICE CHAIR STRAWN: No; your time is up.

18 MR. GRIGG: May I ask one question?

19 VICE CHAIR STRAWN: Sure.

20 MR. GRIGG: I would ask Mr. David Gibson, as he  
21 is the sole authority to approve/disapprove and no matter  
22 what happens or suggestions are made, to postpone any  
23 approvals, all costs be identified first, publish the  
24 beneficial impact, which most of the executive officers  
25 use in all of their findings in the methods of which



1 those beneficial impacts are required, and guarantee that  
2 neither the Board or copermittee members shall have or  
3 use any authority to levy or determine implementation for  
4 excessive fees or funds without individual, local  
5 community elected officials' approval.

6 You have the ability to say, "Yes, I'm going to  
7 do this," or, "No, I'm not.

8 And it doesn't require the input of anybody  
9 else to sway your determination.

10 We ask for you to stand up and answer; thank  
11 you.

12 (Electronic voice activation interruption.)

13 MR. GIBSON: With all due respect, thank you  
14 very much for the promotion. Some of those decisions are  
15 quite a bit above my pay grade; that is, in fact, the  
16 purpose of the Board conducting the hearing.

17 But thank you very much.

18 MR. GRIGG: You're welcome.

19 MR. FOWLER: That's a hard act to follow.

20 My name is Brad Fowler. I'm the Director of  
21 Public Works in charge of Transportation and Water  
22 Quality for the City of Dana Point. I'm also an avid,  
23 South Orange County, year-round ocean skins swimmer, and  
24 I'm planning for the first time, to participate in the  
25 San Diego Triathlon the weekend after this.



1           Should I be worried? I confess that I don't  
2 get sick swimming in South Orange County, but I do, you  
3 know, not swim in 72 hours after a rainstorm in the flood  
4 control channels. So I take some precautions.

5           You know, this is a top priority for us as a  
6 beach city, and the City and your staff has come a long  
7 way. I appreciate the efforts of Staff. I personally  
8 think this can be a stronger permit for all parties. I  
9 think we're 95 percent there, but we still have a  
10 relatively few issues that are significant, and we're  
11 asking for an opportunity to work with Staff on these  
12 issues.

13           One is, I most strongly support the EPA Green  
14 Street's approach, the Orange County example that was  
15 shown earlier on how costly street water treatment can be  
16 on a street-widening project. You may not know that same  
17 requirement applies to all street maintenance  
18 rehabilitation projects on existing streets where dirt is  
19 exposed.

20           All of our streets require rehabilitation  
21 maintenance at some point in their repair line. The cost  
22 ramification of adding nearly 25 percent on all street  
23 rehabilitation projects is huge. Any constraints make  
24 these projects unfeasible onsite and Staff suggests the  
25 alternative compliance program.



1                   In other words, build new treatment on another  
2 street. Isn't that akin to impracticable and not  
3 recognizing the map standard? Street water treatment is  
4 essentially a wet weather in low peak.

5                   In short, I am pleading with you to allow the  
6 EPA-approved Green Street standards as an alternative and  
7 balanced approach, as your neighboring Water Board  
8 Regions have done with this issue. Please also keep the  
9 hydromodification exemption for concrete channels and  
10 acknowledge other permanent harboring as well.

11                   The Board wishes to combine the permits and I,  
12 as a manager, understand that for all regions. I can  
13 observe that in addition to a few several issues that are  
14 combined concerns with San Diego, a few South Orange  
15 County issues that legitimately differ from San Diego  
16 such as split County, cities, existing permit momentum on  
17 HMP, ground water and the like on our newer permit, SD  
18 Orange County presentation showed.

19                   Just observing, can't you ask Orange County to  
20 meet with the Board staff and explore if they can work  
21 out a relatively small number of South Orange County  
22 specific issues and add a few South Orange County  
23 specific paragraphs that recognize these legitimate  
24 differences and recognize the time schedule differences,  
25 if you want everyone on the same permit?



1                   And then, maybe in the next round of permit in  
2 2017, those differences can be closer or eliminated.

3                   Thank you very much.

4                   VICE CHAIR STRAWN: Thank you.

5                   And if it's okay with you, since Orange County  
6 was under their time limit before, I'm going to add your  
7 three minutes to theirs, because I think you were  
8 speaking representing --

9                   MR. FOWLER: I was speaking as myself with the  
10 City. I thought I made that clear. I was told I could  
11 do that by our attorney.

12                   VICE CHAIR STRAWN: It won't matter anyway  
13 because they had extra time, so whichever way you want me  
14 to call it.

15                   STAFF MEMBER: Yeah; it does seem as though you  
16 were speaking on behalf of the City of Dana Point, which  
17 is part of the copermittees, which is part of the  
18 four-hour blocks.

19                   MR. FOWLER: Okay; thank you.

20                   VICE CHAIR STRAWN: They still have two hours  
21 and three minutes, so this would make it two hours.

22                   BOARD MEMBER ANDERSON: We may ask you for that  
23 three minutes back. We don't know. Let's see what  
24 happens tomorrow.

25                   MR. EFIEM: Good afternoon, Board Members.



1                   My name is Efiem Byer. I'm with the San Diego  
2 Regional Economic Development Corporation.

3                   The San Diego Regional EDC is a 501(c)(6),  
4 nonprofit organization, that works to support economic  
5 prosperity and global competitiveness in the San Diego  
6 mega-region level which includes San Diego County,  
7 Imperial County and Northern Baja.

8                   As part of our work in the environment and  
9 water in particular, we understand those are part of the  
10 foundation of our economy. Many jobs in our communities  
11 are directly tied to the environment, especially a clean  
12 one, including a thriving maritime industry that is the  
13 forefront of its field when it comes to blue technology  
14 and clean technology. It's San Diego's natural resources  
15 that are key to attracting the talent we need to help  
16 companies continue to be innovative. We know the  
17 environment is critical, and we believe we should work  
18 together to improve it and protect it.

19                  Within that, we support a comprehensive  
20 solution to stormwater pollution and water quality. We  
21 support using better data and a watershed approach as  
22 well as outcome-based. That just seems smart. It seems  
23 reasonable. It seems the right way to go.

24                  However, these types of environmental  
25 initiatives do not need to run counter to its best for



1 economic growth; it can go hand-in-hand. The  
2 environmental community and the coalition of businesses  
3 can come together with commonsense stormwater regulations  
4 that will not create undue regulatory burden and cost for  
5 new construction or municipalities and do so in a way  
6 that allows the projects that we want to see happen go  
7 forward, like in development.

8 And also, this in a way, that we think about  
9 not letting current polluters get through there. We  
10 don't focus strictly on new construction. We're looking  
11 at a broad approach.

12 I understand the need to get things done and  
13 believe that we should have a smart set of regulations,  
14 but I would ask that rather than approve regulations  
15 today or tomorrow, that you postpone the approval of  
16 those regulations to allow a coalition to get together to  
17 develop smart, effective regulations that will both  
18 improve our economy and improve our environment; thank  
19 you.

20 CHAIRMAN MORALES: Go ahead and come up.

21 (Speaker complies.)

22 But I've got a card here for Vickey and I  
23 understand she wants to speak next.

24 VICE CHAIR STRAWN: Vickey Campbell.

25 CHAIRMAN MORALES: No? Okay.



1 (No verbal response from Ms. Campbell.)

2 MR. VAIKKO: Good evening.

3 I guess that gives me the distinction of going  
4 last. So thank you for your endurance.

5 I'd like to speak just briefly and hopefully  
6 clearly on the 100 percent pollution reduction  
7 standard -- oh, yes, you need my name.

8 VaikKo Allen is my name. I'm the Director of  
9 Stormwater Regulatory Management for Content Engineering  
10 Solutions. Vaikko is spelled V-a-i-k-k-o, if you're  
11 looking for my card there.

12 So there are a couple of questions that I  
13 wanted to address specifically. Those questions being:  
14 What is different about the standard as we see it in this  
15 permit, and what could be done where the implications of  
16 that difference?

17 So I think looking at both the South Orange  
18 County permit and this draft permit here as instructed, I  
19 think we can all agree that if you can retain water  
20 onsite, you should do so. I think that's the consent  
21 around there; it's unanimous.

22 The question really is, is what happens if you  
23 are unable to retain water, even through infiltration or  
24 rainwater (inaudible)?

25 In South Orange County permit, you are allowed



1 to treat that water onsite with biofiltration. There are  
2 some specifics there about how the infiltration system  
3 must be designed, but you are allowed to do that without  
4 triggering any offsite compliance requirements.

5 As I read this permit here, we have a very  
6 different standard. You must treat, you know, the 85th  
7 percentile design storm roughly three-quarters of an inch  
8 to remove all pollutants from that design storm. If  
9 you're unable to do that, then you can use flow-through  
10 treatment devices, but you have to remove the same amount  
11 of pollutants, the same amount as 100 percent removal of  
12 that 85th percentile.

13 So what that means, essentially, is that you  
14 have to remove 85 percent of the (inaudible) load on an  
15 average annual basis onsite. The problem is, that there  
16 is no BMP that can actually do that that is, quote,  
17 "through technology."

18 There is no BMP that is 85 percent effective or  
19 100 percent effective -- between 85-and-100 percent  
20 effective for all the pollutants that may be present in  
21 stormwater. You can look at the International BMP  
22 Database or any other sources and you will not find  
23 technology like that.

24 So essentially, what's happened here is that by  
25 having that pollutant standard, it forces people to go



1 outside with their mitigation, which I think is a very  
2 fundamental and a very important difference between the  
3 South Orange County permit and the draft permit as it is  
4 written here. It's also a difference, I might add,  
5 between the Ventura Regional Permit, the recently adopted  
6 L.A. permit and even the Municipal Regional Permit up in  
7 the San Francisco Bay Area.

8 So that would make this permit unique in  
9 California, in that, it would require that if you cannot  
10 retain water onsite, then you must do offsite mitigation.

11 I think maybe what was intended, was that there  
12 would be a pathway for the use of biofiltration if  
13 retention is not usable, but that's not what this  
14 language does.

15 I would so urge you to delay adoption and give  
16 a little bit more time to work this out. I personally  
17 would like to be involved in those deliberations as that  
18 work proceeds, but I think the language as it is written  
19 does not match the intended -- I think I heard stated  
20 before about that by the Board staff; thank you.

21 CHAIRMAN MORALES: Yes?

22 BOARD MEMBER KALEMKIARIAN: I have a question,  
23 if you don't mind, given the hour.

24 CHAIRMAN MORALES: Sure.

25 BOARD MEMBER KALEMKIARIAN: So I just want to



1 follow-up with a question because I may be starting to  
2 understand this.

3 Your interpretation of the current permit  
4 would be, that you were allowed to treat it onsite and  
5 retain the water and that there was no requirement, and  
6 that meant you were going to treat it 100 percent of  
7 whatever you had?

8 I mean, you were going to treat it to prevent  
9 pollution, right?

10 MR. ALLEN: When you say the "existing permit,"  
11 do you mean the existing draft or the prior permit?

12 BOARD MEMBER KALEMKIARIAN: No. The prior  
13 permit I meant.

14 MR. ALLEN: So it regulates -- my  
15 understanding, anyway, and there may be others who have a  
16 better understanding, but my understanding is that it  
17 regulates or requires you to retain a certain volume,  
18 that's fundamentally different than retaining the  
19 pollutants we need contained in that water.

20 BOARD MEMBER KALEMKIARIAN: Okay.

21 So to follow-up on that, because I've had this  
22 explained to me, and I want to see if you have the same  
23 understanding as someone who has to follow these things.

24 In the existing permit, if you're required to  
25 retain it because you were not allowed to pollute, right?



1                   So retaining it, then you couldn't release  
2 pollutants?

3                   MR. ALLEN: That's correct.

4                   BOARD MEMBER KALEMKIARIAN: All right.

5                   MR. ALLEN: That's the assumption, anyway, that  
6 retention equals 100 percent or that allowed pollutants  
7 entering that retained water.

8                   BOARD MEMBER KALEMKIARIAN: Okay.

9                   CHAIRMAN MORALES: Unless it's storm-related.

10                  BOARD MEMBER KALEMKIARIAN: Right. No, I  
11 understand.

12                  MR. ALLEN: Sure.

13                  Up to and including the design.

14                  BOARD MEMBER KALEMKIARIAN: We're in the same  
15 apples-to-apples here.

16                  MR. ALLEN: Yes.

17                  BOARD MEMBER KALEMKIARIAN: Okay.

18                  So the assumption is, that if you retained it  
19 you're being required to treat 100 percent of it because  
20 you couldn't pollute. Then you made the comment that you  
21 were allowed, under the current permit, to use  
22 biofiltration, right?

23                  MR. ALLEN: That's correct; yes.

24                  BOARD MEMBER KALEMKIARIAN: Okay.

25                  So under the current permit, if you couldn't



1 retain it all and you use biofiltration, what was your  
2 understanding about what was happening to the pollutants?

3 MR. ALLEN: So you would be removing something  
4 less than 100 percent.

5 My understanding, speaking for myself here, is  
6 that it would not be the same level of pollutant  
7 reduction --

8 BOARD MEMBER KALEMKIARIAN: Because --

9 MR. ALLEN: -- if you're treating --

10 BOARD MEMBER KALEMKIARIAN: -- the biofilter --  
11 okay.

12 MR. ALLEN: -- oh, sorry -- because the  
13 biofilter is less than 100 percent effective for all  
14 pollutants that pass through it.

15 MS. KALEMKIARIAN: Okay.

16 So your concern -- and excuse me for restating,  
17 but it helps me understand, if I do.

18 MR. ALLEN: Sure.

19 MS. KALEMKIARIAN: An old trick I learned from  
20 a civilian engineer in the Navy, actually, that if you --  
21 that if the language is adopted now, it's requiring you  
22 to get a 100 percent results from biofiltration perhaps,  
23 which you're saying you can't do.

24 MR. ALLEN: That is correct.

25 You can't do biofiltration or any of --



1                   BOARD MEMBER KALEMKIARIAN: Under current  
2 technology. I understand that.

3                   MR. ALLEN: Sure.

4                   BOARD MEMBER KALEMKIARIAN: But the current  
5 permit would allow you to meet the standards, because if  
6 you couldn't retain all of it, you are allowed the  
7 biofiltration, knowing that you couldn't get all of it?

8                   MR. ALLEN: That is essentially (inaudible)  
9 and, you know, you do the best you can, and if the best  
10 that we can do, which is retention, it's technically  
11 unfeasible. We're not talking about financial  
12 considerations here.

13                   These are reasons of, you know, higher ground  
14 water, contaminated soils, sludge, things like that that  
15 you are allowed to do something that is less than that  
16 standard under the current permit and under the South  
17 County Orange permit.

18                   MS. KALEMKIARIAN: And so the problem -- if we  
19 look at doing something offsite for mitigation, is cost  
20 the main problem?

21                   MR. ALLEN: Yes; cost and complication.

22                   I think Ventura is an instructive example  
23 there, where if you have a similar offsite mitigation  
24 program set up but there are a lot of difficulties in  
25 terms of timing and funding and who's the custodian of



1 funds that gets paid into a project fund, things like  
2 that.

3 Also, identifying the projects, you know, for  
4 example, if you pay into a fund and then there happens to  
5 be no funding identified or available or you only have a  
6 quarter of the funding that you need, then what happens  
7 is essentially you have no mitigation happen for a very  
8 long period of time.

9 It's not an easy thing to manage the offsite  
10 mitigation.

11 BOARD MEMBER KALEMKIARIAN: Thank you.

12 CHAIRMAN MORALES: Okay.

13 This isn't a fair question, but since you're  
14 the last one, it's something I've been thinking about.

15 MR. ALLEN: Not anymore.

16 CHAIRMAN MORALES: Okay.

17 Then if --

18 COURT REPORTER: Chairman Morales, may I please  
19 interrupt you a moment, sorry. I need to check the  
20 ground switch for the battery charger. It's signifying  
21 "low battery."

22 CHAIRMAN MORALES: Sure.

23 (Brief pause.)

24 CHAIRMAN MORALES: Yeah; I have heard, I guess,  
25 this discussion throughout the day talking about -- I



1 don't think it should have been characterized as a 100  
2 percent capture, because I think people here are 100  
3 percent and they say it's impossible.

4           Maybe something along the lines of "equivalent  
5 to" would have been a language that's more palatable, but  
6 if we don't ask for more in a new permit, how will we  
7 ever get more or better? Because it doesn't seem to me  
8 that anybody is willing to spend money that, you know, is  
9 in scarce supply across the board, whether it's  
10 municipalities, governmentalities, agencies, you folks  
11 who build.

12           And how do we get to a better, cleaner water  
13 supply and environment, if we don't ask for better?

14           MR. ALLEN: I will take that question. I think  
15 that's a terrific question.

16           I think the answer is, that any rule or  
17 regulation, that's just a bunch of words until it's  
18 enforced. I think what we have here in San Diego is a  
19 pretty decent rule. It could be improved slightly and I  
20 think this permit does that to some extent; maybe does it  
21 a little bit far, as we discussed here.

22           But the place where we have a gap between what  
23 we could be doing and what we are doing, I feel like it's  
24 on the plan check, really. This is from my own  
25 experience. I'm not speaking for the County or for any



1 of the copermittees but as a company that provides,  
2 essentially, rainwater harvesting systems and irrigation  
3 systems are permanent, those construction BMPs.

4 I see frequently that developers come, and  
5 depending on the jurisdiction that they're going to punch  
6 up with, some are very stringent in terms of what they  
7 require for bioretention treatment standards and some are  
8 very, very loose. And you really -- there's a wide  
9 discrepancy there between the best actors and the worst.

10 In my opinion, focusing in on the language that  
11 has been existing in permits for as long as I've been  
12 watching them, which requires that pollutants of concern  
13 that are expected to be generated and discharged from the  
14 site are treated with BMPs that have at least moderated  
15 or preferably a high effectiveness. If we stuck with  
16 that language and actually enforced it, we'd be doing the  
17 same thing as this permit is requesting.

18 What has happened, I think, is that they have  
19 a series of tables and kind of shortcut tools, worksheets  
20 and things that allow a developer to go through the  
21 process and essentially drop in, in some cases, catch  
22 basin inserts calling them filters, assuming very high  
23 removal efficiencies for them because they show up as a,  
24 quote, unquote, "filter," and they pass through.

25 In my perspective, that is the biggest issue



1 keeping us from achieving better water quality, at least  
2 on the projects that I work on, which are in the  
3 hundreds, really in the last couple permit terms.

4 CHAIRMAN MORALES: But do you see our issue?  
5 We're not a plan check agency. We don't approve permits  
6 at that level.

7 You know, our obligation is almost a policy  
8 obligation. We're here to try and guide the future of  
9 water policy in this region. It brings me back to the  
10 dilemma. I understand that there are a lot of competing  
11 interests. One is cost-associated with things, and  
12 another is, you know, jurisdictional almost, you know,  
13 where there is a clash. But we are limited by our role  
14 in this bigger process.

15 And my concern is, again, that if we were to  
16 say, "Okay. What we should be doing is enforcing more,"  
17 that's going to change the actions and make people, you  
18 know, come up with cleaner water.

19 I think we would get more criticism for that  
20 approach than the approach that we're trying to take,  
21 which is collaborative for everyone, and putting  
22 mechanisms in place that try and get people to do better  
23 because they have to.

24 And so, I know you can't answer it because I  
25 mean, it's too big of a question. I was just putting it



1 out there, just a flyer maybe, you know, you had the  
2 answer.

3 MR. ALLEN: Well, yeah, I won't take much more  
4 of your time here.

5 But we'll just note, that you maybe cannot  
6 prescribe the means of compliance but you can set  
7 performance standards that are clearer and they're  
8 achievable, to the extent that you do that and then push  
9 the burden of demonstrating that the programs of the  
10 copermittees come up with, push the burden of proof  
11 toward them to prove that they are actually meeting these  
12 performance standards that you have full authority to set  
13 that's fair.

14 BOARD MEMBER KALEMKARIAN: So you would be  
15 suggesting that maybe a combination of saying, "You've  
16 got to meet these BMPs --" am I saying it right? "And  
17 whatever --" generally what we're talking about.

18 But to get to a point that you have -- I think  
19 you said, you describe the level -- we describe the level  
20 that we're trying to achieve without putting a number on  
21 it and then they've got to meet that level by whatever  
22 the current practices are, rather than just saying, "I  
23 took an action."

24 It's part of what saddens me is that, you know,  
25 I just monitor by their actions that have been taken, and



1 that's not an effective way to get to the quality of  
2 water at the end of the road that we want.

3 MR. ALLEN: I would love to continue this  
4 conversation. I think that these are really kind of  
5 fundamental questions that we're asking here. I think  
6 when we talk about outcome-based, what I think we're  
7 really talking about is receding waters if we're talking  
8 about what is the impact on the environment, not so much  
9 on a specific project.

10 Also, I would note, so it takes -- kind of  
11 avoids your question a little bit because it doesn't  
12 necessarily apply on a specific project. We're not  
13 necessarily looking for end points at a specific project,  
14 you know, like we would, say, on an industrial permit  
15 where we have permanent -- uh -- yeah, maybe I'll just  
16 leave it at that.

17 CHAIRMAN MORALES: That was way more than three  
18 minutes.

19 Thank you for indulging me.

20 MR. ALLEN: Yes; nice to see you.

21 CHAIRMAN MORALES: Aaron, you're last.

22 MR. PORESKY: Do I get the distinction of being  
23 last?

24 Or is someone going to come behind me? You  
25 can't go home.



1                   My name is Aaron Poresky, Chairman Morales.  
2 I'm with Geosyntec Consultants. I would just like to  
3 describe my involvement in this.

4                   I've worked for the County of Orange in  
5 developing the Technical Guidance Document that they used  
6 to implement the 2009 provisions in the Santa Ana work  
7 permit, as well as it was intended to be used to  
8 implement the 2009 permit for South Orange County.

9                   I'm a consulting engineer. I also do a lot of  
10 other projects related to BMP effectiveness, water  
11 quality modeling.

12                   My firm has managed the BMP Database --  
13 International BMP Database for ASCE and for Worth and  
14 other organizations for the last ten years; and so, I'm  
15 fairly intimate and familiar with pollutant-load  
16 analysis.

17                   When I looked at the provision that's currently  
18 in the draft tentative order here, I wanted to second  
19 (inaudible), read that it is fundamentally different than  
20 the LID requirements that exist in South Orange County,  
21 and specifically, not with respect to what the first  
22 option is, that being retention of that design storm, but  
23 rather what happens next and whether what happens next is  
24 something that is practicable or not.

25                   And so, I would second his opinion that if



1 this -- if retention is infeasible, we're then required  
2 to do some sort of a pollutant-load analysis, based on  
3 BMP effectiveness, based on how much long-term volume  
4 that BMP captures in order to say that our flow-through  
5 treatment -- or our flow-through treatment plus some  
6 alternative compliances achieving the same level of  
7 pollutant-load reduction. And that analysis accounts for  
8 how much water that BMP captures over a long-term basis,  
9 as well as what efficiency that BMP is able to achieve,  
10 and we've heard a lot today that a 100 percent efficiency  
11 is unheard of.

12 In fact, looking at the BMP Database for  
13 certain constituents, like nitrate, like viruses, certain  
14 constituents, I won't say there are hundreds of  
15 thousands, but the database contains hundreds, of which  
16 many are important here.

17 But looking at those, a removal efficiency of  
18 being even close to 100 percent, is really unheard of  
19 with passive technologies today. It may not be necessary  
20 to protect water quality in all cases.

21 So when we do the math on that and we say  
22 retaining may capture 80, 85 percent of average annual  
23 runoff, and then there's suggestion from Staff that we  
24 could just upsize these BMPs and we would take care of  
25 the pollutant-load difference. Well, between 80-and-100



1 percent, you're only going to capture 20 percent more  
2 runoff volume on an average annual basis, then your  
3 efficiency has to be pretty darn good, your BMP has to be  
4 really large and your efficiency has to potentially be  
5 very good in order to get that onsite. And so as they  
6 could suggest, this is going to push a lot of sites into  
7 an alternative compliance program.

8           In terms of overall water quality, we've heard  
9 in our Stakeholder process in Orange County that  
10 redevelopment projects are facing the brunt of these more  
11 stringent regulations. They may be forced to go off into  
12 an alternative compliance program.

13           However, if there isn't an alternative  
14 compliance program yet, that project, which may have an  
15 overall benefit to water quality and the watershed, may  
16 be put on hold. It may be associated with the Brown  
17 Field's cleanup. It may provide treatment for a parking  
18 lot that's currently contributing pollutants that would  
19 be treated as part of the redevelopment. Those separate  
20 projects could be put on hold.

21           And so, while I understand your argument about  
22 pushing things forward, what are we doing if we're not  
23 pushing things forward? I think it comes with, again,  
24 practicable solutions and also thinking about the overall  
25 implementability of the provision as well as this



1 standard, this retention standard which we should do and  
2 we can, but it isn't always achievable.

3 I'm happy for any other questions.

4 CHAIRMAN MORALES: Okay.

5 Folks --

6 MR. CALLACOTT: Oh, I just turned my card in.

7 CHAIRMAN MORALES: Three minutes, sir; thank  
8 you.

9 MR. CALLACOTT: I'll be quick.

10 My name is Bob Callacott and I'm a resident of  
11 the North Beach area of San Clemente.

12 I also consider myself a bit of an  
13 environmentalist. I actually have some quite impressive  
14 environmental credentials with the development of the  
15 upper Newport Bay Restoration Project, amongst a number  
16 of others, and I suspect I have a few more up my sleeve  
17 before I'm finished with my career.

18 At my house in San Clemente, I'm probably 250,  
19 300 feet from the water's edge, so I too can hear the  
20 waves break, and I spend a lot of time down at the beach.

21 And in fact, one of my favorite joys is taking  
22 my lunch down on the weekends and having a sandwich and  
23 beer right by the water's edge. I don't think it's too  
24 contaminated. I haven't gotten sick yet.

25 Anyway, I have the distinction that in 1990 I



1 put together a delegation of representatives -- well,  
2 while I was with the County of Orange -- I put together a  
3 delegation of representatives from Orange, Riverside and  
4 San Diego counties, and we came to you and proposed  
5 development of the first MS4 Permit in this region. We  
6 actually drafted it and sat down with your staff and  
7 worked through the documents and came up with a really  
8 good permit. And we did this proactively months before  
9 the final regulations were adopted by the Federal EPA and  
10 certainly a considerable period of time before we  
11 actually had to obtain the Phase 1 MS4 Permit by the  
12 County.

13           Anyway, in working cooperatively with other  
14 counties, we came to your Board, and we had unanimous  
15 support for the adoption of that permit. In fact, I  
16 remember, since I was the leader of the delegation,  
17 perhaps it was your Chairman at the time asked me, "Are  
18 you guys sure you really want this permit? You don't  
19 need it."

20           It's like, "Yeah, we do. We want to make sure  
21 that we put together a permit that we can actually comply  
22 with and, you know, first of all, in support of clean  
23 water."

24           However, what we need today is a tentative  
25 order that can be more broadly supported. Today we're



1 hearing about a tentative order that was developed  
2 through this Stakeholder process, that doesn't have a lot  
3 of support; every County is opposing the adoption at this  
4 point and virtually every city is opposing adoption of  
5 this order. We had a situation where the counties and  
6 the -- or no -- the tentative order was released, only  
7 the eight or nine working days before this hearing, which  
8 really didn't -- given the extensive nature of the  
9 revisions, didn't really provide adequate time for  
10 review. I don't think that's good business. We also  
11 have seen an unprecedented letter from the ten members of  
12 our legislative delegation on opposing adoption.

13           What I'd like to request, is that your Board  
14 direct Staff to go back and work with all the  
15 Stakeholders, both the public and private -- public,  
16 private and environmental special interests, to develop a  
17 tentative order that can be broadly supported.

18           Thank you.

19           CHAIRMAN MORALES: Thank you.

20           We'll adjourn for tonight and reconvene 9:00  
21 tomorrow morning.

22           (Whereupon the Hearing concluded at 6:26 p.m.)

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1 STATE OF CALIFORNIA )

2 COUNTY OF SAN DIEGO )

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6 I, Gloria D. Mazon, C.S.R. No. 9356, hereby  
7 certify, that the foregoing statements from this Public  
8 Hearing were recorded true to the best of my ability by  
9 electronic transcription, and supervised under my  
10 supervision.

11

12 Dated in San Diego, California, this \_\_\_\_\_ day,  
13 of \_\_\_\_\_, 2013.

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Gloria D. Mazon CSR No. 9356

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