

STATE OF CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN DEIGO REGION

PUBLIC HEARING

PARTIAL TRANSCRIPT

ITEM 10

In the Matter of:

NPDES Permit Amendment: An Order to amend Order R9-2013-0001, NPDES No. CAS0109266, National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region. The amendment includes, but is not limited to, incorporation of the County of Orange, several incorporated Cities of Orange County, and the Orange County Flood Control District as Copermittees (Tentative Order No. R9-2015-0001).

_____ /

SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

CITY OF MISSION VIEJO

COUNCIL CHAMBERS

200 CIVIC CENTER

MISSION VIEJO, CALIFORNIA

WEDNESDAY, FEBRUARY 11, 2015

1:47 P.M.

Reported by:

Jacqueline Denlinger

APPEARANCES

BOARD MEMBERS:

Henry Abarbanel, Chair

Tomas Morales

Eric Anderson

Stefanie Warren

Betty Olson

STAFF:

David Gibson, Executive Officer

Catherine Hagan, Staff Counsel

Laurie Walsh, Water Resource Control Engineer, Stormwater Unit

PRESENTERS:

San Diego Regional Water Quality Control Board
Christina Arias, Water Resources Control Engineer

USEPA - Cindy Lin

Orange County
Chris Crompton
Ryan Baron
Mary Anne Skorpanich

San Diego County
Jo Ann Weber
Jon Van Rhyn

City of San Diego
Ruth Kolb
Summer Hasenin
Heather Stroud

Riverside County
David Garcia

APPEARANCES (CONT.)

PRESENTERS CONT.

Roger Butow, Clean Water Now

Mike Beanan, South Laguna Civic Association

San Diego Coastkeeper
Matt O'Malley

Coastal Environmental Rights Foundations
Marco Gonzalez

Building Industry Association and Construction Industry
Coalition on Water Quality
Mike McSweeney
Wayne Rosenbaum
Mark Grey

City of Lake Forest
Devin Slaven

City of Laguna Beach
Tracy Ingerbritsen

Richard Gardner, Capistrano Beach

Ray Hiemstra, Orange County Coastkeeper

I N D E X

PRESENTATIONS

	<u>PAGE</u>
San Diego Regional Water Quality Board	
Christina Arias, Water Resources Control Engineer	9
USEPA - Cindy Lin	24
Orange County	
Chris Crompton	27
Ryan Baron	36
Chris Crompton	40
Mary Anne Skorpanich	46
San Diego County	
Jo Ann Weber	66
Jon Van Rhyn	71
City of San Diego	
Ruth Kolb	82
Summer Hasenin	86
Heather Stroud	88
Riverside County	
David Garcia	93
Roger Butow, Clean Water Now	99
Mike Beanan, South Laguna Civic Association	103
San Diego Coastkeeper	
Matt O'Malley	105
Coastal Environmental Rights Foundation	
Marco Gonzalez	110

I N D E X (CONT.)

PRESENTATIONS (CONT.)

	<u>PAGE</u>
Building Industry Association and Construction	
Industry Coalition on Water Quality	
Mike McSweeney	117
Wayne Rosenbaum	122
Mark Grey	124
City of Lake Forest	
Devin Slaven	129
City of Laguna Beach	
Tracy Ingerbritsen	130
Richard Gardner, Capistrano Beach	135
Closing Remarks by Orange County	
Ryan Baron	137
Chris Crompton	140
Closing Remarks by City of San Diego	
Ruth Kolb	142
Closing Remarks by San Diego Water Quality Control Board - Laurie Walsh	144

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

February 11, 2015 1:47 p.m.

CHAIRMAN ABARBANEL: We went into closed session on a personnel matter, discussing the performance of our Executive Officer. We unanimously voted to retain Mr. Gibson and to recommend to the State Water Board that he received, in a year in which there would be increases in salary, the maximum increase that the State Board can produce.

That then is what we can do. It then goes out of our hands. But we have every confidence. Thank you, Dave, for your service.

EXECUTIVE OFFICER GIBSON: Thank you very much, Mr. Chairman and Members of the Board.

CHAIRMAN ABARBANEL: We are -- in the interest of spending as much serious attention time on Item Number 10, let's handle the other items on the agenda. With the approval of the Board, we are going to defer the Executive Officer report. It is posted on the web. It is available in print. It is available in electrons. It is available any way you want it except verbally, today.

We are going to postpone the request of Board Members for future items. There will be plenty of that in the future.

1 That leaves us with, effectively, two items. Now,
2 Stephanie, you had a request, you want to change the order
3 of two of the items.

4 BOARD MEMBER WARREN: I would just ask that we
5 move to reelect -- elect our Board Chair and Vice Chair for
6 2016.

7 CHAIRMAN ABARBANEL: Okay, do you have a speech, a
8 motion?

9 BOARD MEMBER WARREN: Sure, yes. I would move to
10 nominate our Board Chair for another term of service.

11 VICE-CHAIRMAN STRAWN: All right, I'll second that
12 and then do we need to vote on it?

13 CHAIRMAN ABARBANEL: It looks like everybody else
14 stepped back, thank you very much. And I would like to
15 nominate Gary Strawn to be Vice Chair again, if you will.

16 VICE-CHAIRMAN STRAWN: And I'll second that.

17 CHAIRMAN ABARBANEL: All right, then that is done.
18 Thank you very much.

19 We will move -- oh, I'm sorry, I forgot to mention
20 we are going to defer Item Number 7 for another meeting,
21 then that we have as much time to spend on Item Number 10,
22 as possible.

23 MS. HAGAN: And then just for -- to close the
24 loop, if you'd just vote on the nominations?

25 CHAIRMAN ABARBANEL: Oh.

1 (Ayes)

2 CHAIRMAN ABARBANEL: We did.

3 VICE-CHAIRMAN STRAWN: For both of them we did.

4 CHAIRMAN ABARBANEL: Okay. So, Steph, you have
5 something to say relative to Item Number 10?

6 BOARD MEMBER WARREN: Yes. Based on work that my
7 firm does on behalf of one of the copermittees, that's
8 unrelated to Item Number 10, I'm going to recuse from
9 further participation in that item.

10 CHAIRMAN ABARBANEL: Okay, thank you. Okay, I
11 have some instructions on something to say, from Catherine,
12 but I printed them on one side so that I would have -- would
13 be able just to see them, and I didn't number the pages.
14 So, I have to -- I'm going to start with the one, the
15 administration of the oath and then the order of
16 presentations. Okay. All right, got that right.

17 Okay, we are going to have a hearing to consider a
18 resolution, which we will hear in a great detail about,
19 which would incorporate the Orange County Copermittees in
20 the overall MS4 Permit that presently include -- they're
21 covered, but they're not included in exactly the same way as
22 the San Diego Copermittees.

23 So, I would like to ask each person, who will be
24 testifying at this hearing, to stand up and take an oath.

25 (Whereupon all prospective witnesses were sworn.)

1 CHAIRMAN ABARBANEL: Thank you all very much.

2 We will begin with the Staff presentation of the
3 detailed item. After the presentations are concluded, we
4 will ask the Executive Officer for a recommendation. We
5 will have and then close the public hearing. We'll ask for
6 Board discussion, and then the Board will deliberate, make a
7 motion, and then vote.

8 The order of the hearings, in general, is
9 approximately the following. The staff will begin with a
10 20-minute presentation. USEPA will have 10 minutes. Orange
11 County Copermittees 45 minutes. San Diego County 20
12 minutes. The City of San Diego 10 minutes. Riverside
13 County Copermittees 5 minutes. Roger Butow 5 minutes.
14 Michael Beanan 5 minutes. Coastkeeper and the Coastal
15 Environmental Rights Foundation will share 15 minutes. The
16 Building Industry Association 10 minutes. Construction
17 Industry Coalition on Water Quality 10 minutes. Interested
18 persons 3 minutes each. And 10 minutes for the Staff's
19 closing comment.

20 Mr. Strawn will rigorously enforce this.

21 VICE-CHAIRMAN STRAWN: I don't have a beeper, so
22 if you see this --

23 CHAIRMAN ABARBANEL: That's right.

24 So, Christina, are you going to begin?

25 MS. ARIAS: Yes.

1 CHAIRMAN ABARBANEL: Okay, thank you very much.

2 MS. ARIAS: Thank you. Good afternoon, Mr. Chair
3 and Members of the Board. My name is Christina Arias and
4 I'm a Water Resource Control Engineer in the Stormwater
5 Management Unit.

6 It is my pleasure to bring before you, today,
7 consideration of adoption of Tentative Order Number R9-2015-
8 0001, which is an order amending the Regional MS4 Permit to
9 incorporate the Orange County Copermittees.

10 I just want to first briefly acknowledge my team
11 in this process. We have Laurie Walsh, the Project Lead,
12 our Supervisor, Eric Becker, and our Branch Chief, Mr. David
13 Barker.

14 Today I will talk about the Regional MS4 Permit,
15 what it is, why it's important, then I'll discuss
16 modification made to this permit and when in the order.

17 So, the Regional MS4 Permit, which stands for
18 Municipal Separate Storm Sewer System, was adopted in May of
19 2013. It was issued to the San Diego County Copermittees
20 because at that time their prior permit had expired.

21 Today's action, if you were to adopt the tentative
22 order, would incorporate the following Orange County
23 Copermittees. The County of Orange, the Orange County Flood
24 Control District, the Cities of Aliso Viejo, Dana Point,
25 Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods,

1 Mission Viejo, Rancho Santa Margarita, San Clemente, and the
2 City of San Juan Capistrano.

3 So, when we embark upon an action of such
4 importance as adoption of the Tentative Order, it is
5 important to remind ourselves why we're doing this, why it's
6 necessary.

7 First, we want to recognize that the Orange County
8 Copermittees, and in fact all the copermittees in the
9 Region, have gained significant improvements in receiving
10 water quality over the last several years.

11 In Orange County's Report of Waste Discharge,
12 which is essentially the permit application, they report
13 that water quality at the beaches, during the dry season,
14 has improved dramatically. And the copermittees, over this
15 time, have gained a much better understanding of the sources
16 of persistent pollutants in the urban environment.

17 But the truth is that stormwater and non-
18 stormwater runoff continue to cause impacts to receiving
19 waters. Monitoring data show that urban creeks continue to
20 score poorly in biological and physical habitat assessments.
21 Surfers continue to get sick when they enter the water
22 during or after a rain event.

23 For the benefit of our newest Board Members, I
24 just want to give a brief, very brief background on the MS4
25 Permitting Program to give you a little bit of context.

1 As I said, MS4 stands for Municipal Separate Storm
2 Sewer System, which is another way of saying the Stormwater
3 Conveyance System. An MS4 permit is a permit to discharge
4 waste, just like any other MPDS permit. It's issued to
5 municipalities because they own and operate the MS4.

6 So, the program begin in the early 1990s, largely
7 in response to impacts from stormwater and non-stormwater
8 runoff. At that time, despite all the improvements that we
9 had made and the quality of the discharge from other point
10 sources, such as wastewater treatment plants, we were still
11 having a great impact to beneficial uses and receiving
12 waters.

13 Specifically, the San Diego Water Board has issued
14 three separate permits to the three counties we regulate,
15 San Diego, Orange County, and Riverside County.

16 Over the last several years, the MS4 Permits have
17 become increasingly more prescriptive and there's been a
18 great focus on actions, completion of actions. What I mean
19 is the number of facility inspections conducted, for
20 example, or the number of street miles swept. The idea was
21 that completion of these actions would result in improved
22 water quality.

23 Was this approach effective? We're not sure. We
24 can't give a definitive answer. The data is really unclear.
25 We've seen improvements in receiving water quality, but we

1 can't definitively tie that back to specific program
2 elements.

3 In 2013, the San Diego Water Board adopted the
4 Regional MS4 Permit. And we called it "Regional" because
5 the intent was to regulate all the copermittees under one
6 permit. For one thing, we gained some efficiency because
7 these permit proceedings can be rather lengthy.

8 But more importantly, the permit represented a
9 huge paradigm shift. No longer is the focus on actions, but
10 rather on real, concrete water quality outcomes.

11 The backbone of the Regional MS4 permit is
12 something called a Watershed Water Quality Improvement Plan.

13 The permit requires that one is developed for each of the
14 major watershed management areas. This plan is developed by
15 the copermittees, in consultation with the Stakeholder
16 Consultation Panel and, really, the public at large.
17 There's lots of opportunity for comment.

18 The Water Quality Improvement Plan allows the
19 copermittees to set priorities so that they're no longer
20 trying to address all of the pollutants all of the time,
21 everywhere. It allows them to develop strategies and
22 schedules to address those priorities, and allows them to
23 spend resources on actions that copermittees know to be
24 effective, and allows them not to waste resources on actions
25 that they know to be ineffective.

1 It allows the copermittees to engage in a finite
2 and formalized iterative process. The copermittees can test
3 new VMPs and management strategies without the fear of
4 failing to make instantaneous improvements.

5 The Water Quality Improvement Plan allows the
6 copermittees to fail, as long as they adjust accordingly.

7 The timing is appropriate for this paradigm shift.
8 The copermittees in our region have developed sophisticated
9 stormwater management programs over the last 25 years.
10 They're ready to move to the prescriptiveness of the prior
11 stormwater permits.

12 I just want to say a quick word about the
13 practical vision that you'll be hearing about later today.
14 In my opinion, the Regional MS4 Permit really encapsulates
15 the essence of the practical vision. I may be biased
16 because I've been working on it for several years, but I say
17 this because several provisions directly implement the
18 various chapters of the practical vision.

19 For example, multiple provisions of the permit
20 pertain to the development and implementation of strategies
21 to achieve healthy waters and recovery of streams, wetlands,
22 and riparian areas. Other permit provisions require a
23 robust and targeted monitoring assessment program and,
24 together, these strategies and programs implement an
25 outcome-based approach that is emphasized in the practical

1 vision.

2 Okay, so where are we now in the process? As I
3 mentioned, this permit was first issued to San Diego
4 Counties because those Copermittees, their permit expired a
5 couple years ago.

6 For the Orange County Copermittees, their MS4
7 Permit expired in December of 2014. So, I'm showing you the
8 map now. Over in this inland area of -- in this upper
9 area, and I don't know if you can see it, but I'm showing
10 you the Region 9 boundaries. And so, what we've done is
11 we're zooming in on the northern portion of our
12 jurisdiction.

13 This red line here is our jurisdictional boundary.
14 So, everything that's up there that's sort of colored green
15 is Region 9. Everything to the north, colored purple, is
16 Region 8.

17 So, if you were to take this action today, then
18 the Copermittees, those cities that we highlighted would be
19 incorporated into the Regional MS4 Permit.

20 The exception is the City of Lake Forest. So, the
21 City of Lake Forest and the City of Laguna Hills and Laguna
22 Woods, submitted letters to us, requesting single Water
23 Board regulation. They've been regulated by both Boards for
24 several years and they claim that the regulatory burden of
25 answering to two Boards is inhibiting their ability to

1 contribute greater water quality impacts to either region.

2 So, Mr. Gibson and the Executive Officer of Region
3 8 have agreed to honor this request, at least on a trial
4 basis.

5 So, in summary, Lake Forest will now be regulated
6 entirely by Region 8. Laguna Woods and Laguna Hills will be
7 entirely regulated by Region 9.

8 In case you're wondering how Riverside County fits
9 in, they're MS4 Permit expires in November of 2015. So,
10 we'll be back here in a few months, showing you another map
11 zeroed in on the Riverside County Copermittees.

12 So, I just wanted to show you the schedule of
13 activities that we've completed before we got to today. The
14 status of the Copermittees submitting their reported waste
15 discharge of 2014. We held a public meeting after that,
16 with stakeholders and the Orange County Copermittees to
17 discuss any modifications that we needed to make to the
18 permit.

19 We released the Tentative Order in September 2014,
20 and we held a 60-day comment period on the Tentative Order.

21 During the comment period we held a public workshop here,
22 on October 8th, 2014.

23 On July 21st, we released a revised Tentative
24 Order, which brings us to our public hearing today.

25 Now, during the 60-day comment period we received

1 14 comment letters that included more than 80 unique
2 comments. The vast majority, upwards of 80 to 90 percent,
3 were comments that were previously submitted during the
4 2013 permit proceedings. So, in other words, we've already
5 addressed the vast majority of the comments we received.

6 And because there were few new comments and
7 virtually no issues brought to our attention by the Orange
8 County Copermittees or other stakeholders, at the public
9 workshop, we didn't make very many changes to the Regional
10 MS4 Permit, and it remains largely unchanged from what we
11 delivered in 2013.

12 I'd also like to point out that the schedule I'm
13 showing you does not reflect all of the work that we put in
14 to developing the Regional MS4 Permit. That permit
15 development took place over two and a half years, and
16 included 50 meetings, public workshops, two public comment
17 periods. All the Copermittees in the Region, not just the
18 San Diego Copermittees, all of the Copermittees were fully
19 engaged in the public process at that time and submitted
20 extensive comments.

21 I'm just showing you some initial proposed
22 modifications that we made in our September 9th, our
23 first -- our release of the Tentative Order. I'm not going
24 to discuss these in detail because that was the subject of
25 the public workshop. But just briefly, this is what they

1 are. First and foremost, incorporation of the Copermittees,
2 single Water Board regulations of those three cities. We
3 included the unified approach for beach water quality
4 monitoring. We added the Los Penasquitos Lagoon sediment
5 deal, we corrected a typo, and we included interim
6 requirements having to do with hydro modification
7 management.

8 There were some comments on Items Number 2 and
9 Number 4 during the comment period, which we responded to
10 and we feel like -- we amended the Tentative Order and we
11 feel we have addressed those comments.

12 So in summary, our initial proposal regarding
13 these items is the same.

14 Now, I want to talk about the two big items, the
15 two modifications that we have proposed in response to the
16 comments that we did receive. First of all, we added a
17 commitment to consider what we call an Alternative
18 Compliance Option to the receiving water limitations of
19 Provision A, upon issuance of the Regional MS4 Permit to the
20 Riverside County Copermittees.

21 Provision A states that "discharges from MS4s must
22 not cause or contribute to the violation of water quality
23 standards in any receiving water; and discharges from MS4s
24 in a manner causing or threatening to cause a condition of
25 pollution, contamination or nuisance in receiving waters are

1 strictly prohibited".

2 This language has been included in MS4 Permits
3 throughout the State for several years and it's consistent
4 with precedential language issued by the State Board in
5 1999.

6 What it means is that if an MS4 discharge is known
7 to cause or contribute pollutants, then the Copermittees are
8 out of compliance with this provision.

9 The Copermittees state that this language makes
10 them vulnerable to not only Water Board enforcement, but
11 also citizen lawsuits. Even if they are actively engaged in
12 activities to reduce pollutants in their discharges.
13 Therefore, they have submitted comments asking for an
14 alternative compliance option, meaning that if they engaged
15 in the iterative process through implementation of an
16 improved Water Quality Improvement Plan, this would
17 constitute compliance with the receiving water limitation.

18 In 2013, the San Diego Water Board deliberated on
19 this issue, but ultimately decided not to include the
20 language and they stuck to the precedential language.

21 Recently, there's been some activity on this item
22 statewide. In 2012, the Los Angeles Board adopted an MS4
23 Permit that included an alternative compliance option.
24 After that, a number of petitions were filed.

25 Now, recognizing that this was really a statewide

1 issue, the State Board took the lead. In November of 2014,
2 they issued a draft order affirming the concept of an
3 alternative compliance option. In December of 2014, they
4 held a public workshop to discuss the matter.

5 At this point, we're not sure when the State Board
6 will issue a final order, but based on the direction that
7 they appear to be taking in supporting the inclusion of the
8 alternative compliance option, it is appropriate for the San
9 Diego Water Board to revisit the issue.

10 Therefore, we've added our commitment to the
11 tentative order to have consideration of the alternative
12 compliance option when we begin the proceedings for the
13 Riverside County Copermittees.

14 We're not ready to propose or discuss any language
15 today. Should we delay adoption of this Tentative Order
16 because of that? No. Is this a lost opportunity? No.

17 We need to finish this process. We need to get
18 the rest incorporated into the Regional MS4 Permit so that
19 they can get moving on their Water Quality Improvement Plan.

20 As for us, following today's public hearing, our
21 plan is to start the discussion on what that alternative
22 compliance option language will look like. This is very
23 controversial and it deserves a robust stakeholder
24 engagement process.

25 Therefore, we need to reach out to all

1 stakeholders to hear their concerns and get their input on
2 how we can draft some language. Once we have done that, we
3 will draft some language for your consideration.

4 If you adopt an alternative compliance option
5 during the adoption proceedings for Riverside County, later
6 this year, then this language will be available to all the
7 Copermittees. This is not a lost opportunity.

8 Secondly, in response to comments we added a
9 definition for prior lawful approval. You may remember we
10 heard about this at the October 8th workshop.

11 Specifically, San Diego Copermittees and industry
12 representatives want this firm be defined in the Regional
13 MS4 Permit. The term, "prior lawful approval", shows up in
14 the provisions dealing with land development requirements.
15 But it states that if a priority development project has
16 prior lawful approval from the Copermittee by the effective
17 date of the BMP Design Manual which, for San Diego County,
18 is December 29th, 2015, then that project is subject to the
19 land development PMP requirements of the previous MS4
20 Permit.

21 If the project does not have prior lawful approval
22 by this date, then the project is subject to the PMP
23 requirements of the 2013 Regional MS4 Permit.

24 There are significant differences between the two
25 sets of requirements, so project want to know by which

1 standard they will be held. After careful consideration of
2 the issue, we agreed it would be useful for the
3 Copermittees, the land development communities, the public
4 at large, even Water Quality Staff to understand clearly the
5 Water Board's intention and expectation regarding the
6 implementation of this provision.

7 Therefore, on the Revised Tentative Order we added
8 a definition in hopes of providing that clarity.

9 So, since then we've talked to a number of
10 different groups and it turns out that interpretation of
11 this language is really all over the map. So, in terms of
12 meeting our goal to provide that clarity, we were
13 unsuccessful.

14 And for that reason we're actually now
15 recommending that we strike the language altogether, which
16 is included in the errata sheet for you to consider.

17 We're supportive of the concept of the definition
18 of the "prior lawful approval", we just feel that the
19 language needs more than two weeks' of vetting and public
20 input.

21 Finally, I'd like to conclude by stating that in
22 the Report of Waste Discharge, the Orange County
23 Copermittees asked for the ability to prioritize their
24 efforts. They asked for a watershed-based planning
25 approach. They asked for more control over their

1 jurisdictional activities. They asked for a way to
2 establish an off-site PMP compliance program for the land
3 development requires. And they asked for interim
4 requirements for hydro modification management.

5 All of these elements are included in the
6 Tentative Order and the Regional MS4 Permit. Orange County
7 Permittees are ready to roll straight into the paradigm
8 shift. For these reasons, we recommend adoption of
9 Tentative Order R9-2015-0001, with errata.

10 CHAIRMAN ABARBANEL: Are there any questions?
11 Gary, you have a question?

12 VICE-CHAIRMAN STRAWN: Congratulations by the way,
13 you had 30 seconds left. You right under the clock.

14 CHAIRMAN ABARBANEL: Good, we don't have to
15 unleash Mr. Strawn?

16 VICE-CHAIRMAN STRAWN: Yeah, arrrrgh. Yeah, the
17 prior lawful approval, where you talk about two weeks not
18 being enough time. Is six or eight months enough time?
19 Could we expect to see some new wording when we get around
20 to doing this with Riverside? And then, would that be
21 retroactive to cover the other activities? Or, is this
22 something that will be a bigger problem?

23 MS. ARIAS: I hope so. After hearing the
24 concerns, we felt that there's substantial, good arguments
25 that -- so, yes, we'll be back with some language. We'll

1 look at it and have something -- take a little bit more time
2 and do it right, and have something to propose the next time
3 around.

4 CHAIRMAN ABARBANEL: If I may, that was also my
5 question. So, we can expect at the time, the consideration
6 of the Riverside inclusion as a Copermittee, which I wrote
7 down here, and tell me if this is approximately right, would
8 be sometime in the late summer of this year, July, August,
9 September?

10 MS. ARIAS: So, Riverside County Copermittees,
11 their permit expires in November.

12 CHAIRMAN ABARBANEL: Oh, November.

13 MS. ARIAS: In November, but they submit a Report
14 of Waste Discharge six months before that. So, we'll
15 actually be getting it shortly. But, you know, we're
16 talking about prior lawful approval?

17 CHAIRMAN ABARBANEL: Well, I would like to have a
18 time at which people, who want to have a discussion of both
19 the alternative compliance option and the prior lawful
20 approval, can get their thinking done, get their written
21 material in.

22 Now, I mistakenly wrote down July. So, we are
23 going to have that discussion --

24 MS. ARIAS: Yes.

25 CHAIRMAN ABARBANEL: -- in the Riverside County

1 context --

2 MS. ARIAS: Yes.

3 CHAIRMAN ABARBANEL: -- in November, is that
4 right? I'm asking for a date.

5 MS. ARIAS: Oh, okay. So, they're permit expires
6 November. But we're going to -- we've committed to starting
7 the stakeholder process for both those items pretty much
8 when we wrap this up.

9 CHAIRMAN ABARBANEL: Okay, soon and there will be
10 plenty of opportunity to discuss it?

11 MS. ARIAS: Absolutely. So, when we come back
12 here in a few months, our plan is to have language on both
13 those items for your consideration.

14 CHAIRMAN ABARBANEL: Okay. So, I think that I was
15 simply trying to add a target date to what Gary suggested,
16 which I agree with.

17 Tomas?

18 BOARD MEMBER MORALES: Yeah, and on that plan, the
19 plan to have that proposed language, I'm assuming -- you
20 know, the way it works is you all -- we come up with
21 language, we put it out there and then you've got the view
22 of the environmentalists, the BIA, they take a look at what
23 we wrote and they say, we think it says something completely
24 opposite of what they think it says, and it's just a matter
25 of interpretation.

1 MS. ARIAS: Right.

2 BOARD MEMBER MORALES: Can we just tell them, hey,
3 can you guys get together, give us language that you both
4 agree on. I know it was easier to do when Joe was here
5 because, the BIA and Joe, they got along and they got to the
6 point where they worked without -- so, isn't that maybe
7 something that we could consider doing so that, really, once
8 they give us the language we're like, okay, you're stuck
9 with it.

10 MS. ARIAS: Right, that's the idea.

11 BOARD MEMBER MORALES: Okay.

12 EXECUTIVE OFFICER GIBSON: Mr. Chairman, if I
13 could interject for a moment?

14 CHAIRMAN ABARBANEL: Okay.

15 EXECUTIVE OFFICER GIBSON: I think an element of
16 this prior lawful discussion approval that we want to
17 consider is coordinating with Region 8. Orange County and
18 Riverside County are shared by the two Regions. And I do
19 want to make sure that in our discussions with stakeholders
20 that we go forward with language that's appropriate, that
21 works in both Regions. We would not want to have the same
22 ongoing dilemma of one set of land use approval rules in one
23 part of the county and a completely different set elsewhere.
24 So, we definitely want to bring Region 8 into that
25 discussion.

1 We'll begin these stakeholder outreach, as
2 Christina Said, almost immediately. We will set up some
3 appointments and we will report to you, in the Executive
4 Officer's report, the schedule of that. And it is
5 optimistic that we could bring the Riverside amendments in,
6 in December perhaps, or very early in 2016. But in the
7 meantime, these two issues will not be languishing for want
8 of time and attention.

9 CHAIRMAN ABARBANEL: Okay. Oh, I'm sorry, Betty,
10 yes.

11 BOARD MEMBER OLSON: I just had a --

12 CHAIRMAN ABARBANEL: Please turn your microphone
13 on.

14 BOARD MEMBER OLSON: I apologize. So, I just --
15 my question is, so we're approving this without this
16 language. The language is coming back to us. This is very
17 similar to the last question that was asked, but not I'm
18 confused. It's coming back to us prior to Riverside on just
19 this language portion or it's going to be presented to us at
20 the same time we look at the Riverside?

21 MS. ARIAS: So, we're going to get started with
22 the stakeholder process. We set up meetings, talk to
23 different groups, you know, flesh through some ideas. But
24 we'll be back here for a Board meeting for, you know,
25 adoption of an order to bring the Riverside County

1 Copermittees. And at that time we will have proposed -- we
2 will have written some language for your consideration.

3 But before that point in time, our goal is to meet
4 with the different stakeholder groups to, hopefully, come to
5 some consensus at that point.

6 BOARD MEMBER OLSON: So, beyond the language, they
7 can continue on the programs that they've initiated --
8 there's no -- this doesn't stop anything or freeze it in any
9 way?

10 MS. ARIAS: This does not stop anything.

11 BOARD MEMBER OLSON: It's just the language.

12 MS. ARIAS: This is actually pretty much leaving
13 everything status quo.

14 BOARD MEMBER OLSON: All right, thank you.

15 CHAIRMAN ABARBANEL: Okay, and you can convey to
16 them Mr. Morales' desire. I don't know that we have the
17 authority to order them to come back in agreement, although
18 I understand that's what President Roosevelt used to do to
19 parties who disagreed. He may have had more authority than
20 this Board.

21 (Laughter)

22 CHAIRMAN ABARBANEL: Does that end the --

23 MS. ARIAS: Yes, I'm finished.

24 CHAIRMAN ABARBANEL: Okay. I understand that the
25 Orange County group would like to ask questions of the

1 staff. They have 20 minutes in which to make a presentation
2 and do that. And I hope that will be sufficient.

3 The next presentation will be given by -- is Cindy
4 Lin here? Yes, from the USEPA. You're also Region 9,
5 right, so you're right at home.

6 MS. LIN: Yes, I am very much at home.

7 CHAIRMAN ABARBANEL: It's good to see you, again.

8 MS. LIN: It's good to see you all. Good
9 afternoon, Mr. Chairman, Members of the Board. My name is
10 Cindy Lin and I'm the EPA Liaison to the San Diego Regional
11 Board. Thank you for allowing me to speak today.

12 At EPA Region 9, we've worked closely with your
13 staff during the development of your San Diego Regional MS4
14 Permit adopted on May 8th, 2013.

15 The MS4 Regional Permit was an important step
16 forward among California's MS4 Permits. It is a very good
17 model, both across California and nationally, particularly
18 in that it's incorporating land development and TMDLs, and
19 they would sort oftentimes refer to this MS4 Permit as a
20 model for others, when I'm actually at national workshops
21 and meetings.

22 With the implementation of the land impact
23 development requirements in the permit, as this is one of
24 EPA Region 9's priorities, and also one that directly places
25 efforts towards sustainable green infrastructure

1 development.

2 Our office supported incorporation of TMDLs in the
3 permit, specifically, providing that consistency between
4 WQLs, water quality-based (inaudible) -- and TMDL waste
5 allocations.

6 We (inaudible) guidance and result in MS4 programs
7 that are clear, specific, and also show measurable results.

8 EPA strongly supports the receiving water limitations
9 language in the permit and feels the language reflects the
10 State Board's adopted standard for receiving water limits
11 language that was defined in the State Board Water Quality
12 Order 99-04, and that was dated June 17th, 1999.

13 As you may know, the State Board is currently
14 looking into the question of how receiving water limits are
15 expressed. The State Board has not yet issued a final
16 order, but I would like, today, to tell you that we've
17 reviewed the receiving order limits language and final
18 permit as clarified, also, in the new Finding Number 18, in
19 the Revised Order. That those will both provide the best
20 and efficient way to address the issue.

21 The Board has expressed plans to consider
22 incorporation of a "well defined, transparent and finite",
23 alternative compliance approach for receiving water limits
24 during proceedings on reissuance of the Riverside County MS4
25 Permit that is scheduled for fiscal year 2015-2016, which

1 you guys were just talking about.

2 EPA agrees that this is a very sound approach,
3 addressing the issue. EPA supports adoption of this kind of
4 order. We strongly support that you move this forward for
5 approval. And we also (inaudible) -- as additional
6 permittees in Orange County as clear progress, and their
7 Regional Permit.

8 I'd like to comment your staff, specifically, for
9 all the effort and work we've done with this permit and the
10 support of the development of Water Quality Improvement
11 Plans is not an easy task, and your staff has done an
12 exceptional job.

13 I look forward to working with your staff in the
14 future and I thank you for your time.

15 CHAIRMAN ABARBANEL: Are there any questions?
16 Thank you very much. Since you came in so quickly, I have
17 one last question to ask the staff. You mentioned that the
18 State Board is discussing the alternative compliance
19 option. Do you think it's plausible that they will have
20 reported out by the time that we're discussing it down here?
21 I know that's a cloudy crystal ball but --

22 MS. ARIAS: Right. I think it is possible, yes.
23 And they may even provide guidance for us to consider as
24 we're drafting the language.

25 But in the absence of that, if they haven't

1 finished by the time we're back here with Riverside, we're
2 going to move forward. We're going to bring something back
3 for you to consider.

4 CHAIRMAN ABARBANEL: Very good. Thanks.

5 Okay, next we have the County of Orange. And is
6 it Chris or Mary Anne, who wants to start? Chris?

7 VICE-CHAIRMAN STRAWN: We have 45 minutes for your
8 presentation. And I don't have a beeper. So, if you see me
9 waiving my hands, you'll know your time is up.

10 PRESENTATION BY ORANGE COUNTY

11 MR. CROMPTON: Well, you can tell my optimism. I
12 started by, in my notes I put good morning. Well, it's
13 clearly not good morning.

14 (Laughter)

15 VICE-CHAIRMAN STRAWN: Well, it could have gone on
16 until tomorrow.

17 MR. CROMPTON: You know, it's an important topic.
18 I thought you gave it full justice and more power to you.
19 I think it was a good discussion. It was long, but it was
20 good.

21 Anyway, good afternoon, Chair Abarbanel and
22 Members of the Board. I'm Chris Crompton, Manager of Water
23 Quality Compliance for the County of Orange. I'm the other
24 Englishman that works for the County of Orange.

25 Just by way of background, I'd note that I've been

1 involved, almost since the beginning, with every stormwater
2 permit issued to the County of Orange, which ages me a
3 little bit when Christina puts out how far back the program
4 goes.

5 I'd also like to mention new Board Member Olson.
6 It's been several years since we last worked together,
7 studying water quality problems, and it's good to see you on
8 the dais here.

9 And with the Chair's permission, I would like to
10 give a copy of our report, that I gave to all you other
11 members, to Board Member Olson, because she didn't get one
12 last time.

13 I'm going to have three folks from the County,
14 myself and two others, talking today. And I just wanted to
15 go over what we intend to cover. And I want to start off
16 talking about the process of the permit enrollment. We
17 talked about this back in 2013 and it still resonates.

18 I want to talk about some key policy issues, as we
19 see them, particularly the issue of attaining compliance.
20 And that's already been touched on and is obviously a very
21 key issue for the County, and the Permittees in South Orange
22 County. And I'm sure, also, the other Permittees in
23 neighboring counties who are subject to this Permit.

24 I then want to talk about the State of the
25 Environment Report. I think Richard Boone, at the last

1 meeting, did talk on that, but it still continues to
2 resonate in our thinking on how permit renewal should occur.

3 And then at the end we're going to talk about the
4 pathway forward. And in general, we're trying to make sure
5 that we're enrolled into a permit that we can comply with.
6 And secondly, to ensure that there's a strong factual
7 foundation for the permit provisions.

8 Ryan Baron will be talking a little bit about some
9 legal issues, and Mary Anne, as I said, will talk about the
10 pathway forward at the end.

11 And in some ways, while we talk about the state of
12 the environment and compliance, the two are highly
13 intertwined, so I don't want us to lose sight of that issue
14 that we see as sort of being part of sort of the overall
15 bigger picture.

16 Back in 2013, and I'm going to take you back. I'm
17 want to start by taking you back to the start of the
18 Regional Permit process. And at the time, we put up some
19 graphics for you to consider. The Regional Board had its
20 idea of how the permit renewal process should work and we
21 offered some alternatives to that process, some suggestions
22 along the way as to how the process should work.

23 Essentially, we had two lines that we were working
24 on. One was this sort of the up lay, which is what we ended
25 up with, which is sort of the San Diego Permittees coming

1 in, and then we would all drop into the process.

2 And the other alternative we had, which was to
3 have three processes going kind of simultaneously, and at
4 point in time we would all produce our Reports of Waste
5 Discharge, and then we would voluntarily come into a
6 Regional Permit.

7 The main difference between the two processes is
8 the one of the Report of Waste Discharge. And that's kind
9 of one of the main issues I want to talk about here is that
10 particular item.

11 I think what we found is the current upper process
12 on that graphic has resulted in three permit renewals in
13 three years. A Regional Permit in advance of the Report of
14 Waste Discharge, submitted by both Orange and Riverside
15 Counties, and continued and on alignment of the three
16 permits. It was a decision that was made, and we're not
17 going back on that decision, but clearly there was a point
18 in time that was made that that process was the optimal
19 process. And, you know, we're now indeed at the point of
20 trying to understand how the Report of Waste Discharge fits
21 into this process.

22 These issues sort of led us to request, when we
23 submitted our Report of Waste Discharge, our own individual
24 permit. We submitted the request for the individual permit
25 because we believed that we had demonstrated progress and

1 the conditions that warranted separate considerations from
2 the Regional Permit. And, hopefully, we can highlight some
3 of those issues during the course of our presentation.

4 We've always taken the submittal of the Report of
5 Waste Discharge as the opportunity to present our collective
6 knowledge and recommendations to your Board on the status of
7 our program. In 2014, we took the extra step of providing
8 you with a State of the Environment Report that provide
9 clear direction for the crafting of Orange County's next
10 present. We brought the best available expertise to bear
11 in helping us to do this. Including, for example, Dr.
12 Bronstein, who is participating in key National Research
13 Council reports related to environmental data.

14 And actually, has gone to such lengths to assess
15 its urban stormwater environment in a single permit renewal
16 document. We're proud of the document. We've given it to
17 you and we've tried to highlight it to you in these
18 hearings.

19 The Tentative Order contained no mention of the
20 state of the environment or most of our recommendations.
21 We've voiced this issue extensively in our written comments.
22 The recent Response to Comments document is largely a
23 rebuttal of our extensive analysis and recommendations and
24 has resulted in almost no changes to the Regional Permit, as
25 shown on this slide. And if you look at the slide, we've

1 got a tremendous number of disagrees, and no's, and a few
2 agrees, and the agrees were largely in response to other
3 people's comments.

4 This is troubling. And I think not part of what
5 we expected when the process was created in 2013, which is
6 why I brought you back to the prior graphic.

7 In January of 2013, Mr. Gibson, in discussing the
8 Orange County and Riverside routes, states, "these offer us
9 opportunities to provide corrections or clarification in
10 minor ways, as well as change of course in major ways".

11 Jessica Jow (phonetic), in a written response
12 stated, "The Regional MS4 Permit will continue to rely on
13 the round process to bring perspective changes to the
14 permit".

15 And I think our problem is we're not seeing this
16 happen. We have the presentation from Ms. Arias and the
17 number of changes made is very slim. There was no
18 recognition in the document at of the State of the
19 Environment, at all.

20 I want to move on to the next part of the
21 presentation and I'll ask Ryan Baron to come up.

22 MR. BARON: Good afternoon, Chairman Abarbanel,
23 Honorable Board. My name's Ryan Baron. I'm a Senior Deputy
24 with the County Council's Office, for the County of Orange.

25 I'm actually going to talk a lot about policy

1 issues, rather than legal issues. And the first concern of
2 ours being a compliance option offered for the Orange County
3 Permittees at the time we enroll in this permit, and once we
4 enroll into that permit how we can be part of it.

5 The permit has 350 Copermittees "must" phrase in
6 it. So, there's 350 times the phrase "the Copermittees
7 must" do something within the permit, in the 130 pages of
8 the permit.

9 So, our primary concern then, with that, is
10 complying -- I guess you can't really see it too well --
11 with such an A.2.a. regarding receiving water limitations.

12 That provision says, "The discharges from MS4s
13 must not cause or contribute to the violation of water
14 quality standards in any receiving waters". This is the
15 issue that's been taken up by the State Board in the L.A.
16 permit, and we're awaiting a final decision on, although
17 they've given us a tentative that they are embracing an
18 alternative compliance pathway.

19 A.4 says that, "Each Copermittee must achieve
20 compliance with A.2.a. of this order through timely
21 implementation of control measures".

22 Now, I admit, not all 350 "musts" follow under
23 A.2.a. and receiving water limitations, but pending the
24 post-9th Circuit NRDC versus L.A. County litigation, those
25 are the pathways to compliance that we look to the most.

1 So, prior to the series of those court decisions,
2 one finalized for the 9th Circuit in 2011, one finalized in
3 2013, prior to that the MS4 community, and even some State
4 officials that I'd spoken with believed that compliance
5 with A.4 or, rather, A.2.a., you were ensured compliance if
6 you were compliant with A.4, you were ensured compliance
7 with A.2.a. if you were diligently and rigorously
8 implementing the Stormwater program through the iterative
9 process.

10 However, after those series of decisions the law
11 became one of strict liability, where any exceedance was,
12 basically, a de facto violation of the Clean Water Act.

13 And just to read to you from that decision, "If
14 the monitoring data shows the level of pollutants in
15 Federally protected water bodies exceeds those allowed under
16 the permit, then as a matter of permit construction the
17 monitoring data conclusively demonstrates that the county
18 defendants are not in compliance with the permit conditions,
19 thus the county defendants are liable for permit
20 violations".

21 So, the issue for us is very significant because
22 we are entering into a permit, and there are also statements
23 on the record from the May 8th, 2013 hearing, that the
24 Permittees are out of compliance on day one. And although
25 we have the ability to prioritize and engage in a watershed

1 process, there really isn't a pathway to compliance.

2 So, what are the impacts of that? Well, I'm going
3 to skip the first bullet point because that's more of a
4 practical consideration.

5 Most permits and licenses that I've dealt with in
6 my career, you file an application, you show that you can
7 comply, that you have the financial or technical wherewithal
8 to have a permit, whether you're getting a license to
9 broadcast over the airwaves, or a permit to discharge from a
10 stationary source you're in compliance on day one. And then
11 you fall out of compliance. Hopefully not, but at some
12 point you fall out of compliance later.

13 Here, we're sort of in an opposite situation
14 where, as Chris will speak after me about bacteria, there
15 are certain constituents that we are out of compliance now,
16 and it may take 20, 30 years or more to come into compliance
17 with those numeric standards.

18 So, there's not really any other area in the law,
19 in environmental law, where you have a strict compliance
20 regime post-9th Circuit decision. Even under the Clean Air
21 Act you can file your State Improvement Plan, and if you're
22 in an air quality region that isn't attaining your, you
23 know, National Ambient Air Quality Standards, you can show
24 further progress in your plans to EPA and still be deemed --
25 and have those plans approved and still be generally deemed

1 to be in compliance. But here, we don't have that.

2 The other concern for us, in rolling on this
3 permit today, is that really the system was not set up to
4 make flood control operators adhere to the same standards as
5 other point source dischargers. We don't have any ability
6 to shut off a valve. We can't stop stormwater from entering
7 into receiving waters.

8 In 1927, the State Legislature delegated authority
9 to the Orange County Flood Control District to form a
10 district and protect life and property. And since that time
11 we've entered into billion, trillion dollar infrastructures
12 improvements that predate the Clean Water Act, that predate
13 the permit. And it's difficult to unwind a lot of that
14 process, to say the least.

15 Now, in the fact sheet it says that we
16 voluntarily -- actually, I left it over there. It says that
17 we voluntarily apply for a permit. I think it's on page 35,
18 dealing with unfunded mandates. But we really don't have
19 any ability to cease discharging.

20 Another issue, and this was brought up, I think,
21 by the court, in the May 8th, 2013 proceeding, is that flood
22 control operators are under pipe. We don't have any ability
23 to control, always control what goes into that pipe. We
24 don't have the ability to ban copper in brake pads. We
25 don't have the ability to ban certain types of fertilizer if

1 the Federal or State government thinks it should be an
2 interstate commerce or it should allow that product within
3 the State.

4 So, we are in a unique position, by being into
5 pipe, to deal with a lot of the downstream effects, yet
6 still be held strictly liable for them.

7 One of the questions that permeated throughout the
8 2008 -- or, I'm sorry, the 2013 hearings, and I think came
9 up at the workshop, was is this, the sky falling. Well,
10 it's probably not falling in Orange County at the moment.
11 If you talk to L.A., they'd say it's falling, maybe in
12 Malibu, or Stockton even.

13 But there have been a series of cases, since 2013,
14 where there have been a series of lawsuits against
15 municipalities over exceedances in NPDS permits, many of
16 which relate to stormwater.

17 Currently, in the Federal District Courts there
18 are four cases that cites the NRDC/County of L.A. case as
19 being the standard for per se violations for monitoring data
20 that shows an exceedance in either a stream, dealing with
21 selenium, storm sewer systems to rivers, violations of
22 narrative water quality standards, et cetera.

23 There's also been a series of cases, since 2012,
24 either lawsuits or Notices of Intent to Sue, against nine
25 different municipalities dealing with exceedances in NPDS

1 permits, half of which are related to stormwater.

2 Now, I don't want to say this is apples to apples,
3 because some of these are different cases, they're
4 wastewater treatment facilities and there are times when
5 folks should be meeting their numeric standards.

6 But in this case, where we can't, the current
7 regime holds us strictly liable. And so, we're looking for
8 a compliance option today.

9 One of the practical considerations, the practical
10 impacts of having to enroll now, without a compliance
11 option, is that this is a reverse process from what we've
12 seen in L.A. and Santa Ana. The Orange County Permittees
13 are currently going through a Region 8 approval process.
14 Subsequent to the L.A. Board decision, the Santa Ana Region,
15 in their latest iteration of the permit has introduced a
16 compliance option and is seeking comment on that in a second
17 round of comments that's due this Friday. And we hope to
18 see that as the first Board to adopt a compliance option
19 post-L.A.

20 So, what we're seeing though is enrolling now, and
21 then potentially get a compliance option at the end of this
22 year or sometime next year.

23 Another practical impact of that is
24 prioritization. How can you prioritize certain pollutants
25 in the watershed if you're held strictly liable for each and

1 every one of those pollutants at all times in the watershed.

2 And lastly, before I turn it over to Chris, one of
3 the things the Permittees will have to do to start the WQIP
4 process is to do some sort of CEQA analysis. I think L.A.
5 County's doing a very large, very expensive programmatic
6 EIR. We will go through the EIR process, we will go to our
7 Board of Supervisors, spend potentially hundreds of
8 thousands of dollars getting consultants on board to write
9 these documents, and then potentially have to go back at the
10 end of this year, or the next year, and redo some of that
11 process, either issue an addendum to CEQA, maybe have to
12 redo some of the CEQA. Potentially, you know, figure out if
13 the modeling standards are higher, potentially add scopes of
14 work or additional consultants.

15 So, we would hope to do that process once. And I
16 do have any questions, if staff could sort of respond to how
17 we, as Permittees, might incorporate that process now, in
18 anticipation of a compliance option? Thank you very much.

19 CHAIRMAN ABARBANEL: So, are you asking that
20 question of staff?

21 MR. BARON: Not directly at the moment, just in
22 general if someone could comment on --

23 CHAIRMAN ABARBANEL: Well, you have it here for a
24 bit.

25 MR. BARON: I don't want to put anyone on the

1 spot, but if anyone could comment on how we might
2 incorporate that into our process that would be great.
3 Thank you.

4 MR. CROMPTON: Yeah, it's not just us that are
5 talking about our ability to comply. Obviously, this is
6 issue has resonated through Los Angeles and the Los Angeles
7 permit. It's also, as you can see on the graphic here, the
8 American Society of Civil Engineers has released a report on
9 pathogens in urban stormwater systems. It was published in
10 August of 2014, which was after the Regional Permit was
11 adopted, so it is new information. And it's intended to be
12 a comprehensive review of the state of the science and
13 practice of fecal indicator bacteria control.

14 And one of the, I think, the telling conclusions
15 is that depending on the source of FIB affecting a
16 particular receiving water and the manner in which MS4
17 compliance is assessed, dry weather standards may be
18 attainable in some cases. But consistently attaining
19 standards under wet weather conditions may be infeasible.
20 And this is, obviously, a national report from a national
21 professional organization.

22 And you probably remember this. My colleague
23 has -- he's keenly trained. So, it may not be a pathway,
24 but maybe it's a railway track to compliance, named after
25 Richard Boone.

1 But essentially, the key ask here is that there's
2 a real need for a pathway to compliance, a railroad track to
3 compliance. Something that, at the time the permit is
4 issued, that we can be in compliance.

5 I wanted to just talk some things more about the
6 State of the Environment Report. And the reason I'm really
7 bringing it up is because, obviously, our prior comments on
8 this issue haven't resonated particularly well.

9 We distributed this report at the Board meeting
10 last year and were quite candid about both our notable
11 accomplishments in dry weather and the continued challenge
12 presented by fecal indicator bacteria control in wet
13 weather, which is backed up by the ASCE Report. It is this
14 information that is half the second issue of concern, which
15 is the State of the Environment not being discussed in the
16 fact sheet or permit.

17 With its absence, we are not broaching the
18 analytic fact between the finding and the directives and we
19 are omitting the technical rational for a compliance
20 pathway.

21 And if you look at the top of that slide, there's
22 a quote from the Water Quality Order 95-4 that, "The
23 findings must broach the analytic gap between the raw
24 evidence and the ultimate decision or order". And we think
25 that the permit is missing it.

1 So, in terms of water quality priorities, in terms
2 of this assessment that we created, you can see along the
3 bottom there's a -- sorry, I don't get the CRI. The
4 increasing concern over the (inaudible) -- over here, that's
5 the least concern down to the greatest concern. And what we
6 find is that we, in South Orange County we have three issues
7 that are predominant concern. Bacteria, which we've already
8 mentioned, nutrients and dissolved solids. (Inaudible) --
9 is the bacteria indicator.

10 Nutrients go more on kind of the bacteria side.
11 Let me just say, the nutrients cycling in the aquatic
12 ecosystems is not well understood. Moreover, exceedances of
13 water quality objectives occur disproportionately to the
14 occurrence of adverse impacts, such as nuisance algae
15 growth. It's an area we need to put more effort and
16 emphasis in, and that's where we think we need to put
17 emphasis. A lot of it is within systems to do with
18 groundwater/surface water interfaces.

19 Total dissolved solids, we don't discharge total
20 dissolve solids. Rainwater has very low total dissolved
21 solids. The problems with total dissolved solids, which may
22 be significant, and you can see that it rates pretty highly,
23 it's almost certainly the result of phenomenon arising from
24 shallow groundwater exfiltration and the area's unique
25 geology. It's not something that we, as urban dischargers,

1 are discharging, but it's something that gets into the urban
2 system from natural sources.

3 Again, it's a complicated issue. It's not to do
4 with things necessarily on the surface, but it's to do with
5 the way the internal mechanisms of the infrastructure work.

6 The conditions we're finding inside Orange County
7 are pointing us in some new directions as to where we should
8 be looking for the real problems.

9 In terms of beaches, obviously, beaches are of
10 enormous -- we've spent more money, I think, and more effort
11 on our bacteria, fecal indicator bacteria at beaches than
12 almost any other issue. It's important to us, it's
13 important to our citizens, it's important because people
14 recreate there.

15 And in dry weather, we're beginning to make some
16 progress. you can see, just even with the data, we're
17 beginning to show reductions over a period of time. The
18 data shows that the levels are being reduced.

19 We do include on the checklist pretty much every
20 conceivable program to control bacteria. Certainly, if
21 there are new ones out there, we probably would be willing
22 to try them. But we got the toolbox and we're using it.
23 And as I said, it's working in dry weather, but not so much
24 in wet weather.

25 If you look down the first one here, you can

1 probably see somewhat vaguely, but there's a large number of
2 diversions. Diversions are a -- where you take stormwater,
3 or dry weather flows out of the storm drain system and move
4 it to the sanitaries, so it had been a very effective method
5 of protecting beaches, places where people actively
6 recreate.

7 We've used State -- Browning has supported a
8 number of these activities. It's been one of their emphases
9 to try to protect those areas. If you get the water away
10 from it, then things will be improved.

11 We've even, and on this next slide you can see
12 we've even tried to control wildlife. In this last area
13 here, we've used proctoring programs at beaches to try and
14 scare off excess number of birds from congregating on
15 beaches. And so, we're trying to deal with sort of the
16 natural sources there. Because, again, it's important to
17 protect the beaches. You know, we've made significant
18 progress, but we haven't got there.

19 Wet weather is a different story. We still get an
20 A grade in about 61 percent of the time in wintertime, in
21 wet weather. But the rest of the time, the picture is not
22 as robust. And that's consistent with what we've been
23 telling you.

24 Even with the -- with some of the BMPs that we're
25 putting into place are -- have different effectiveness in

1 dry weather and wet weather. This is a basin that was
2 constructed to treat wet and dry weather flows. What is
3 being shown is that on the left-hand side we get some
4 significant reductions in dry weather. But in wet weather,
5 we get almost no change at all.

6 This is interesting because restoration was
7 brought up by your staff a lot in the kind of restoring the
8 environment. Restoring the environment, again, is pretty
9 good. We restored this channel system, put in a whole bunch
10 more vegetation, removed riprap and did a pretty good job.

11 The levels of the bacteria in dry weather went
12 down significantly, one or two orders -- probably one order
13 of magnitude. But in wet weather what you actually find is
14 we actually get an increase in the amount of bacteria coming
15 out of it in wet weather. So, while it might be safe during
16 dry weather, it could become a source in wet weather. So,
17 that raises some issues for us to look at as well.

18 So, what does this sort of tell us about the state
19 of the environment? Firstly, I've given us the priorities
20 that we've had. We've really got three priorities,
21 dissolved solids, nutrients, bacteria. The compliance is
22 not attainable for us at the present time for wet weather,
23 for fecal indicator bacteria. Even, you know, BMPs appear
24 to be effective in dry weather, but not necessarily in wet
25 weather. And even wet weather BMPs seem to be ineffective.

1 I think this continues to make the case that we
2 really need that compliance pathway because compliance on
3 some of these issues is not easy.

4 And with that, I will turn it over to Mary Anne
5 Skorpanich.

6 VICE-CHAIRMAN STRAWN: He left you 16 minutes.

7 MS. SKORPANICH: Thank you. Good afternoon, I'm
8 Mary Anne Skorpanich from the County of Orange. And a
9 special welcome to Professor Olson.

10 So, what's our pathway forward? You know, we had
11 intended to comment today and express our support for the
12 permit, but we feel that we have one major stumbling block
13 impeding us in that direction, and that is the lack of this
14 compliance pathway.

15 The State Resources Control Board has signaled its
16 support of compliance pathways in stormwater permits,
17 although it hasn't taken final action on that precedential
18 order, yet.

19 Your own Executive Officer, Mr. Gibson, has stated
20 his support, as has USEPA in past proceedings, that it is a
21 reasonable thing to do.

22 But what we find ourselves faced with today is
23 that we are going into a new permit and we don't have this
24 compliance pathway.

25 On the left you see Section A.2.a, on the right

1 Section A.4. A.4, as you'll notice, references A.2.a, but
2 we don't have that linkage coming back. And based on the
3 case that was litigated in Los Angeles County against the
4 Flood Control District there, one of the court rulings was
5 that each and every one of these sentences in the permit is
6 separately enforceable.

7 So, if we don't have that linkage back, we don't
8 really have that compliance pathway and we don't find that
9 that's all pulling together.

10 So, our major ask here is that you give us that
11 linkage. As you've heard our other two speakers mention,
12 many of the innovations upon which these Regional Permit is
13 based become meaningless for us without that pathway.

14 The issue of prioritizing, when we're liable for
15 everything, becomes somewhat moot in terms of really being
16 able to focus our time and resources on those priority
17 problems.

18 And as Chris pointed out in his presentation, the
19 three most pressing water quality problems in our surface
20 water, in South Orange County, are for the most part things
21 that are out of control of the local permittees. They are
22 things like groundwater inputs. They are things like
23 bacteria and so forth.

24 Your staff mentioned that they are intending to go
25 forward with the process whereby we'd have stakeholder

1 discussions and come up with this language that might be
2 appropriate for your consideration on a compliance pathway,
3 but it's been two years since the original permit was
4 adopted. During that period of time the stakeholder process
5 could have transpired. We've been waiting, now, two years.
6 As you may recall, those of you who were on the Board at
7 the time, there was discussion about such language but,
8 ultimately, it was not put into the Regional Permit at that
9 time.

10 So, we feel like we've waited and we feel like
11 this is our time to come into the permit, but we find that
12 we have this major gap, still, that exists.

13 So, back to what the State Board ordered about
14 (inaudible) -- you know, with the iterative process on
15 permits, and as with the Scientific Method, itself, we
16 always want to start with what have we done in the past,
17 where does that bring us in the current day. And we think
18 that the permit process, itself, that deliberation, that
19 consideration should follow that same formula.

20 What have we done in the past? We reported to you
21 in the Report of Waste Discharge. Where are we today? We
22 reported that on the State of the Environment. We feel that
23 those two are the most important pieces that should be under
24 consideration today and that the permit way should be the
25 way forward from that point. And we really don't feel that

1 that's been reflected at all.

2 So, what are the stumbling blocks here? It sounds
3 like we've -- or we did that history from the timelines,
4 when the Regional permit was first being launched into
5 consideration and was adopted, that issues were primarily
6 being driven by the San Diego Permittees at that time.
7 We've now waited for our permit to expire and when it's time
8 to enroll us, we're being told, no, you ought to wait for
9 the Riverside Permittees to be enrolled for us to consider
10 this alternative compliance pathway. And we feel like we're
11 just sort of being squeezed in between.

12 So, we see the Regional Permit as sort -- we
13 understand the reason why the Regional Board wants to do
14 that. We understand your rationale for it. But it tends to
15 make a one-size-fits-all.

16 And coupled with that is the schedule that you've
17 put this on. So, you know, you've scheduled the adoption
18 hearing for today. Your staff is saying, no, it doesn't
19 make sense to do this until we can have that stakeholder
20 process and have a compliance pathway, but we're not so sure
21 that we really see a reason why.

22 So, harking back to the image about the -- the
23 image of the bridge and a question whether this is the
24 practical vision that you have all conceptualized and are
25 moving toward on, and that compliance pathway is possible

1 for you to do. It is your policy decision to do and it
2 is -- we'll also ask that you include language in the
3 findings, and I have some suggested language here today that
4 puts in some recognition in the fact sheet. It's very
5 short. That would give some acknowledgement, at least, to
6 the current state of where we are today, as reflected in our
7 Report of Waste Discharge.

8 And with that, we'd like to reserve any remaining
9 time for questions or comments later on in the process.

10 CHAIRMAN ABARBANEL: That's fine. I have a
11 question for you as well, after Mr. Morales.

12 BOARD MEMBER MORALES: Yeah, and this is open to
13 like, I guess staff, but also anyone else from Orange
14 County. You know, today we're here to consider bringing you
15 into the same MS4 that we've got for the San Diego
16 Copermittees.

17 And when we were going through this process with
18 them, you guys were involved and you heard their complaints.
19 I think, you know, almost every one of them stood up, at
20 least the County, from the governmental agencies, and said,
21 hey, you know, we're going to be sued, we're going to be
22 sued, we're going to be sued.

23 And I'm not aware of any lawsuits, yet, and it's
24 been two years, or even any NLIs on the same MS4 Permit that
25 we're asking to bring you into.

1 And, you know, I have to think hard about this
2 because, you know, in a sense you're asking us to insure you
3 against lawsuits. And the only way we can do that is by
4 saying, you know, there are no regulations. You know,
5 there's nothing for you to fall short of. And we can't do
6 that.

7 So, then I look to the other end and I say, okay,
8 well, how has this harmed the San Diego Copermittees? Have
9 they been subject to citizen lawsuits or any type of
10 lawsuits over these permittees? Are the environmental
11 organizations going after them? And I think the answer is
12 no because, you know, because they see that the agencies and
13 the municipalities are really making efforts to comply. And
14 that's what they cared about and looked for.

15 So, I don't know that it would be any different
16 for Orange County because you guys do great work here. And
17 I don't think anybody will be able to look at you all and
18 say, you know, they're not trying. So, I'm not taking your
19 concerns with a grain of salt, but I'm looking at them with
20 the benefit of, you know, a two-year history for our San
21 Diego Copermittees. And I'm wondering if you may not have
22 the same, you know, history two years from now.

23 And that's not to -- I mean, the State Board may
24 tell us you have to have an alternative compliance pathway,
25 and then we'll have it. But, you know, I kind of agree

1 that -- I don't think we should slow things down because of
2 that, over a concern that, you know, hasn't shown itself to
3 be a problem in San Diego, for the same permit.

4 BOARD MEMBER OLSON: Well, I'm new to this issue
5 so I don't have the same experience that our Board Member
6 Morales has. But I have a series of questions that I would
7 like to ask, which might help me understand your situation
8 more clearly.

9 So, as I understand this, there is an A.4 and an
10 A.2.a, and they're not linked together. And so, that puts
11 stormwater or it makes it more, I guess you could say,
12 susceptible to lawsuits. Did I understand that correctly?
13 Because there isn't a linkage back, so you're not on a
14 pathway to progressing to improve things, but you are out of
15 compliance. Is that my -- is that a correct interpretation?

16 MS. SKORPANICH: Yes, on the one hand we are
17 subject to lawsuits, but at least in our minds, you know,
18 whether we've been sued or not is not the only test.

19 As I've said to this Board in the past, in these
20 deliberations, you know, I pose the question, is it good
21 public policy? Is it good public policy to issue
22 regulations that you know the Permittees cannot comply with?
23 There's no way on earth that they could comply with on the
24 first day.

25 And I guess I would just raise that more from the

1 governance, from what kind of governance signals.

2 But yes, it does make us liable, as it did with
3 the County of L.A.

4 BOARD MEMBER OLSON: So, but currently you're not
5 protected from lawsuits? Groups could bring lawsuits
6 against your stormwater?

7 MR. BARON: Yeah, the Clean Water Act allows for
8 third-party lawsuits. And I don't the suggestion here is
9 to, in any way, shape or form to insulate the lawsuits. In
10 fact, we've always discouraged folks from even bringing up
11 that subject.

12 I think the point was to respond to this question
13 about is the sky falling? And there is a vulnerability
14 there to our programs, even if they're good programs and
15 we've shown slides, and we have annual reports that show
16 we're succeeding.

17 And up to two or three years ago, compliance meant
18 the iterative process. Now, it doesn't. Compliance means,
19 hopefully, it means an alternative compliance pathway, where
20 you go through this extensive modeling process, you show
21 that you can meet these numeric limits, or narrative
22 standards in some situations over a time table. And then
23 the Board deems you in compliance.

24 I don't think it's to get a safe harbor. People
25 should be sued if they're not doing what they should be

1 doing. And we should meet standards where we can meet
2 standards. But there are places where we can't.

3 And again, when I cite off that litigation, it's
4 not an apples-to-apples comparison in every situation. That
5 there are, and it may not have hit Orange County, yet, but
6 all it takes is a couple of ones in Malibu, L.A., where now
7 it's hundreds of millions of dollars of litigation. And we
8 shouldn't be in that kind of atmosphere where -- you know, I
9 know attorneys that now review watershed management plans.
10 I don't think attorneys should review watershed management
11 plans. I certainly don't.

12 But I think it's just that sort of environment
13 where, if we could promote compliance with science an
14 engineering, and not through this litigation path or even,
15 you know, ask for compliance or gear it toward whether we
16 have to be sued now.

17 It's just that we fundamentally don't have any
18 path to compliance and that's unlike any type of permit or
19 anywhere in the environmental law.

20 BOARD MEMBER OLSON: So, let me ask a follow-on
21 question, then. Have all of these actions taken place so
22 that other areas, specifically I guess, San Diego, since
23 it's the only Region that you've actually done, did they
24 have an alternative path at the time it was adopted or were
25 they in the same position as these individuals are?

1 An alternative path?

2 MS. ARIAS: No, the San Diego Copermittees did not
3 have the alternative compliance option.

4 And as I mentioned, that our permits that we've
5 been reissuing, issuing and reissuing since 1990 -- well, I
6 take it back. Since 1999, since the State Board put that
7 precedential language, stating the Provision A Receiving
8 Water Limitations, the strict liability, we've included the
9 same language since that order came out in 1999. This is
10 not a new subject.

11 BOARD MEMBER OLSON: I realize that. I know,
12 actually, quite a bit about indicator organisms and the role
13 of bird populations, and wetlands restorations, and how
14 they sometimes can impact those numbers. I'm well aware of
15 that.

16 So, I want to make sure that we're sensitive to
17 the efforts here.

18 Now, my other question goes to the EIR, the CEQA
19 process. Wouldn't've San Diego faced those same dilemmas?

20 BOARD MEMBER MORALES: Correct me if I'm wrong,
21 anybody, but I think the San Diego Copermittees were sitting
22 in exactly the same position as Orange County is today,
23 almost two years ago, and were making almost exactly the
24 same arguments then.

25 And I don't think there's anything different about

1 this MS4 Permit than, fundamentally, than the one that the
2 San Diego Copermittees had us apply to them, when we did.
3 And wasn't it May of 2013?

4 MS. SKORPANICH: And if I may, but for what
5 happened with the L.A. Permit since then, and the State
6 Board's posture that they've taken since then, signaling
7 that these compliance pathways are useful and have utility
8 in stormwater permits.

9 BOARD MEMBER OLSON: So, you have concern that
10 certain situations may confront you, but you do not know
11 today that those situations will confront you. Is that
12 correct?

13 MS. SKORPANICH: Actually, we do know that we will
14 be out of compliance today --

15 BOARD MEMBER OLSON: Right.

16 MS. SKORPANICH: -- should you approve this permit
17 today. We'll be out of compliance tomorrow and into the
18 foreseeable future, until such time as there is some means
19 by which we can be in compliance with the permit conditions.

20 BOARD MEMBER OLSON: All right. And so then I'd
21 like to ask the staff, what is the timeline for alternative
22 pathways to compliance? Are they going to be developed?
23 Are they envisioned?

24 MS. WALSH: Hi, I'm Laurie Walsh. I'm a Water
25 Resource Control Engineer on the Stormwater Unit. And

1 Betty, for your benefit, when we brought the Regional
2 Permit before the Board in 2013, we actually had some
3 proposed language for a compliance option in some of the
4 errata sheets. And at that time, the Board decided that, I
5 think like Dave Gibson mentioned, that was kind of the
6 bridge too far, where the Start Board had not made any
7 decision, yet, and we were a little early on in the process.

8 That particular errata sheet included like an
9 enhanced Water Quality Improvement Plan, which identified
10 any of the constituents that a Copermittee would be out of
11 compliance with. They would have to establish strategies, a
12 schedule, goals in order to take actions in order to bring
13 themselves into compliance with any exceedances that they
14 had at that time. It would be over, and above, and beyond
15 what was in the minimum permit requirements.

16 So, we had made an attempt to get that compliance
17 pathway. There were Copermittees that were supportive of
18 that. Many of the San Diego County Copermittees were
19 supportive of it. But it was a decision that the Board made
20 at that time, in May of 2013, to not go ahead and include
21 them at that time, and wait for the State Board to fully vet
22 the process a bit more.

23 We're a little bit down the road, now. The State
24 Board has taken a look at it. We've had some hearings,
25 public comment, that sort of thing. But the State Board has

1 not made any decision, yet.

2 And it's been our recommendation, and Dave, please
3 jump in if you want to add at this point, that we were going
4 to wait until the State Board made a decision, but then we
5 added this commitment to go ahead and have these
6 discussions, and bring language before you when we come to
7 you either later this year, or early next year with the
8 Riverside adoption. If that helps?

9 BOARD MEMBER OLSON: So, I just have one last
10 question. And that is Riverside -- so, the Orange County
11 Permit has expired and that's why they have to come into
12 this agreement at this time, why they couldn't wait to come
13 in at the same time as the Riverside, which might allow you
14 to develop the alternative. Unless, the State Board isn't
15 going to act on it for a long period of time and then there
16 is no alternative.

17 EXECUTIVE OFFICER GIBSON: Mr. Chairman, Board
18 Member Olson, if I can just offer a point of view. We are
19 moving forward on a regional, municipal separate storm sewer
20 system permit, which provides a construct, a framework
21 within Watershed Water Quality Improvement Plans are
22 implemented for the constituents of priority concern.

23 This attempts to put flesh on the iterative
24 process that the State Board gave us in 1999, as
25 precedential language to achieve compliance with water

1 quality objectives, and also achieve the maximum extent
2 practicable standard.

3 At that time it was not considered advisable by me
4 that we move forward with that compliance option. And, in
5 fact, we've never had that compliance option in 24 years of
6 Stormwater Permits.

7 When the Board did attempt to include such
8 language in 1997, USEPA actually vetoed the permit for
9 Riverside County and Vallejo on the grounds that the Water
10 Board was establishing a burden of proof that it, itself,
11 would not accept.

12 Based on those previous findings and the fact that
13 it seemed appropriate to get a watershed approach in place,
14 and then build on that later, it was my recommendation that
15 we not include the compliance option.

16 Los Angeles County did put one in, okay, and it's
17 being petitioned and being seriously objected to by the
18 environmental community. And we fully expect that there
19 will be litigation.

20 We have language that we felt was superior to the
21 Los Angeles approach. We are prepared to bring that
22 language forward again. But we do think that a stakeholder
23 discussion is appropriate. And if we're going to bring that
24 language to you for consideration, you deserve a full and
25 detailed administrative record to back that up.

1 It would be precedent setting. Even though Los
2 Angles has their approach, we think ours is different and
3 perhaps more detailed. And it would be timely in terms of
4 allowing the Orange County Copermittees to develop their
5 plan anticipating that. We're not talking about putting it
6 off for 18 months or two years. We're talking about
7 engaging the discussions right away, and bringing it in
8 with perhaps the Riverside Permit Amendments in December.

9 When we do that, I think we will have a basis and
10 an understanding of the objections of several parties to
11 that approach, and perhaps concurrence from the USEPA, as
12 they have so far, that that's the right approach.

13 It is a question of more likely of doing it right
14 and doing it once, rather than having a series of
15 repetitions in terms of trying to get this language right.

16 It is a different approach. So is the Watershed
17 Water Quality Improvement Plan approach that we have in
18 place. That has provided Copermittees, for the first time,
19 the right to choose which priorities are the most important
20 and to work on them.

21 It builds, in fact, upon the work that Orange
22 County has already done. And it is, in fact, the way we
23 think the practical vision should ultimately be attained.

24 A few more months, perhaps even a year, is not
25 going to be that much of a cost in terms of process and

1 time, if the outcome is far superior than rushing something
2 through now.

3 We could delay this action. And if we were to do
4 that, my recommendation is that we would delay it long
5 enough so we bring in Orange County with Riverside County,
6 at the same time. That we would do it once and do it right
7 in that respect.

8 But they would not benefit from several other key
9 aspects of the Stormwater Permit that the Regional Permit
10 offers them, like hydro modification, better monitoring
11 reporting requirements, and so on.

12 So, for those very many reasons, I recommend that
13 we do bring forward this permit, as it is now, and develop
14 that approach for the receiving water compliance option.

15 Understanding that there are several parties
16 you'll hear from today who vehemently disagree that that
17 safe harbor, or that approach should be offered. And they
18 may have alternatives that you may want to hear about today,
19 as well.

20 VICE-CHAIRMAN STRAWN: Yeah, in the interest of
21 moving this along, I'd like to remind everybody we have 20
22 minutes to follow. And I think we'd be happy to add a few
23 minutes to that if Joanne Webber or somebody would like to
24 address the County of San Diego's -- the questions about
25 whether you've seen any of the problems that are being

1 talked about here. I would like to hear about that and I
2 think I'd be happy, and my Board Members, fellow Board
3 Members would be happy to give you a couple extra minutes
4 if you want to do that.

5 The other question I have, has to do with Ms.
6 Skorpanich's comment. If we pass this Tentative Order
7 today, I believe you mentioned that from that time you would
8 be in noncompliance.

9 But to my understanding, that's no change from
10 where you are right now because that noncompliance has, in
11 fact, been in place since '99 or something like that. Is
12 that true or am I not reading this?

13 MS. SKORPANICH: Yes. Well, the policy from the
14 State Board has been in place since 1999. Up until the
15 time that the case was litigated against the Los Angeles
16 County Flood Control District, the interpretation was always
17 that you would meet those receiving water limitations to the
18 maximum extent practicable, per Section 402 of the Clean
19 Water Act, which specifically was in the amendments related
20 to stormwater, the regulation of stormwater. In
21 recognition that we could not turn off the pipe of what was
22 coming into our system, nor could we turn off the pipe of
23 what was coming out of our system.

24 And so, it was a different test of compliance, if
25 you will. That legal decision has turned everything on its

1 head. And we've been asking since then for a manner in
2 which we can be in compliance with the permits that we have.

3 And if I may, we would appreciate the opportunity
4 for a delay and to have that stakeholder process, first, and
5 get the language in our permit.

6 The other option just offered, you know,
7 respectfully, that we could also be getting our own permit
8 and that may solve some of the problems with what we're
9 looking for. It may not solve all the problems.

10 VICE-CHAIRMAN STRAWN: Okay. And here I show that
11 you have 9 minutes and 33 seconds left. So, if you want to
12 come back later and address some of these things, after the
13 others have spoken, yeah.

14 CHAIRMAN ABARBANEL: Okay. I read the comment
15 letter and I'm not sure if I'm in the Twilight Zone or
16 something, but your Attachment A, with the detailed comments
17 on our permit seemed pretty extensive. And, you know, I
18 thought we had the workshop in September to kind of address
19 all of the big, outstanding issues. And I'm reading through
20 that and -- okay, all right.

21 And I wasn't too sure, I mean you're saying in
22 your comment letter that we shouldn't do a Regional Permit
23 because we don't have the authority. And you raised several
24 other issues.

25 Could you comment on this and how it relates to

1 the process that we've been through and how we got to here?

2 MS. SKORPANICH: Sure. This was an issue that we
3 raised in both written and oral testimony during the
4 2012/2013 process. And based on our reading of the criteria
5 for issuing a Regional Permit, Orange County doesn't meet
6 any of those criteria that relates to Southwest Riverside
7 County and San Diego County.

8 So, that's why I mentioned that another option for
9 you is to issue us a separate permit.

10 CHAIRMAN ABARBANEL: Okay. I have a comment, but
11 I'd first like to thank the two ex-Brits for bringing us
12 this picture. And I would like to point out to you that
13 under the word "compliance", between the m and the p, is an
14 illegal discharge, which I recommend Orange County clean up
15 ASAP.

16 (Laughter)

17 MR. SKORPANICH: Chairman, it may be another Water
18 of the U.S., based on the Tributary Rule.

19 (Laughter)

20 MR. BARON: The original slide had the word
21 "lawyers" in the water.

22 CHAIRMAN ABARBANEL: But that's to the sharks.

23 MR. BARON: That was pulled out.

24 MR. SKORPANICH: And we took out the predators
25 that might be lurking.

1 CHAIRMAN ABARBANEL: I would like to add my
2 comments here that the MS4 Permit that we adopted for San
3 Diego County and are now planning for -- a tentative
4 proposal to enroll you and Riverside, has many, many aspects
5 to it, as our Executive Officer pointed out, which have been
6 argued thoroughly to be enormously beneficial for the
7 Copermittees.

8 And I am actually rather impressed that the one
9 item that is bothering you is not any of those items which
10 they have found so valuable, and the opportunity to discuss
11 this at some greater length, the issue. It's not even so
12 much alternative compliance, from what you've said, but any
13 compliance at all, in your view.

14 Along with all of the persons, all of the
15 Copermittees that will be enrolled in a unified permit over
16 the next few months is a really good opportunity, but also
17 offers you the opportunity, if we enroll you today, to
18 follow them any beneficial things that our neighbors in San
19 Diego County have signed, both optimistic and I understand
20 what your issue is.

21 MS. SKORPANICH: Thank you. As I mentioned when I
22 started my comments, we really did hope to be able to come
23 here today with a full-throated endorsement of the permit.
24 So, thank you for your time.

25 CHAIRMAN ABARBANEL: All right. Gary, you said

1 they have 9 minutes and 33 seconds?

2 VICE-CHAIRMAN STRAWN: Hold on, I wrote it down.
3 Next, we have 20 minutes for the County of San Diego. And,
4 Jo Ann, are you going to go first?

5 CHAIRMAN ABARBANEL: Well, maybe a bathroom break.
6 We've been here a couple of hours, since we came back and
7 have been here. So, I'd like to have -- it's now 3:26.
8 We'll be back at 3:30. Thank you.

9 (Off the record at 3:26 p.m.)

10 (On the record at 3:32 p.m.)

11 CHAIRMAN ABARBANEL: Okay, the next set of
12 speakers is representatives from San Diego County. You have
13 20 minutes. Sorry for interrupting your ready-to-go
14 attitude there.

15 PRESENTATION BY SAN DIEGO COUNTY

16 MS. WEBER: No problem, still ready to go. I'm
17 Jo Ann Weber, Planning Program Manager for the County of San
18 Diego and today I represent the 12 San Diego Copermittees
19 located in the Southern Watersheds of San Diego County, and
20 I have them listed up there.

21 Our request for your consideration today is to
22 allow EO Gibson the discretion to conditionally approve the
23 stream water condition proposed as part of the Water Quality
24 Improvement Plans and also the Watershed Plans that are
25 required by our permit.

1 And so, the benefits of this is essentially
2 approving this request will results in saving about a
3 million dollars that could be diverted to implementation
4 instead of conducting additional monitoring, where there
5 will be some very limited technical benefit.

6 I will provide some additional detail on this and
7 this is essentially a timing issue.

8 CHAIRMAN ABARBANEL: I'm sorry, but does this
9 relate to the item on the agenda, which is the enrollment?
10 I don't see the nexus.

11 MS. WALSH: It does. It relates to not the
12 enrollment of Orange County, but a different part of the
13 permit where Jo Ann's county has recognized a timing issue.

14 CHAIRMAN ABARBANEL: Oh, okay, I'm not saying I'm
15 opposed to it, I just didn't want to interrupt.

16 MS. WEBER: And they would also benefit from this
17 in their transitional monitoring, give them a little more
18 flexibility.

19 CHAIRMAN ABARBANEL: And I guess that they would
20 approve it too, then.

21 MS. WEBER: During the development of the Water
22 Quality Improvement Plan, during the first two years of the
23 permit, the Regional Board Staff required a mixture of the
24 new monitoring of the 2013 permit, and the old monitoring,
25 stream monitoring of the 2007 permit. This was a reasonable

1 compromise during the first two years of the permit where it
2 was during transitional monitoring.

3 Under the 2007 permit, stream monitoring was
4 conducted such that half the watersheds go one year and then
5 the other half go in the subsequent year. To be responsive
6 to the 2013 permit, the San Diego Regional Monitoring
7 Workgroup carefully planned ahead and added additional
8 stream monitoring over and above what was required during
9 the transitional monitoring period to meet the stream
10 monitoring requirements of the 2013 requirement.

11 The reasons to this is they wanted to be
12 responsive to the 2013 permit, but to allow time for the
13 eight watershed monitoring areas to take on more
14 responsibility of conducting monitoring.

15 As lead in two watersheds, and to meet our
16 jurisdictional obligations under the 2013 permit, the County
17 of San Diego will no longer commit the additional resources
18 to oversee monitoring activities for the entire County. In
19 short, we planned ahead.

20 So the timing issue is the high likelihood that
21 the eight Water Quality Improvement Plans that are currently
22 being worked on now will not be approved by the beginning of
23 the 2015 monitoring year, on October 1st. These plans are
24 due in late June and require a minimum of a 30-day public
25 comment period.

1 Board staff, ELO (phonetic) (inaudible) -- will
2 have average on their stack at that time, not only these
3 plans, but all of the total Jurisdictional Urban Runoff
4 Management Plans. So, the stack is going to be really high
5 for them.

6 Monitoring recommended under the 2013 permit, the
7 measurement recommended in Water Quality Improvement Plan
8 cannot be implemented unless EO Gibson approves of the
9 entire plan, not just the monitoring element.

10 So, just to address why this isn't a technical
11 benefit to conduct this additional monitoring, this is
12 essentially a carryover from the 2007 permit and the Board
13 Staff reduced the frequency of our stream monitoring and the
14 (inaudible) of stations based on an analysis of historic
15 data that we, the Copermittees, submitted as part of our
16 Report of Waste Discharge.

17 The analysis indicated that there was no added
18 benefit to the 2007 permit increased frequency of
19 monitoring. It wasn't necessary in order to track long-term
20 water quality trends.

21 The Copermittees have, at this point, completed
22 their requirement for stream monitoring of the 2013 permit.

23 And so, I just wanted to give you sort of just a
24 general idea. So, basically, we did year one, we're in year
25 two now, and year three is the one that's in question. And

1 we agreed that everything would be accepted and we could do
2 our monitoring that was in the WQIP. But because of this
3 timing issue, we're not so sure we can do it.

4 Okay, just to give you an idea of what I'm talking
5 about, in the seven watersheds we have to mobilize 13
6 stations. And these aren't just running out and grabbing a
7 water sample. We have a lot of sophisticated equipment that
8 has to go up in advance of the event, and there's a lot of
9 stuff inside as well. We have weather stations, there's a
10 lot of computerizations. You can talk to the station and
11 get it to collect the sample where you want. It would be
12 both 24-hour dry weather samples, as well as wet weather.
13 So, these are not just simple. They're complex and that's
14 why it's about a million dollars to do this.

15 Also, there's a lot of tasks that have to happen
16 up front. We're in a budgeting process now. By May, we
17 have to make sure we have our scopes of work ready for the
18 contractors. We have to obtain encroachment permits,
19 generally, to do these. We need to install on the stations,
20 as well as actually, for sure we'd have to collect that
21 first dry weather sample and it does add up.

22 And so, our request is essentially, instead of
23 requiring a third transitional year of monitoring, we
24 request that you give the discretion to EO Gibson to approve
25 the stream monitoring proposed in the Water Quality

1 Improvement Plans.

2 Thank you for your consideration of this request
3 and I'm glad to address any questions.

4 CHAIRMAN ABARBANEL: So, Catherine, will this
5 require a separate vote from the overall resolution?

6 MS. HAGAN: No. When you consider the tentative
7 order, you can include it in the -- you would identify it in
8 the motion if you wanted to incorporate the changes.

9 CHAIRMAN ABARBANEL: Okay. Are there any
10 questions?

11 MS. WEBER: And I did provide the language here,
12 too, which I did not mention.

13 CHAIRMAN ABARBANEL: Okay, thank you. Are there
14 any questions? Okay, thank you very much.

15 Oh, please.

16 MS. ARIAS: We just would like to add that we
17 support the Copermittees in this request.

18 CHAIRMAN ABARBANEL: All right. I have a second
19 card from the County of San Diego. Jon.

20 MR. VAN RHYN: Good afternoon. I'm Jon Van Rhyn
21 and I'm also with the County of San Diego.

22 To take us back a little bit, I want to talk about
23 prior lawful approval one more time. Hopefully, we've got
24 the presentation queued up on the screen. Do I have to do
25 something? Okay.

1 If I could, while we're figuring this out, I'm
2 just going to hand out copies of some language we're going
3 to be talking about in the presentation. There should be
4 more than enough there.

5 All right, well, I'm just going to go ahead and
6 get started.

7 (Pause in proceeding)

8 MR. VAN RHYN: It's going to be a little less
9 informative for the audience but, thankfully, you guys have
10 a handout to work off of.

11 So, I'm going to be referring to the handout that
12 you have in a second. I just want to give you a little bit
13 of background, first.

14 This issue, obviously, is not new. We've
15 actually beat it to death pretty well over the last year and
16 a half. I think most of you will recall we were here
17 talking to you about this at the October workshop. We also
18 had a separate meeting or workshop with Board Staff, I think
19 in September. And we've had countless meetings with the
20 different parties up to that point and since that point, as
21 well.

22 So, you know, when we talk about kind of where we
23 go from here, recognize that there's a lot of language that
24 has been worked out already. And when we talk about where
25 we need to draw the line and where we need to compromise to

1 find that position that people can support realize that a
2 lot of the compromising already has occurred. And that's
3 primarily between the Copermittees and building industry, or
4 project proponents. Because that's really the two parties
5 who sort of have to balance the risk and have to figure out
6 who's going to carry the risk for a particular project.

7 So, last time I talked about kind of what the
8 issue was. And just to frame it very, very generally, the
9 issue and why I keep talking about this, and not just
10 accepting that the old standard in the 2007 permit is
11 sufficient, is that project financing for most private
12 projects occurs very, very early. Prior lawful approval is
13 the way that most of us interpret those and most of us, I
14 think, do continue to go forward with the 2007 permit
15 definition. Realize how construction permits, which happen
16 very, very late, and what that does is create a disconnect
17 in timing between when somebody gets their project financing
18 and when they have certainty as to what their final
19 requirements are.

20 If that happens to span the gap of two different
21 permits, then you're stuck with having to them bring your
22 project up to compliance with newer standards. And that's a
23 really significant issue and that's something that we
24 learned in working with building industry that needs to be
25 resolved. And I think that's why we're all talking about

1 this because we all believe that it's worth solving. And
2 that's, you know, before staff had recommended taking
3 language out of the Staff Report, that was essentially what
4 it said was this is a problem worth solving, and I think we
5 all agree with that.

6 The issue for us, as jurisdictions, is that we're
7 balancing risk between whether or not we allow developers to
8 basically get earlier approvals and have a little bit more
9 certainty with their financing. When we do that, we take on
10 the risk that if a project is built to an earlier standard,
11 we're going to inherit the quality of that discharge because
12 we have strict liability for discharges from our MS4s.

13 So, if we are easier on a developer or easier on
14 our own projects, then that means that we may be treating
15 that water somewhere else, in some way later. And that's
16 kind of the balancing act that we've been working through
17 with the development community.

18 So, what you have before you, before staff
19 recommended removing it, is what's on the sheet that I just
20 handed you. And it's going to be a little bit more
21 difficult to describe it without the visuals on the screen,
22 but there are essentially three parts to this.

23 And the first one of those really is
24 recommendations for how to handle private projects. And
25 there's two pathways that staff had put there. And what

1 we're seeing in the tracked changes, I should say, is what
2 we did as a County, we're making recommendations on top of
3 what staff had proposed. We accepted all of staff's edits,
4 initially, so this is actually a markup on top of an
5 acceptance of those edits.

6 So, the first pathway is basically what you see
7 under subparagraph 1.b, there are two pathways, 1 and 2.
8 The first one of those, which we're in complete agreement
9 with and we didn't have any edits for, applies to the
10 majority of projects. And it just essentially says, if
11 somebody has a development approval or a construction
12 permit, and it complies with the PDP requirements of the
13 fourth-term permits -- and, actually, there's a little bit
14 of a problem with the fourth-term permits because San Diego
15 had one really long second-term permit, so we're not
16 actually on the fourth term, so that's a little bit of a
17 language problem.

18 But the point is that it's pointing back for us to
19 the 2007 permit.

20 If they define their drainage system in enough
21 detail and they comply with the 2007 permit then, basically,
22 we should be able to grandfather them or consider them to
23 have a prior lawful approval. And then later, in the
24 language, staff added safeguards that basically say under
25 what conditions can you continue to have that approval.

1 The second and more controversial pathway has been
2 number two there, which deals with the issue of vested
3 rights. And what staff had initially proposed was something
4 that was more or less acknowledging that there will be cases
5 where a jurisdiction will recognize that a project does have
6 a vested right, and normally under a vesting tentative map
7 or under a development agreement. Those are the two --
8 those are the only two statutory mechanisms for vesting
9 rights.

10 The problem, from the County's perspective, is
11 that those don't vest rights for stormwater requirements.
12 Stormwater requirements are via a State permit and you can't
13 vest those rights. So, we looked at that language and said,
14 well, if somebody came to us and they wanted to vest rights,
15 they had a VTM already, we would say no. You simply can't
16 do that, it's not a legitimate mechanism to do that.

17 So, what we did is we suggested edits that
18 essentially said, well, if you mention this permit, that
19 those were going to be a legitimate mechanisms for vesting
20 rights, and just say it. And so, we edited that language to
21 say, now, that if somebody has one of those things, the
22 Copermittee can basically accept that as vesting rights for
23 their stormwater requirements.

24 So, we're using the permit as the mechanism to
25 basically take away that ambiguity. Now, in doing that, we

1 obviously didn't want to open it up so much that somebody, a
2 project from 1988 could come back and say I've got a
3 development agreement and now I'm vested. And so, we added
4 the language that staff used in other places for the fourth-
5 term permit, and we basically said, fine, you can have that,
6 but you can't below the 2007 permit. So, we added that back
7 in.

8 We've had a lot of discussion with Copermittees,
9 we've discussed it with industry. And even though I'm
10 speaking here for the County, today, just so you know, we
11 did a vote of Copermittees to see who was in favor of these
12 language changes. Of the Copermittees here locally, we got
13 12 that voted for, including the County, two against, and
14 seven didn't reply.

15 And if you've ever polled our Copermittees, you
16 know that's a really good response rate, so we're pretty
17 happy. We think that that essentially means at 12 and 2
18 that we're pretty well speaking for the Copermittees as a
19 whole. So, it's a good jurisdictional perspective, at least
20 for this Region.

21 The other language, and I'll skip over this a
22 little bit more quickly, the next paragraph, down below that
23 one and two that you were just looking at, is really about
24 the public projects. And we didn't really change too much,
25 except to do the same thing with the fourth-term permit

1 floor. We felt like if we're going to hold developers to
2 the fourth-term permit floor, we should also hold our own
3 projects to that floor. We also added language that deals
4 with design-build contracts, which is a little bit of a
5 special case. In some cases, if you're not familiar with
6 design-build contracts, basically, you can contract with a
7 developer or somebody to do work for you under a design-
8 build, where it includes the design and it includes the
9 construction. In most cases, those are two separate
10 contracts.

11 All we're trying to rectify with this language is
12 to recognize that in some cases, when you're under a design-
13 build, we should just specify exactly when the PLA would
14 take effect. And that would be with the issuance of the
15 contract is what we're suggesting.

16 And then the final step, and I won't even labor
17 this at all, on the bottom, the last couple of things deal
18 with how staff dealt with essentially how you can continue
19 with the PLA once it's granted.

20 And there's really two issues. The first one is
21 that you've got five years. So, you've got to have all your
22 permits or you have to have all your approvals within five
23 years or you're back to the newer standard. We agree with
24 that. That's a really good safeguard to basically not allow
25 these things to go on too long.

1 And then the final thing was that throughout that
2 period the projects have to remain in substantial conformity
3 with the initial approval. We agree with that, as well.

4 We think actually, overall, with the changes that
5 the County is suggesting here, which are basically just, you
6 know, not the hugest. You know, they're really, relatively
7 minor changes, but there are some things that we felt needed
8 to be changed to be able to accept it. We think the staff
9 did a really good job. They really framed the issue. They
10 got all the pieces in place correctly. There were just some
11 things that they probably could not have anticipated, not
12 sitting in a jurisdictional seat. And these are the
13 corrections that we're basically asking you to make.

14 So, we're coming here today, essentially asking
15 you to not throw out the language and to actually include
16 the language that we've handed you, with those changes as
17 well on top, and to adopt that today, as part of the permit.

18 Understanding, of course, that you may not be
19 inclined to do that. And certainly, there's enough
20 uncertainty here that that may not be the way that you want
21 to go, would also recognize that if that's not the way that
22 you want to go, don't throw this out. Maybe, you could
23 direct staff to at least use this as the straw man for
24 starting discussions. Because we don't, certainly, want to
25 go back to ground zero on this.

1 And then just the last thing I want to emphasize
2 is schedule. What was talked about earlier was something
3 where there would be significant discussion in the next few
4 months and over this year. The problem with it is, if you
5 assume that the Riverside adoption is going to be on about
6 the same schedule as the Orange adoption is today, then I
7 believe the Riverside permit was 11 months behind the Orange
8 County permit, then you're looking at January of next year
9 as the date when that would be adopted.

10 The San Diego Copermittees have an effective date
11 for these new requirements in December of this year. So, if
12 that happens we haven't solved anything. It may be good for
13 Orange and it may be good for Riverside, but we're missing a
14 window of opportunity.

15 So what I would suggest is, if you are going to
16 move forward with that process and we're going to continue
17 this outside, look at ways to get this done sooner than
18 piggy-backing this on to the Riverside permit. Possibly,
19 through a permit deliverable, as some other regions have
20 done. Maybe the BMP Design Manual would be a vehicle for
21 accepting some of these things or, possibly, if there's an
22 opportunity to come back with a separate Board policy, or
23 something that can be done in a shorter-term period, we
24 would really recommend that.

25 So, that's all I have, unless you have questions.

1 BOARD MEMBER MORALES: Let me just, hopefully,
2 quick ones. As I understand it, and I could be wrong, this
3 will do two things. One, it will essentially serve to
4 allocate risk between like, say, the County and then the
5 development community, in a way.

6 MR. VAN RHYN: Correct, yeah.

7 BOARD MEMBER MORALES: And two, it will affect the
8 number of projects that come under the current MS4 versus
9 the '07 MS4.

10 MR. VAN RHYN: Yes.

11 BOARD MEMBER MORALES: Okay, with that as a
12 background, how many projects, roughly, are we talking
13 about. How many -- and this only like post-'07 DDAs that
14 we're entering into, correct?

15 MR. VAN RHYN: I'm sorry, I didn't understand what
16 was --

17 BOARD MEMBER MORALES: Well, this would only apply
18 to post-2007 development agreements?

19 MR. VAN RHYN: Yeah, it would be the effective
20 date of the 2007 permit, yes, the way we have written it.

21 BOARD MEMBER MORALES: Okay.

22 MR. VAN RHYN: So, roughly right now, I can only
23 speak for the County, we've identified probably between 40
24 and 50 projects where they might -- there's a question as to
25 whether they'll be grandfathered before December of this

1 year. And whether that's getting the construction permits,
2 as our current policy is, or whether that's something that's
3 revised per this permit or some other mechanism, that's
4 about the -- you know, what we're talking about. And that's
5 the max, that's just those that are still in limbo, that
6 haven't gotten to what we consider grandfathered in.

7 BOARD MEMBER MORALES: And as you stand here, any
8 sense for the average size of a project? Are these like
9 single-family? Are we talking about 400 --

10 MR. VAN RHYN: It's hard to say right now. I
11 mean, building is picking up and more permits are coming in.
12 But recognize that the PDP requirements under this newer
13 permit, they have brought those thresholds down. So, you
14 know, potentially, you're talking about a lot of smaller
15 projects as well.

16 BOARD MEMBER MORALES: Okay.

17 MR. VAN RHYN: Great, thanks.

18 VICE-CHAIRMAN STRAWN: Next, we have ten minutes
19 for the City of San Diego. And I think, Ruth Kolb, you're
20 going to lead it off?

21 PRESENTATION BY CITY OF SAN DIEGO

22 MS. KOLB: Good afternoon, Esteemed Board Members,
23 thank you for having me here today. My name is Ruth Kolb.
24 I'm with the City of San Diego. I'm a Program Manager in
25 the Transportation and Stormwater Department.

1 Yesterday, we sent a letter to Dave Gibson, which
2 needs to be read into the record, since you're only
3 accepting verbal comments. So, I will read the letter into
4 the record, which I believe you have copies of, and then I
5 will be followed by Summer Hasenin and Heather Stroud.

6 "Mr. Gibson, the City of San Diego submitted a
7 comment letter dated November 19th, 2014, on the Draft
8 Amendment to the Regional Municipal Separate Stormwater
9 System, MS4 Permit, for the San Diego Region to incorporate
10 the County of Orange, several incorporated cities of the
11 South Orange County, and the Orange County Flood Control
12 District as the Copermittees, Tentative Order R9-2015-001,
13 herein referred to as the Draft Amendments.

14 We appreciate the Regional Board Staff addressing
15 several of our comments and incorporating the changes into
16 the Revised Draft Amendments, dated February 11, 2014, in
17 particular. The City supports incorporating the areas of
18 special biological significance update requirements.

19 The City supports the inclusion of the prior
20 lawful approval definition. The proposed language provides
21 a clear, bright line of what constitutes a prior lawful
22 approval and will provide consistency across jurisdictions
23 in applying the new requirements on development projects.

24 And, the City supports incorporating the
25 opportunity for alternative receiving water limitation

1 compliance option.

2 After reviewing the February 11, 2015 Revised
3 Draft Amendments, the following are remaining changes that
4 the City requests to be addressed:

5 The City supports corrections that were made to
6 the Las Penasquitos Lagoon TMDL requirements, in Attachment
7 E. To be consistent with the Las Penasquitos Lagoon TMDL,
8 Resolution R9-2012-0033, the following additional changes
9 are necessary. In order to ensure that the MS4 Permit is
10 consistent with the TMDL and Basin Plan, incorporate the
11 following underlined language, taken directly from the TMDL
12 into Section 7.b.3.a.

13 'Successful restoration of 80 percent of the 1973
14 acreage of tidal and non-tidal lagoon salt marsh (346 acres)
15 or demonstrate that the implementation actions are active on
16 and/or affecting 346 acres with continued monitoring to
17 ensure 80-percent target achievement.'

18 In order to ensure that the MS4 Permit is
19 consistent with the TMDL final numeric target, which does
20 not include a sediment-loading reduction requirement, edit
21 Section 7.b.3.b.1 as follows: 'Incorporate the BMPs
22 required under specific Provision 7.b.2.c.2 or other
23 implementation actions to achieve compliance with specific
24 Provision 7.b.3.a. as part of the Water Quality Improvement
25 Plan.'

1 In order to ensure that the MS4 Permit is
2 consistent with the TMDL interim targets, which are stated
3 as attaining certain sediment load reductions or showing
4 progress in improving lagoon conditions consistent with the
5 specified targets add new Section 7.c.2.d to include the
6 following interim compliance pathway, taken directly from
7 the TMDL, the responsible Copermittee shows progress in
8 improving lagoon conditions consistent with specific
9 provisions in 7.b.3.a or.'

10 The City requests that each jurisdiction be able
11 to demonstrate compliance with permit independent of other
12 responsible parties. This can be accomplished by changing
13 the references to responsible Copermittees in the Compliance
14 Determination provisions of Attachment E to responsible
15 Copermittee.

16 Thank you for your time and consideration of these
17 comments. If you have questions, please contact Ruth Kolb
18 at blank, blank, blank."

19 This last comment about the independent
20 responsibility is important because it's not appropriate to
21 hold one responsible municipality responsible for the
22 elected body's decisions for actions or inactions. So,
23 we're requesting that each municipality be held
24 independently responsible.

25 And at this time, I'm going to turn it over to

1 Summer Hasenin.

2 MS. HASENIN: Good afternoon. My name is Summer
3 Hasenin and I'm with the City of San Diego. I am here to
4 speak to you on the prior lawful approval. But I will make
5 it easier for you, I do not have a (inaudible) --

6 Our request, at the City of San Diego, is simply
7 to adopt this into order with the proposed language that the
8 Regional Board Staff put forward.

9 We respectfully request inclusion of the prior
10 lawful approval language in this permit amendment. And the
11 reason we emphasize it on this permit is because of the
12 timing.

13 The 2013 Permit requirements go into effect for
14 San Diego County Copermittees' projects in December of 2015.
15 So, if you wait for inclusion of a prior lawful approval
16 language at a later date, that would be really too late for
17 our projects.

18 We do have projects currently in different reviews
19 and different permit review process, and these permits
20 already have an inquiry with the City of San Diego and other
21 Copermittees, already for the past year and a half, as soon
22 as the permit was adopted.

23 So, if we don't include anything now, this really
24 leaves us with no clear guidance for projects that are in
25 different approval process at this point.

1 I do appreciate what Christina mentioned, that the
2 interpretation of this language that they are proposing is
3 already all over the board. I totally appreciate that
4 because I've been hearing all these arguments. But I would
5 imagine that wide range of interpretation and inconsistency
6 in the absence of this language. That's really what we have
7 been dealing with for the past year and a half.

8 So, as a compromise, I think it would be great to
9 move forward with including the language as it. I think it
10 provides a pretty good start for a prior lawful definition.
11 And in the next 10 months or so, if we all agree, all the
12 stakeholders, that revision is needed, then we can bring
13 this forward at that time, or the permit proceeding for
14 Riverside County.

15 But as of now, we respectfully request inclusion
16 of the language as is, in this option. Thank you.

17 BOARD MEMBER MORALES: I have a question and this
18 would be for either you, Summer, and staff. If you could,
19 in like bullet point form, what are the top three
20 disagreements about the language as written? I mean --

21 MS. HASENIN: What constitutes a prior lawful
22 approval.

23 BOARD MEMBER MORALES: Oh --

24 MS. HASENIN: Just all the arguments and the crazy
25 thing with these three little three words, if you talk with

1 three different people in the audience, now, everybody will
2 give you a different understanding. And probably all of the
3 attorneys have the same understanding, but engineers might
4 not be as smart as the attorneys, we don't understand the
5 language unless it's clearly stated in permit language, in
6 all permit language. That's our simple request.

7 BOARD MEMBER MORALES: Well, I can't tell you I'll
8 give you your request. But I will give you this, engineers
9 are as smart as attorneys, trust me.

10 (Laughter)

11 MS. STROUD: Good afternoon, I'm Heather Stroud,
12 I'm a Deputy City Attorney with the City of San Diego. And
13 I'm going to focus on the Los Penasquitos Sediment TMDL
14 Permit provisions.

15 Ruth walked through the changes we're requesting,
16 but you may not have caught it the first time, so I'll just
17 explain what we're asking for. So, I have a few slides
18 here. On the left side of each slide is the permit language
19 either quoted or paraphrased, and on the right side is the
20 TMDL requirement, so you can see them side by side.

21 The City does appreciate the corrections that were
22 made in the Revised Tentative Order, but still has three
23 major issues of concern where the Compliance Provisions are
24 not consistent with the TMDL. They are required to be
25 consistent with the TMDL under the Clean Water Act

1 Regulations at 40 CFR 122.44. So, we do have issues here.

2 In each case, the current language may be
3 permitted to take away a compliance option from the
4 Copermitttees that was meant to be available when the TMDL
5 was adopted. And I did have a chance to meet with your
6 staff and with Dr. Lin, from EPA, on this earlier today.
7 And I don't believe the intent was that the permit be
8 inconsistent with the TMDL, so I suspect if revisions aren't
9 made to it today, you're probably going to see it coming
10 back to you in the Riverside reopener. We'd obviously
11 prefer to get it right now, instead of having to go through
12 that again.

13 So, the first issue we have is that with the Final
14 TMDL Compliance Determination the permit allows final
15 compliance to be shown by successfully restoring the lagoon.
16 However, the TMDL recognized that reaching this target could
17 take more than 20 years, and does not preclude compliance if
18 it does take longer.

19 So, as you see on the right, the TMDL allows
20 compliance by demonstrating that implementation actions are
21 active on and/or affecting the 346 acres with continued
22 monitoring. So, we would just request that that language be
23 added into the permit as is.

24 The second issue we have is also regarding the
25 final compliance pathway and the Water Quality Improvement

1 Plan pathway. The only final compliance target that was
2 included in the TMDL is the lagoon restoration target.
3 We're concerned that the WQIP compliance pathway adds a
4 final compliance requirement that's not in the TMDL, that
5 adds a requirement to meet a sediment load reduction on top
6 of that lagoon restoration target.

7 So, we have requested a revision to Section
8 7.b.3.b.1 that just makes clear that we can either
9 incorporate BMPs required to meet WQBELs or other
10 implementation actions to achieve the lagoon target, which
11 is referenced at 7.b.3.a.

12 And the third and final issue we have is that with
13 the interim TMDL compliance determination, and the TMDL
14 makes clear that compliance can be shown by meeting interim
15 sediment load reductions. And as you can see on the right,
16 and/or showing progress in improving lagoon conditions
17 consistent with the specified targets.

18 So, we just simply request that that compliance
19 pathway be added to the interim compliance determination.

20 So, thank you. And the permit language really
21 does need to be clear. We want to get it right the first
22 time. This is the first time this TMDL is being
23 incorporated into the permit. It was adopted by this Board,
24 by the State Board, and approved by EPA with broad
25 stakeholder support, so we're just asking for the permit to

1 be consistent with that. Thank you.

2 CHAIRMAN ABARBANEL: Any questions? Thank you.

3 VICE-CHAIRMAN STRAWN: And we have five minutes
4 here for Riverside County.

5 CHAIRMAN ABARBANEL: While they're coming up, does
6 staff object to inclusion of the TMDL language? Do you
7 object to the inclusion of that TMDL language?

8 MS. ARIAS: So, as it turns out, we still object
9 to some of the requests but I think there were three
10 bullets that Ms. Stroud brought up. And we, actually, agree
11 that the TMDL interim target language should be adjusted.
12 And we actually have language. It's not exactly what Ms.
13 Stroud suggested --

14 CHAIRMAN ABARBANEL: We can save that for later.

15 MS. ARIAS: We can save that for later, right.

16 CHAIRMAN ABARBANEL: Yeah, yeah, sorry.

17 MS. ARIAS: But I just want to add, too, that I
18 think Ms. Stroud made a good point that it's important to be
19 clear. And one of our jobs, as permit writers, is to
20 translate a TMDL from the Basin Plan Amendment into the
21 permit. And it goes from the TMDL Basin Plan Amendment
22 into something enforceable. So, we try our best to
23 translate what the intent of the TMDL staff, into
24 enforceable, clear permit provisions.

25 And so, we purposely did not include some of the

1 language that Ms. Stroud referred to because we felt it was
2 not clear and we wrote it -- we simply just wrote it
3 differently. It accomplishes the intent and accomplishes
4 the same thing, but is more clear.

5 So, and as she mentioned, we did review their
6 comment letter several times and, to be honest, when we
7 spoke this morning, also with Ms. Lin, from EPA, it became
8 clear that we had a misunderstanding. And so, we did tell
9 the City of San Diego that we would -- now that we
10 identified the misunderstanding that we -- if we agree that
11 there's something still not quite right with the Basin Plan
12 Amendment that we would agree to fix anything that needs to
13 be fixed, when we come back for Riverside County.

14 BOARD MEMBER MORALES: And I want to make sure we
15 do do that because when we talk about, you know, the permit
16 writer's responsibility, I think as regulators one of the
17 things that I think this Board wants to do is encourage the
18 type of process that we had with the Los Penasquitos TMDL.
19 And we want the parties that bought into that process and,
20 essentially, wrote your own TMDL to continue to see that as
21 a viable option in the future.

22 VICE-CHAIRMAN STRAWN: And I show two cards for
23 Riverside County, Mark Grey and David Garcia. Is that
24 correct.

25 MR. GARCIA: No, just David Garcia.

1 VICE-CHAIRMAN STRAWN: Oh, okay.

2 PRESENTATION BY RIVERSIDE COUNTY

3 MR. GARCIA: All right. Good afternoon, Mr.
4 Chairman, Board Members and participants. I'm David Garcia,
5 the NPDS Program Manager, with the Watershed Protection
6 Division at the Riverside County Flood Control Water
7 Conservation District.

8 The District serves as the principal permittee
9 under the 2010 MS4 Permit for the Santa Margarita Region.
10 I'm also speaking today on behalf of the other Permittees,
11 which are the County of Riverside, the Cities of Murrieta,
12 Wildomar, and Temecula.

13 Well, the today the Board's (inaudible) to adopt a
14 permit which applies to us. We appreciate this opportunity
15 to provide some thoughts on the permit.

16 We commented extensively in 2013, on the permit
17 that was adopted by the Board then. And I believe those
18 comments have been put into the record this time around, and
19 that's appreciated, thank you.

20 I'd first like to say that we support the comments
21 of the Orange County Copermittees on various aspects of the
22 permit. Most importantly, we join the Orange County
23 Permittees on their request for an alternative compliance
24 option. We do think an alternative compliance option offers
25 the best opportunity for an approach to improving water

1 quality that is cooperative and collaborative.

2 The Riverside County Copermittees are strong
3 supporters of this approach. It requires that the
4 Copermittees use good science and engineering practices to
5 identify, prioritize and address complex water quality
6 problems. For this approach to work, however, Permittees
7 can't be looking over their shoulders, worried that any
8 failure might leave them liable for violations. They have
9 to be proactive and not defensive.

10 Stormwater management staff need the flexibility
11 to determine how best to improve water quality. If
12 Permittees are liable for any exceedance of a water quality
13 standard, then that exceedance could halt or delay major
14 program elements that distract from the goal of proactively
15 managing stormwater.

16 Therefore, administrative and legal proceedings
17 could be driving the program. It's not the best method for
18 creating effective stormwater and water quality policy.

19 The Permittees seek a process to reach compliance.
20 While minimizing major program interruptions, we understand
21 that if the Permittees don't follow and agree to an
22 alternative compliance process, they will be held
23 accountable.

24 So, we look forward to submitting our Water Waste
25 Discharge for consideration in May. We're also continuing

1 our efforts on adopting partnerships in conjunction with
2 local water agencies to reduce both dry and wet weather and
3 water usage within our watersheds.

4 Finally, I want to thank the San Diego and Orange
5 County Permittees for their efforts in the San Diego Region,
6 and also Regional Board Staff for their engagement with us
7 in the Santa Margarita Region.

8 So, I'd be happy to answer any questions. Thank
9 you.

10 CHAIRMAN ABARBANEL: Betty?

11 BOARD MEMBER OLSON: I do. I realize that you're
12 not entering into the permit today. But if you were
13 entering into it do you -- I thought I heard from your
14 comments that it would delay program activities because you
15 would be or you could be out of compliance. Did I
16 understand that correctly?

17 MR. GARCIA: Yes, if we have exceedance in water
18 quality standards and either someone takes us to court or an
19 issue arises like that, that distracts a whole lot of our
20 big program elements that we may be working on to address
21 that issue.

22 So, looking at the real risk of either an
23 exceedance in our water quality priorities is what we want
24 to stay focused on.

25 BOARD MEMBER OLSON: All right, thank you very

1 much.

2 MR. GARCIA: You're welcome.

3 CHAIRMAN ABARBANEL: Other questions?

4 I have a question. There's been a lot of
5 reference today to considering some tricky verbal legal
6 issues at the time that we consider the enrollment of Orange
7 County in the overall permit -- or Riverside County in the
8 overall permit. Your permit extends until November of this
9 year, as I understand it. Is that right?

10 MR. GARCIA: That's correct.

11 CHAIRMAN ABARBANEL: Could you possibly consider
12 identifying May as the time that your permit is over, so
13 that we can consider enrolling you in a more timely manner
14 and addressing the issues that have been raised to benefit
15 both the San Diego County Copermittees and the Orange County
16 Copermittees?

17 MR. GARCIA: Due to resource constraints, I don't
18 think we'd even be able to consider that.

19 CHAIRMAN ABARBANEL: Well, I thought I should ask.

20 BOARD MEMBER OLSON: So, is there anything to
21 preclude you from simultaneously preparing for your November
22 entry into the permit and at the same time working on
23 alternative pathways, or is that precluded from anything in
24 our materials as the Board?

25 EXECUTIVE OFFICER GIBSON: Mr. Chairman and Board

1 Member Olson, they're certainly not precluded from beginning
2 the development of their watershed approach and the other
3 permit compliant elements. And indeed, Riverside Counties
4 and other Copermittees have, over the last 24 years,
5 routinely developed new programs. Riverside County, in
6 particular, has been a leader in low-impact development.

7 So, there are opportunities for them to move
8 forward on this, to even propose amendments, or changes, or
9 additions to their programs as part of their Report of Waste
10 Discharge.

11 But the obligation to implement best management
12 practices, to the maximum extent practicable, is not
13 contingent on a permit cycle. It's a continuous obligation.

14 And, indeed, it's expected to grow, and refine, and improve
15 the program year to year, to year, irrespective of permit
16 renewals.

17 CHAIRMAN ABARBANEL: So, that might be seen by an
18 optimist, maybe me, as a possibility that we don't have to
19 wait until November to resolve the issues that are troubling
20 the San Diego and Orange County Copermittees. We could get
21 to that pronto and promptly, is that correct?

22 EXECUTIVE OFFICER GIBSON: It is possible, Mr.
23 Chairman, to do that a couple of different ways. If
24 Riverside County were able, in its Report of Waste
25 Discharge, to identify the key elements that it would want

1 to have addressed in the Regional Permit, that amendment
2 could come sooner than November, if they were agreeable to
3 that. I believe they do have the option to continue until
4 November before the Board issues that new permit.

5 Moreover, for a constrained subject like prior
6 lawful approval, if you're not able to come to a decision
7 today on exactly what language you want to have included in
8 the Orange County extension, the staff could work with the
9 stakeholders and bring a targeted amendment back to you at
10 the later date, that's independent of the Riverside
11 amendment.

12 But I will point out that we'll hear testimony, in
13 a few minutes, from other speakers who have a very decidedly
14 different point of view, than we've heard so far, on prior
15 lawful approval. So, I would encourage you to wait and hear
16 what they have to say before suggesting an option, any one
17 of those several I mentioned.

18 BOARD MEMBER MORALES: One question. Since, you
19 know, you guys will be here in November, one thing that Ms.
20 Skorpanich said was for Orange County, you know, we might
21 want to consider giving them their own permit. That's
22 always one of those careful what you wish for. But is that
23 something that Riverside County will come to us in November
24 and say, hey, you know, how about giving us our own permit
25 that we might take back and say, hey, let's give them

1 numeric limitations?

2 (Laughter)

3 MR. GARCIA: I'd have to talk to the Permittees,
4 but I think the Permittees want a permit that's widely
5 accepted by everyone.

6 BOARD MEMBER MORALES: Okay.

7 MR. GARCIA: By everyone, and especially the
8 Permittees.

9 BOARD MEMBER MORALES: All right.

10 MR. GARCIA: Thank you.

11 VICE-CHAIRMAN STRAWN: Roger Butow, five minutes.

12 PRESENTATION BY ROGER BUTOW

13 MR. BUTOW: I'm sorry, I've been lulled into
14 sleep.

15 VICE-CHAIRMAN STRAWN: I didn't mean to wake you
16 up so rudely.

17 MR. BUTOW: That's okay. We were back there with
18 Jerry Falwell and Jurassic Park and wondering what era we
19 were in. Well, sorry to nod off.

20 Once again, Roger Butow, Founder and Executive
21 Director of Clean Water Now. The first thing I'd like to do
22 is thank staff and we had a great time working on the task
23 force they developed in 2013. And we support this permit,
24 just to start at the top, we do support this permit. We
25 have several reservations, but we'll set those aside because

1 we think, basically, we've got a done deal.

2 We are fascinated with the County's position, the
3 sky is falling. Those of you that, as a child, and your
4 parents told you about the boogie man under the bed, this
5 thing about litigation -- well, since I never mince words,
6 it's asinine. It's obscene for someone state it here. To
7 my knowledge, and Clean Water Now has used this for 17
8 years, to my knowledge, no one has ever even filed such a
9 thing in Southern Orange County. Not what they're talking
10 about, over a general stormwater permit.

11 On our watch, starting with the 96-R3, on through
12 today, in fact what the County's done is spent taxpayer's
13 money hiring lawyers to fight every permit. I would submit
14 to you that the County has never been in compliance with any
15 of the permits. So for them to stand up here and
16 disingenuously say to you, well, when we walk out tomorrow
17 we won't be in compliance if you pass this today. Well,
18 dud, as Homer Simpson would say, you've never been in
19 compliance as far as Clean Water Now is concerned. So, why
20 would you be in compliance tomorrow? You'll be filing more
21 paperwork. In fact, you have on your docket, that you'll
22 handle in closed session, existing appeals, whether they're
23 in abeyance or not, for prior permits. So, there's nothing
24 there.

25 If you want a track record, I wish we could put

1 the picture back up of the Bridge Over Troubled Waters, the
2 supposed state of the environment for Orange County. That's
3 pretty hysterical.

4 I was told, and I'm going to try to confirm it,
5 the fact that language, and none other, is even mentioned in
6 the Region 8 permit. So, now they're asking you to include
7 it.

8 And as I shared, in a jocular manner with your
9 staff, well, maybe we should just let the County of Orange
10 write the permit and you all can sit out here, and they'll
11 sit up there. They'll write the permit and then tell you,
12 and then you can stand here and speak on why that permit is
13 not acceptable. The tail doesn't wag the dog. That's the
14 bottom line, as far as Clean Water Now is concerned.

15 And this thing about aggrandizing a document, the
16 State of the Environment, I've lived in Orange County since
17 I joined the Marine Corps. That goes back to 1965, except
18 for my tour in Vietnam. And I object to anyone trying to
19 typify the waters of Orange County as being safe and
20 healthy.

21 In fact, what's made, and I think you have someone
22 here from Department of Water Resources, so we've been in a
23 drought since 2000 and I believe seven, so for eight years
24 we've had drought. We've had tier rinks come into being.
25 We have all kinds of things that have affected the flows.

1 Of course the dry weather flows show lower fecal indicator
2 bacteria because we don't have any water. That's the bottom
3 line. And any twit could figure that out.

4 If I seem upset, I am. It's because my County
5 keeps fighting the simplest of environmental improvements,
6 which is the basis for all life, which is water itself, and
7 clean and healthy water, both drinking water and water in
8 our streams.

9 I would say that, you know, George Bush, mission
10 accomplished on an aircraft carrier, fine. If you want to
11 stand here and say, and I love this quote, and I'm sure it
12 was not intended to be intentionally funny, and I'll finish
13 with this, based on the success of the Orange County
14 Stormwater Program there's little justification for much of
15 the Tentative Order.

16 Well, I don't know if that's supposed to be funny.

17 I sat at my desk and laughed myself sick, reading that,
18 that my County can actually claim that there's not even
19 much -- was it little justification for much of this order.

20 There's a lot of justification and it goes back to 1972.

21 So, if someone wants to disinter Richard Nixon and
22 have him take his signature off of the Clean Water Act, he's
23 out there in Yorba Linda. Good luck. Thank you.

24 CHAIRMAN ABARBANEL: Thank you, Roger.

25 VICE-CHAIRMAN STRAWN: Mike Beanan, also five

1 minutes.

2 PRESENTATION BY MIKE BEANAN

3 MR. BEANAN: Good afternoon, Mike Beanan, Vice-
4 President, South Laguna Civic Association. And thank you,
5 once again, for coming up to Orange County for the day.

6 I want to begin by thanking Staff and the Board
7 for working so hard on these permits, I know it's difficult.

8 But just the last time you were up here, the
9 County got up and argued that there were 10,000 impaired
10 creeks in the United States, so what's the big deal if we
11 just have another couple impaired creeks?

12 Well, it is a big deal because the impaired creeks
13 in the Aliso Watershed drain into a marine protected area
14 that's on Nightly News as whale habitat. So, that is a big
15 deal. And that's why these permits are so important to us.

16 Orange County remains out of compliance with the
17 existing permit. They don't enforce water quality in Aliso
18 Creek. The berm is routinely breached, illegally, to
19 discharge into the ocean, and the watershed remains a 303d
20 impaired watershed.

21 In their own reports, there's noncompliance at a
22 dozen storm drains, specifically J01, P08. J01 and P28 show
23 very high fecal coliforms, and this is in their own reports.

24 There's no dry weather diversions to control point
25 sources. All the diversions are at the expense of the

1 people of Laguna Beach and coastal cities, and that's not
2 fair. The Regional Board hasn't issued cleanup and
3 abatement orders to motivate compliance. If we don't get
4 speeding tickets, everybody speeds.

5 I believe we can manage stormwater better at
6 strategic capture sites inland, and remove the regional
7 nutrient loading that we're enduring at our coastal
8 receiving waters.

9 The County gets up here and argues what they can't
10 do. I work in the private sector. If I show up at a job
11 and tell people what I can't do, I don't have a job.

12 So, I would suggest that maybe we need to reach
13 beyond the talent that we have in this room and break the
14 monopoly that these agencies have over stormwater
15 management, and look into offering requests for proposals to
16 private contractors, and ask them to come in and give us
17 some ideas about how they would stop these flows.

18 Because of litigation and pressure from
19 Coastkeeper, Donald Brand, one of the major developers in
20 Orange County, captures 50 years' of stormwater on the
21 Pelican Hills development. And he did that about 10 years
22 ago. So, if a major developer can do it, I believe there
23 are other people who are out there who can do this. And if
24 the County can't do their job, or won't do their job, or
25 can't see a way forward to do their job we need to find some

1 people that can. And it's too important to let this
2 languish. Thank you.

3 VICE-CHAIRMAN STRAWN: I see someone standing
4 here. At this point, I have 15 minutes set aside for the
5 San Diego Coastkeepers and Coastal Environmental Rights
6 Foundation. But I can't tell which of the speaker cards go
7 under that. So, if you want to come up and help me get the
8 order set or just identify yourself and I'll put the cards.

9 Excuse me, the gentleman that thought he was next,
10 if you can --

11 (Off-mic comment)

12 VICE-CHAIRMAN STRAWN: Oh, okay. Do I have a
13 card?

14 UNIDENTIFIED SPEAKER: On Riverside, or that's it,
15 Riverside is on the address part.

16 VICE-CHAIRMAN STRAWN: Do I have a card for you?

17 UNIDENTIFIED SPEAKER: I submitted a card, yes, I
18 did.

19 VICE-CHAIRMAN STRAWN: Okay.

20 UNIDENTIFIED SPEAKER: And you said when David got
21 up --

22 VICE-CHAIRMAN STRAWN: Okay, I got you.

23 PRESENTATION BY SAN DIEGO COASTKEEPER

24 MR. O'MALLEY: Much to the chagrin of apparently
25 everyone in the room, I'm not Jill Witkowski (phonetic).

1 I'm Matt O'Malley, from San Diego Coastkeeper.

2 (Laughter)

3 MR. O'MALLEY: Just a little bit of background, I
4 think it's a lot easier to reach consensus on higher level
5 issues. The devil is really in the details. So, now that
6 we're kind of getting into the nitty gritty of this stuff, I
7 think that's where, you know, some of our more differences
8 come out. But nonetheless, here I am.

9 I did want to get up and support the staff's
10 recommendation of taking the prior lawful approval language
11 out. I'm going to talk about that, first, and then a little
12 bit about receiving water limitations.

13 You know, I get calls I would say fairly regularly
14 from people, and the public members of ours, who are looking
15 at different development projects that are happening around
16 the County. And one of the first questions they ask is why
17 do they say they have to follow the 2007 Permit requirements
18 and not the 2013 Permit requirements? And they're based on
19 the old footnote that was in the permit, based on the
20 understanding of vested rights law.

21 Based on Regional Board Counsel's letter to the
22 County about this issue, somewhat recently, of last year, my
23 response is when the BMP Manual comes out, if they've
24 basically gotten really far and done some work on the
25 ground, according to the case law, that's just about -- keep

1 an eye on the -- you know, there's some fluidity there.

2 You know, the way I look at the Permit, the 2013
3 Permit, is its set -- it's MEP standards, right, and it set
4 a floor for that. It said here are the new rules,
5 Copermittees, you go out and implement these. You have the
6 legal right to do so because the law obviously lets you do
7 that, but now you have the obligation to do so as well,
8 okay.

9 So, I think the big question here is that the
10 Board, instead, needs to say or does it want to make a
11 decision, well, we didn't mean that for everything, right,
12 there are some exceptions. And what those exceptions are
13 and what they look like.

14 I think from a policy perspective, and just
15 speaking on some of the language that was drafted, both the
16 staff's initial language as well as, you know, from the
17 County, I want you to think about what that means from a
18 practical perspective. There could potentially be projects
19 breaking ground in the year 2021, who are following the 2007
20 Permit requirements, 14 years after that permit was put into
21 place. So, I just wanted you to think about that, if that's
22 what you mean by giving enough flexibility on the PLA
23 definition.

24 That said, because we do also have people asking
25 me, I have calls all the time, you know, our members about

1 this. When is this supposed to take effect? I do
2 understand, you know, the call for clarity.

3 To me it was pretty clear, you know, based on what
4 the Board says, what the permit says, what the existing law
5 says, but apparently not to everyone.

6 To that extent, if we're going to offer
7 alternative language, you know, I think a lot of this
8 started because of the removal of a footnote in a prior
9 permit, you know, I don't think that we have any problem
10 just reinstating that language. I think it's the most
11 legally defensible definition of prior lawful approval in
12 line with existing case law.

13 Especially if you meant what you said is these
14 regulations are now going to be in effect going forward.

15 I want to kind of get off that really quick
16 because I want to leave plenty of time for my colleague to
17 speak, but receiving water limitations, you heard earlier
18 Orange County talking about how this 9th Circuit decision
19 sort of changed the game. It didn't. It really just
20 expressed in case law and said, yeah, the way you guys have
21 been giving the permits all along, that is right. This is
22 not a new obligation. This was the obligation to meet these
23 receiving water limitations from the beginning.

24 As far as pathways to compliance, I can think of
25 other ways to do it besides cutting the citizens out of the

1 process. What happens is, if you pass something like a safe
2 harbor, and you're given this protection from this fake
3 fear -- now, on the record, I have no plans to bring any
4 kind of enforcement actions against the City or County at
5 this point. You know, but that's really what the fear is.
6 But I think you're cutting citizens out.

7 And so what happens is, if you come up with this
8 plan, then really it is on the five of you, or the six of
9 you, or seven of you are essentially the only people who are
10 going to say, yeah, when is good enough, good enough. And
11 then we won't have that say in that, if we're not able to
12 utilize -- and we also hear that we talk about early Clean
13 Water Act allowed citizen suits. It actually encouraged
14 them. I mean, part of the legislative history says we know
15 that the government can't do all of this. There's going to
16 be a lot of things happening out there, so we encourage the
17 citizens to go out and do that. So, just think about that
18 as you go forward in this discussion.

19 From that perspective, you would essentially be
20 cutting us out of the process.

21 I want to leave time for Marco to speak, so that's
22 really all I have to say. So, again, I support pulling the
23 language out. But if there's going to be an alternative, I
24 think rather than reinventing this complex system, just put
25 the language in that was in the last permit, because it's a

1 pretty bright line. It gives the clarity to both
2 Copermittees and to developers as to when those regulations
3 take effect. Thank you.

4 VICE-CHAIRMAN STRAWN: If I can get a card later
5 from you, and Marco, so --

6 MR. OMALLEY: They should have been submitted. We
7 did submit cards, pink ones.

8 PRESENTATION BY COASTAL ENVIRONMENTAL RIGHTS FOUNDATION

9 MR. GONZALEZ: My name is Marco Gonzalez. I'm a
10 Partner with Coast Law Group and the Executive Director of
11 the Coastal Environmental Rights Foundation.

12 A lot of you haven't seen me before the Board, but
13 a couple of you, Eric, Gary, a lot of the staff knows I've
14 been involved in these issues at the municipal level,
15 really, since 1996, since I was back in law school. I was
16 part of the team that litigated the '01 challenge by the
17 BIA. I've been involved in so many meetings, at one point I
18 kind of had to take a break and let some other folks carry
19 it.

20 But coming back around into this round of regional
21 permitting discussion, I'm coming forward with, yes, 17, 18
22 years of on-the-ground experience. But the last 10 years
23 have given me a new perspective. Because, as an
24 environmental activist, as the former senior attorney at
25 Coastkeeper, as the guy who sued Encinitas under the old

1 stormwater permit, and was involved in the settlement with
2 the County of San Diego, the only two actions in San Diego
3 under the Stormwater Permit, I've moved on to a place where
4 I represent developers, responsible developers. There are
5 some out there. They want to do the right thing.

6 And what's interesting is they hire me because I'm
7 a guy who has negotiated kind of the realm of community
8 support for projects and I understand these issues. And so,
9 I get to sit in that proverbial back room and they ask me,
10 how do we do this? How do we possibly get around having to
11 comply with the new stormwater, and the new hydro model, and
12 the new, and let's go all the way back to the SUSUMP
13 (phonetic) requirements. Oh, my God, if we have to comply
14 with SUSUMP we're going to go broke, we're going to go
15 bankrupt, our city budgets can't handle it. Baloney. We've
16 beaten back every Chicken Little complaint, story, the sky
17 is falling that's every come forward on this.

18 And there's one thing that I've learned in the
19 last number of years, representing developers, is that if
20 you give them clarity, they'll do what they got to do to
21 comply.

22 And where the problem comes in is where you get
23 lawyers who don't have the environmental perspective, who
24 feel like they do their clients better by pushing hard on a
25 city, who doesn't have the staff resources, either in the

1 City Attorney's Office or the Engineering Department, to
2 push back. And so, you get those circumstances that I'm
3 sure Wayne Rosenbaum will come up and talk to you about,
4 where there are threats of lawsuit, there's uncertainty,
5 there's oh, my God, we just don't know what constitutes a
6 vested right.

7 Having litigated this matter, I'll tell you, it is
8 absolutely clear to every lawyer who participates in a land
9 use discussion, a vested right exists when you have an
10 investment and you move ground. That means a grading
11 permit.

12 The 2007 footnote, as Matt noted, is by far the
13 clearest representation you could have put. And if you
14 couple it with the statements that came forward at the time,
15 it's pretty clear this was intended to apply pretty much as
16 quickly as possible going forward.

17 And so, the people that I've represented, I've got
18 guys who have had tentative maps that date back 10 years,
19 and they come forward without a grading permit to try to
20 finalize their map and get the grading permit and lo, and
21 behold, they've got to go back and put a bunch of detention
22 basins in the front yards of their prior lots. A little
23 more engineering. They figure it out.

24 Occasionally, they've got to take a home out and
25 make it a larger detention pond, but they do it. It's not

1 the end of the world. There aren't so many projects out
2 there that would have to go back to the drawing board.

3 But what you will see, if you adopt language
4 today, is a whole lot of people scrambling to get a very
5 nebulous project approval, as the original proposed language
6 suggests, that they would then argue constitutes an ability
7 to hold onto that 2007 hydro mod language.

8 I think having met with staff, my associate,
9 Ludwig Borac (phonetic) and Matt have met with staff, and
10 explained these issues, I think it really does make the most
11 sense to punt for now. And I think to send a message going
12 back that, look, it was pretty clear to begin with. The
13 line of cases established, in the land use context, an
14 extremely bright line. If you really want to get yourself
15 vested, get your grading permit. Take a shovel out, move
16 some dirt, and then you're good to go.

17 Now, on the issue of alternative compliance, you
18 know, this one hits home for me because back when we brought
19 our lawsuit against the City of Encinitas, in 1999, the
20 argument is you have receiving water limitations in your
21 permit, and you have since at least '96. And there's some
22 language in '91 that suggests those were coming.

23 And remember, that permit was supposed to be
24 issued many years before that, but for litigation it took a
25 while longer. We've never been in compliance in wet

1 weather. We spent so much time talking about how we're
2 going to deal with elicited discharges during dry weather
3 flows, we essentially turned to my constituency of surfers,
4 the people who are actually in the water and said, you know
5 what, 72 hours after a rainstorm, sorry, you don't get to go
6 swimming. That was our response to wet weather discharges
7 for the last 25 years.

8 And I'm here to say that when I heard Orange
9 County stand up and tell you not here's the litany of what
10 we've tried in wet weather but, instead say, we're going to
11 jump to the infeasibility argument, I don't accept that. My
12 constituency doesn't accept that. The State of California
13 doesn't accept that.

14 And I would be willing to bet that if you brought
15 EPA back up here and asked them how they feel about the
16 notion, nationwide, where problems -- where it rains a lot
17 more than it does here, whether wet weather noncompliance
18 is simple acceptable and feasible, they'd say baloney.

19 Now, much as Matt represented, I'm here to say
20 flatly, on the record, between now and the time that the
21 permit is reopened to include Riverside and we have a
22 stakeholder process to discuss the alternative compliance
23 issue, until the issue is resolved in L.A., and the appeal
24 to the State Board, and the litigation, I'm not sending out
25 60-day notice letters to these guys. The same way I didn't

1 five years ago, and the five years before that.

2 They've been in noncompliance since the day I
3 first looked into this issue, and I've often wondered why we
4 haven't sued them. But they did in L.A. They brought the
5 issue forward. Someone had to.

6 What I want to hear them do, what I want to hear
7 from the Copermittees in all three of these regions is we
8 accept that this is a problem and we're not going to stop
9 until it's fixed.

10 The touchstone of Stormwater Compliance Permits is
11 the iterative process. The iterative process, as I
12 understand it, is you go out and you implement some BMPs.
13 You try to achieve MEP. If you don't achieve receiving
14 water limitations, you take it upon yourself to reassess
15 your plan, to come up with new, more stringent, more costly,
16 more technically advanced BMPs and you keep trying.

17 But the iterative process, as we've seen in these
18 regions, is you don't do much. You claim Chicken Little,
19 the sky is falling, it all costs too much.

20 The iterative process in this region is, if the
21 Regional Water Board has a permit renewal, or a permit
22 reopener, or an enforcement action that causes you to have
23 to go back and actually do something new, like a Suisun
24 manual, a hydro mod, then you change your plan. But absent
25 that, there is no Copermittee who can credibly stand before

1 you and say that they have taken to task the iterative
2 process, in their jurisdiction, and credibly implemented
3 new, more stringent BMPs on their own accord.

4 It's either me or Matt beating them over the head
5 over some very specific thing, that never really even
6 reaches the Regional Board's attention, or it's you guys
7 having a process.

8 So, I just find it a little bit disingenuous,
9 after about 20 years of being involved in this, to hear the
10 same story over and over again. I mean, we were sitting
11 before the Court of Appeals. They tried to get us up to the
12 State Supreme Court. We have had this discussion on so many
13 levels, so many times, it's time to just end it. You guys
14 are doing the right thing in doing the Regional Permit.

15 I think staff has done a phenomenal job and
16 they've evolved so far from where they were 20 years ago,
17 I've got to say.

18 And I really think that the smart thing to do on
19 the prior lawful approval at this point is to punt it,
20 perhaps at some direction that reaffirms that the grading or
21 construction permits, the APCO (phonetic) line of cases
22 really is the reasonable starting point.

23 And then, to just kind of hold onto our seats as
24 we get to the alternative compliance discussion and
25 stakeholder process.

1 I do also want to say that with respect to two
2 issues, one of them was the one that Ruth Kolb presented,
3 regarding the stream monitoring, and also the issues that
4 staff support regarding, I believe it was TMDL discussions.

5 We don't really have any problem with either of those.

6 Thank you.

7 CHAIRMAN ABARBANEL: Thank you.

8 VICE-CHAIRMAN STRAWN: Thank you. Next, I think
9 we have Wayne Rosenbaum, the Coalition.

10 MR. MC SWEENEY: Maybe we go first.

11 VICE-CHAIRMAN STRAWN: I don't know. Sure, Mike,
12 come on up.

13 (Laughter)

14 MR. MC SWEENEY: We had requested a block of time.

15 VICE-CHAIRMAN STRAWN: Yeah, there's a block of
16 time for you. I just had one card, though. You gave a card
17 earlier. We only have one mic. You'll have to stand real
18 close together and use the single microphone.

19 MR. MC SWEENEY: I'm going to go first and he'll
20 follow.

21 VICE-CHAIRMAN STRAWN: Okay.

22 PRESENTATION BY BUILDING INDUSTRY ASSOCIATION

23 MR. MC SWEENEY: Before I start my time, I just
24 wanted to bring you some news on my best buddy on Facebook,
25 Jill Witkowski. I believe this Saturday she becomes Jill

1 something else, she gets married. So, while we miss her, I
2 will say that she is better looking than Matt O'Malley, but
3 Matt O'Malley's a great guy.

4 I'd like to start out by addressing one thing that
5 Marco just said and --

6 CHAIRMAN ABARBANEL: Thank you for clarifying
7 that.

8 (Laughter)

9 MR. MC SWEENEY: What Marco's just said about, you
10 know, the BMPs and the different things. The problem isn't
11 the BMPs, the problem isn't the regulations. The problem is
12 we have a gigantic County and the regulations have only been
13 applying to new development. But everything we've built for
14 the last 150 years, there's nothing.

15 So, we've kind of been chasing our tail. And I
16 will give the credit to the staff and the Executive Officer,
17 this new permit takes us in a different direction, to where
18 under alternative compliance we're going to be able to do
19 things that will start to capture pollutants off of existing
20 sites.

21 Otherwise, we're going to wait 200 years for
22 everything to be redeveloped and then we will finally put a
23 net over everything.

24 Prior lawful approval is what I wanted to speak
25 about. I believe it was in May, ourselves and some of the

1 Copermittees, we'd asked for a workshop. We had the
2 Executive Officer, the permit-writing staff, we had members
3 of my industry, we had Matt and some of the
4 environmentalists, and a number of Copermittees.

5 And one of our members gave a, for lack of a
6 better description, a quick tutorial on land development 101
7 and project financing. And I think that Jon Van Rhyn
8 touched on it, that both staff and the Copermittees
9 understood some of the challenges the development industry
10 deals with. Because the average project time to get
11 something approved for a housing development is about eight
12 years, because of CEQA, everything else. If there are
13 challenges, legally, to that or the CEQA wasn't done right,
14 it could be 12 to 15 years. The worst case scenario you
15 could -- if you were that unlikely, you could hit three
16 permit cycles.

17 So, through all this planning it's where, which
18 one do you -- are you covered under?

19 So, I comment staff for not being land use
20 attorneys, listening to us, and coming up with reasonable
21 language. Was it perfect for us? No. But it was a good
22 start.

23 This last Wednesday, the County called us up and
24 said, hey, we want to talk to you. We don't like the
25 language. We met with staff yesterday. And we're here to

1 support the County's -- or your staff's suggestion to pull
2 this back. Our view is we would like to get this right, if
3 it takes a little bit more time to do that. But I think
4 both the City of San Diego and the County identified, for
5 you, the real problem, logistically, with if there isn't a
6 clear definition, and we pass December and it doesn't happen
7 until then, there's that never, never land. And then, how
8 are they going to do their job because they're accountable
9 when your staff comes to audit them.

10 So, to us, it makes sense to get it right. The
11 problem, one of the problem is, you know, over time, if
12 you're in the eight years and then you do your project in
13 phases, so you've broken ground, you've got a 100-unit
14 subdivision, you build it in four phases. Your final phase
15 starts in year six. Well, you know, and then it's -- you know
16 now, you'll hear substantial conformance, there's that gray
17 area. So, we're trying to get this identified so that our
18 members' rights are respected, your regulations are adhered
19 to. We don't want to leave the County or the Cities, the
20 Copermittees hanging out to dry.

21 And I think that the direction that your staff and
22 your Executive Officer have led the way in the last three
23 years that I've been doing this, is people are
24 collaborating.

25 So, my request to you is very similar to what you

1 had said earlier. I would request that you direct your
2 staff to set up a working group, with people from my
3 coalition, the environmental community, some of the
4 Copermittees. We'd like the working group to be small
5 enough so it's effective.

6 And, as President Roosevelt said, "Lock them in a
7 room" and offer to feed us day-old sushi, if we can't get it
8 done.

9 CHAIRMAN ABARBANEL: I don't think sushi was all
10 that popular during his regime.

11 (Laughter)

12 MR. MC SWEENEY: But I think that having us work
13 together, you know, and for me it was illustrative last
14 Wednesday, because Wayne was talking with Tom Bosworth, from
15 the County, and for a lay person it was like listening to
16 two guys debate how many atoms you can put on the head of a
17 pin.

18 So, the important thing is to get everybody in the
19 room to work together. So, I would think that that's a
20 reasonable request.

21 If we can't do that before the Riverside, then it
22 may make sense to do something on a case-by-case basis or
23 have an interim policy.

24 But we're here to work with anybody. You know,
25 the staff says in two weeks, hey, let's get some folks

1 together and do this, we're willing to do it.

2 I'd like to give the rest of the time to Wayne to
3 fill out the rest of our argument.

4 PRESENTATION BY THE CONSTRUCTION INDUSTRY COALITION

5 ON WATER QUALITY

6 MR. ROSENBAUM: Good afternoon, Wayne Rosenbaum,
7 on behalf of the Coalition. First of all, yes, we would
8 very much like to thank staff. They have worked hard on
9 this. They have been a pleasure to work with and I think we
10 have made significant progress.

11 The issue here really is clarity. We can do a lot
12 more when we understand the parameters of our both rights
13 and obligations.

14 I would also tell you that Marco is correct that
15 under the APCO standard that is one way that rights get
16 vested. I don't know that Marco has -- or Mr. Gonzalez has
17 fully briefed you on other statutory vesting rights which
18 are the problem here.

19 If you leave out three-quarters of the projects
20 and their vested rights, and only look at APCO, then we
21 really don't have that set of direction that we need.

22 Examples, and yes, I can give you examples. We
23 have a dialysis unit that would like to build in one of the
24 Copermittes. They don't know what the rules of the road
25 are. So, they kind of sit on the sideline. And it's

1 (inaudible) -- that everyone will just assume that there are
2 economics involved, and are there are other environmental
3 concerns involved. And what do you do in the case of this
4 dialysis unit, where the entire area's already been built
5 out to the '07 standard, the roads are in, the pads are in,
6 the detention basins are in, everything's complete, we're
7 building a building. And now, we're trying to figure out
8 what standard applies to that building. We need that
9 clarity.

10 So, what we will ask of you is really two things.

11 Direct your staff to convene a meeting of stakeholders
12 soon, within the next several -- I would prefer within the
13 next several weeks. We all know what the issues are, we all
14 have a starting point. Shouldn't they realize that and pick
15 up the phone, start making some phone calls and find a
16 convenient date. It shouldn't be problematic.

17 Two, I do not think we're going to come out of
18 that room with 100 percent consensus, but I think we can
19 come out of that room with a pretty reasoned position that
20 staff can support and that at least -- or maybe a large
21 majority of the stakeholders can support to bring back to
22 you, for your consideration.

23 And three, please do not make us wait until
24 Riverside. We should be able to do a limited reopener
25 because there are just too many important projects,

1 important social projects that don't know where to go or
2 what the rules of the road are. And when we go into a city
3 and ask them, well, what rules should apply to us, they say,
4 we don't know. And we understand that they said we don't
5 know because the current permit just says if you have a
6 prior lawful approval you, the jurisdiction, may use your
7 discretion.

8 So, that's our request. We hope that it's not
9 overreaching. Again, we thank your staff. And if there are
10 any questions, we're available. Thanks so much.

11 CHAIRMAN ABARBANEL: Thank you.

12 VICE CHAIRMAN STRAWN: Mark, it's your turn now,
13 Mark Grey.

14 MR. GREY: Good afternoon, Board Members. My name
15 is Mark Grey, with an "e". I'm the Director of
16 Environmental Affairs for the Building Industry Association
17 of Southern California and the Technical Director for the
18 Construction Industry Coalition on Water Quality.

19 My San Diego brethren just spoke. I represent the
20 territory that the South Orange County MS4 Permit would
21 govern.

22 I've just got a couple of quick points and, at
23 this late hour, I certainly will not take 10 minutes, and
24 more like one minute.

25 First off, I wanted to state my support and our

1 support for the off-site low-impact development BMP
2 Alternative Compliance option that this permit provides,
3 should you choose to adopt it today.

4 I think the Regional Board has shown some great
5 leadership, and especially your staff on this issue,
6 involvement. Christina and Laurie have been actively
7 involved in the San Diego County Water Quality Equivalency
8 Technical Advisory Group, a committee helping to develop the
9 technical criteria for complying at off-project locations,
10 when you cannot retain stormwater on site. And we're
11 building up a real big database of knowledge on that and how
12 to do it, and that's exciting.

13 We're working together, cooperatively, the San
14 Diego Copermittees and the Orange County Copermittees, on a
15 cooperative joint scope of work to develop that program.
16 I'm fortunate to be working with Orange County on a
17 cooperative agreement on the second phase of that project,
18 to do case study analysis, benefit cost analysis, do the
19 economics so that appropriate in lieu fees and credit
20 trading programs could be support locally, in the
21 communities.

22 And over the next several years we'll be looking
23 for pilot projects and opportunities to bring this program
24 to life. So, I just wanted, again, to state our support for
25 that and your Board and staff's support of that process. I

1 think we're really moving somewhere in that regard and it's
2 going to provide flexibility. And we've heard about
3 development today, a number of people representing
4 development and we want -- that flexibility is what we're
5 looking for and we appreciate that.

6 And lastly, I just wanted to support the Orange
7 County and the Copermittees in Orange County with respect to
8 seeking an alternative compliance approach for receiving
9 water limitations. I think the membership that I represent,
10 we're understanding of their argument and their place, and
11 we get that there's -- I think I saw Richard Boone give a
12 presentation where he showed the Loch Ness monster as it
13 related to the receiving water limits, like is it out there
14 or it isn't?

15 But I think, given the 9th Circuit decision, I
16 don't agree with the Coastkeeper point of view that it
17 doesn't do anything. I think it puts a burden of liability
18 onto the Copermittees. And that liability could be placed
19 onto our membership down the line, in terms of approving
20 developments and conditions of discharge.

21 So, I would conclude by saying the State's -- I
22 would urge you all to read the State Draft Order, and I
23 would read it very carefully. It's an excellent order. But
24 I don't necessarily agree with the State's conclusion that
25 there isn't enough evidence to demonstrate that retention of

1 the 85th percentile storm, the feasible retention of the
2 85th percentile storm, that they didn't have enough evidence
3 to demonstrate that that wasn't going to lead to compliance.

4 And I would disagree with that. And I think Board
5 Member Anderson, you were here in 2007, and '06, and I don't
6 know if all the Board Members were here then. Mr. Gibson,
7 you were staff.

8 But when we look at the evolution of what we've
9 talked about in these hearings, both here and throughout
10 California, we're practicing what EPA asked us to do in 2007
11 and 2008, in the NGOs. Do watershed planning. Retaining
12 85th percentile storm. That is the best practice. That's
13 the max, that's the expression of MEP, one of the highest
14 expressions we can have. That's using the iterative
15 process.

16 And so, I guess I'm sympathetic to that argument
17 that if we're -- if they're undertaking these Watershed
18 Management Plans, WQIP in San Diego, the Watershed
19 Management Plans and Enhanced Plans in Los Angeles, and when
20 you look at what's in those plans, you look at the actions
21 that are being taken to retain the 85th percentile 24-hour
22 storm, to the extent feasible, and you look at the money
23 that's being spent it's astronomical. It's in the hundreds
24 of millions of dollars.

25 I'm not making this up, this is on the record in

1 Los Angeles.

2 So, I would urge you to read that order, look at
3 it. The Board has already come up with an alternative that
4 you discussed in the 2013 San Diego adoption. I would urge
5 you to act on that now and not wait. Move quickly and we're
6 sympathetic to that.

7 Thank you very much, appreciate your time.

8 CHAIRMAN ABARBANEL: Mark, I really wanted to
9 thank you for the study that you attached to your comments.
10 That was very helpful as something I think the Board might
11 have been looking for from your industry, for many years.
12 So, that was really helpful and it will help, I think, craft
13 the future, making it easier. There's better understanding
14 of getting things done on the ground.

15 MR. GREY: Appreciate that. Our mission is
16 advocacy, education and research, and our research needs to
17 support what we do in clean water. And we're really proud
18 of that, so I appreciate that.

19 VICE-CHAIRMAN STRAWN: Okay, I show four more
20 cards and I think we're down to interested persons. If I
21 skipped any of the groups, let me know. But I'm going to
22 start with Penny Elia, from Sierra Club.

23 Okay, then I have -- I think I have three city
24 representatives, Devin Slaven, from the City of Lake Forest.

25 And then I'll follow him with a Tracy Ingerbritsen, from

1 the City of Laguna Beach. And then, Richard Gardner, from
2 Capistrano.

3 PRESENTATION FROM THE CITY OF LAKE FOREST

4 MR. SLAVEN: Thank you. I will be very brief.

5 Although I did go from good morning to good afternoon, and I
6 think we're approaching evening now. Good evening, Mr.
7 Chair and Members of the Board.

8 My name is Devin Slaven. I'm the Environmental
9 Manager for the City of Lake Forest.

10 And I just wanted to take a brief moment to
11 acknowledge and thank Mr. Gibson, all of your Permit Staff,
12 and your Counsel, Ms. Hagen, for working with the City of
13 Lake Forest and our neighboring cities that have political
14 boundaries that are split between two Regional Boards.

15 We appreciate staff's willingness to meet with us
16 and develop a plan forward for single MS4 Permit regulation.
17 Over the years it has proved increasingly difficult to
18 implement a cohesive stormwater program for two separate and
19 sometimes disparate MS4 permits.

20 We support and are thankful for the opportunity,
21 provided in this Permit and Correlating Agreement, to
22 continue to participate in the development and
23 implementation of the Aliso Creek Watershed WQIP, while
24 being principally regulated by the Santa Ana Water Board MS4
25 Permit for most day-to-day program activities.

1 And that's it, thank you.

2 CHAIRMAN ABARBANEL: Thank you.

3 PRESENTATION BY THE CITY OF LAGUNA BEACH

4 MS. INGERBRITSEN: I'm just going to say good
5 evening. Good evening, Chair and Board Members. My name is
6 Tracy Ingerbritsen and I'm the Senior Water Quality Analyst
7 from the City of Laguna Beach. Always a lot of people here
8 from my City.

9 The City of Laguna Beach supports the San Diego
10 Regional Municipal Permit, but would urge the Regional Board
11 to consider including the alternative compliance option.

12 Laguna Beach has approximately six miles of ocean
13 coastline. Portions of our coastline are designated as
14 State Marine Reserve, a Marine Conservation Area, and an
15 Area of Special Biological Significance.

16 The City has purchased and is surrounded by
17 permanent open space. We value and embrace our precious
18 environmental resource.

19 Our beaches and the ocean are important to the
20 City of Laguna Beach. Significant investments have been
21 made to ensure our beaches and ocean waters are clean and
22 protected, not only for our residents and visitors, but also
23 for the animals that live in them.

24 The City has installed 25 urban water diversion
25 units that divert 67 percent of the developed watershed,

1 urban nuisance water, to the sanitary system for the
2 majority of the year. We have renovated and/or replaced
3 numerous sewer lift stations, public restrooms and public
4 parks to prevent potential pollutants from reaching the
5 ocean.

6 We recently spent \$4 million cleaning up the
7 historic burn site that drains into a 303d listed creek. We
8 care about our environment.

9 The City's proximity to the ocean, its designated
10 coastline, and the large amount of visitors each year
11 ensures that we see more monitoring of our waterways than
12 most of the other cities included in this permit. Holding
13 these monitoring results to strict receiving water limits is
14 of concern to the City of Laguna Beach, considering we will
15 have a greater liability based upon current monitoring
16 requirements.

17 Again, the City of Laguna Beach supports the
18 adoption of the San Diego Regional Municipal Permit and
19 urges the consideration of an alternative compliance option.

20 Thank you.

21 CHAIRMAN ABARBANEL: Thank you very much.

22 VICE-CHAIRMAN STRAWN: Richard, you're up.

23 MR. GARDNER: Waste not, want not.

24 VICE-CHAIRMAN STRAWN: And I'm sorry for keeping
25 you until the end --

1 MR. GARDNER: No problem.

2 VICE-CHAIRMAN STRAWN: -- that's where your card
3 wound up.

4 PRESENTATION FROM RICHARD GARDNER

5 MR. GARDNER: I suggested earlier that there may
6 be an advantage to the Regional Board hearing some of the
7 public at some point early on, so that you could weigh some
8 of their thoughts while you're hearing the municipalities,
9 counties, and other interested parties.

10 I'm Richard Gardner from Capistrano Beach. And I,
11 you know, have been involved in the MS4 Permits. The first
12 one that I was involved in, I think was with Bill Hammer.
13 And then the next one was Jeremy. Jeremy did a great job.
14 Was that the 2007 one?

15 Anyway, and I was here last year, in May, when you
16 heard conversation at that time supporting the permit. And
17 there was some areas that I was uncertain as to what would
18 come out of it.

19 One was those treatment plans, those end-of-point
20 treatment plan diversions that discharge back into the
21 creek. And I don't think -- I think we ended up saying
22 we'll just pass that and we'll do it later.

23 And you may not know, or maybe you do, that some
24 of those that were put in didn't function, and I don't even
25 think they're working anymore. They were put in because

1 they got grant money from Prop. 50, and it was thought this
2 is going to sterilize the creek water, and we'll just dump
3 all this clean water back in and we'll be fine.

4 But the results showed that in the case of
5 bacteria, it's a living organism and you may have things
6 that don't always follow rationale. Like the study for
7 Poachee Creek, where levels of bacteria in the upper
8 watershed were higher and then the levels dropped until they
9 got nearer the shore, and then they went into those
10 underground box channels. And then at the pond, the levels
11 again went up.

12 So that bacteria is a little bit difficult to
13 control and I think there should be the flexibility built
14 in, and even though we all want to see our water clean that
15 way. I think Betty remembers in, I think it was '99, when I
16 first met you at UCI, asking about water quality at that
17 time.

18 I want to just say one more thing. Besides the
19 fact that those devices that are in the creek beds and
20 they're trying to -- that were, at one time, filtering water
21 and now are doing nothing, they have almost become a
22 pollutant in themselves, they're an unnatural thing.

23 I was wondering if, in the monitoring part of
24 this, there needs to be a program and it could be just
25 indicated by the Regional Board, there will be the

1 Implementation Plan. In other words, it's another part that
2 the Permittees will say here's how we plan to implement the
3 permit. And it could be a very straight forward thing. I'm
4 thinking of the 10 CFR 50, part of the Federal Regulations
5 for Nuclear. You know, it can be anything from a new reg
6 guide, where you actually say here's how we want you to do
7 it, to implement the regulation or they can come back and
8 suggest the things. It gives a nice working relationship.

9 But for instance, we have now said we're not going
10 to have any more discharges, no more urban runoff. Don't
11 run that water off the lawn. We don't want any water
12 running down the driveways. Everybody in this county knows
13 that. But yet, we still have water running down the street.

14 And my question for you is, how is your
15 Copermitttee actually living up to that permit and is it the
16 little book they write and say, Mrs. Brown, we saw water
17 running off? Or, you know, they could tell you they have a
18 plan, but what you really need to do is check and see.
19 Well, how are you implementing our stormwater permit? Thank
20 you.

21 VICE CHAIRMAN STRAWN: Thank you. And I
22 understand I goofed up earlier. I had a card here for Ray,
23 but I somehow thought you were with the other Coastkeeper
24 group and so I skipped you, I'm sorry.

25

1 PRESENTATION BY ORANGE COUNTY COASTKEEPER

2 MR. HIEMSTRA: No problem. I have a slightly
3 different issue to discuss.

4 Good evening, Board Members. My name is Ray
5 Hiemstra. I'm the Associate Director for Orange County
6 Coastkeeper.

7 I just want to start off by urging you to approve
8 the permit today. As a lifelong resident of Orange County,
9 I'm a little disappointed with some of the presentations on
10 kind of a can't do attitude. Orange County's one of the
11 wealthiest counties in the country. We can do whatever we
12 need to do. We'll do whatever we're required to do. So,
13 I'd like you to keep that in mind.

14 What I'm here specifically to talk about is adding
15 marine protected areas in a section of the permit. We
16 worked on the permit for a long time and, you know, we
17 support what's there. But I did notice that marine
18 protected areas aren't there. They were implemented in
19 2012, in the South Coast Region. They're a really important
20 aspect to Orange County Coastkeeper.

21 So, I'm just going to request that in Section B,
22 the Water Quality Improvement Plan, Subsection 2.a.3, and
23 this is on page 21, of 132, of the strikeout version, is
24 revised to include marine protected areas.

25 They're certainly on a part with ASBS, and

1 wetlands, and estuaries, so I think they should be added in
2 a priority for clean water. Thank you.

3 CHAIRMAN ABARBANEL: Thank you. Did you want to
4 comment on that?

5 MS. WALSH: Laurie Walsh with the San Diego Water
6 Board. I've spoken to Ray about this particular area in the
7 permit and staff could support that recommendation, if you
8 made that for us to make that change, to that particular
9 section.

10 That section is within the Water Quality
11 Improvement Plan Requirements. It's under the Priority
12 Water Quality Conditions and requires Copermittees to
13 consider the following minimum types of receiving waters,
14 and although marine protected areas could be included in
15 what we call receiving waters recognized as sensitive, or
16 highly valued, I think it could be included in that
17 language, but we would not be opposed to adding the specific
18 "marine protected" words to the permit, if you so desire us
19 to do so.

20 CHAIRMAN ABARBANEL: Thank you. Any other
21 questions of our staff? A few issues have been raised over
22 the last four hours. Well, I believe, actually, you now
23 have some minutes. I've lost track of the minutes. To
24 address the various questions and suggestions that have come
25 up. And if you had some specific suggestions on what we

1 should vote on, what is -- I mean, we have your overall
2 recommendation, but we've heard a number of commentaries.
3 Would that be of interest to the rest of the Board? Good.

4 VICE-CHAIRMAN STRAWN: I think if we give them
5 time, we ought to also -- we still had nine minutes on the
6 County, if they wanted to say something.

7 CHAIRMAN ABARBANEL: And 33 seconds.

8 VICE-CHAIRMAN STRAWN: Yes, sir nine minutes and
9 33 seconds.

10 CHAIRMAN ABARBANEL: Okay.

11 BOARD MEMBER MORALES: I think if there are any
12 points that you think we should --

13 MS. ARIAS: We do have closing remarks. But I
14 have a question. So, there are closing remarks and I don't
15 know if the County would like to use their nine minutes or
16 not. But I think, would you like us to go first or --

17 VICE-CHAIRMAN STRAWN: Yeah, I don't really care.
18 But it seems to me maybe the County would go first and then
19 you can have your closing remarks.

20 CHAIRMAN ABARBANEL: That would be appropriate
21 because their nine minutes are remaining.

22 VICE-CHAIRMAN STRAWN: Is Orange County okay with
23 that?

24 CLOSING REMARKS BY ORANGE COUNTY

25 MR. BARON: Good evening.

1 CHAIRMAN ABARBANEL: We were just debating whether
2 to just give you 33 seconds.

3 MR. BARON: Please. I have a seven- and a four-
4 year-old to pick up by 6:00 and the daycare has high fees.
5 I have to rush to Central Orange County and potentially
6 break the law to get there.

7 CHAIRMAN ABARBANEL: No, we don't want to hear
8 about that.

9 MR. BARON: I know. I feel the need to clarify
10 some of the statements that we made. It isn't about -- when
11 Mary Anne Skorpanich and I went up to the State Water Board
12 and spoke, at the Receiving Water Limitations Workshop, we
13 deliberately did not want to talk about litigation. And we
14 thought it did a disservice to the MS4 community to phrase
15 everything in terms of trying to get out of being sued,
16 because it's never been about that.

17 It's been about finding a pathway to compliance
18 and we don't have that. And under the NRDC case, it
19 reclassifies us as an industrial discharger, essentially.
20 And those cases that I read to you, or just cited briefly,
21 are cases that are going on now, putting us in the same
22 situation where we have to meet numeric standards all
23 places, at all times.

24 So, yes, I have to touch upon litigation somewhat.
25 And by way of example, Los Angeles County, in that

1 litigation, in the public record is being alleged that
2 they've violated 213 exceedances over nine years, for a
3 total of \$37,500 per exceedance, which is a total of \$8
4 million. So, that's a lot to have to deal with.

5 And I think the folks that I work with want to do
6 all -- are arguing all they can in their programs, and want
7 to try and find ways to even meet those constituents that we
8 don't think we can meet for 20 or 30 years.

9 But the point is the reclassification, which was
10 not the intent of the State Board, it was not the intent of
11 Congress. And the other issue is that to find some way to
12 compliance.

13 And we had a recommendation in front of your body
14 two years ago, the Board did not vote on it. It's been two
15 years. We could come back and, I guess, wait another year
16 for that to happen.

17 But these issues are ongoing. And so, it takes
18 one lawsuit, it takes -- and I'm not a litigator. I've done
19 regulatory stuff my entire career, going back to Washington
20 D.C. I'm, I guess, a risk management person. I advise
21 clients, you need to go out and meet the requirements of
22 your permits, you need to do this.

23 But when I open a permit and, Mr. Morales, you
24 mentioned earlier that you can get your own permit and meet
25 strict numbers. We feel that we have that permit. We have

1 flexible ways, more flexible ways to deal with constituents
2 of concern. We have the ability to prioritize, to take back
3 the program. But there's still that missing link about a
4 pathway to compliance. And we're very, very encouraged that
5 staff is recommending that in the fact sheet, to come back
6 at a later date. And, hopefully, the Board is amendable to
7 that, as well.

8 But I just wanted to sort of talk about this issue
9 of litigation and sort of that is not what our program is
10 about. Thank you.

11 MR. CROMPTON: Chris Crompton, with the County of
12 Orange. I appreciate the dialogue today. I appreciate your
13 rapt attention. I think you've been engaged, and we've
14 asked good questions, and we really appreciate it.

15 I think we, you know, over this process since
16 2012, we've come a long way and there are some big picture
17 items that are out there, that came to the fore today and
18 really have sort of -- the defining issues of stormwater and
19 they're kind of in your lap.

20 I did want to just touch on a few items that
21 people brought up along the way, that I thought need to be
22 cleared up.

23 Everything that's happening now is due to drought.
24 You know, improvements are only due to drought. Well,
25 drought helps. I mean, less water means less pollutants, if

1 that is true. But there are BMPs as well in place. And I
2 think, you know, we heard this morning, is the drought the
3 new normal? I mean, we're beginning to get into probably
4 what is more a historic normal cycle. What we had before
5 potentially was an adverse cycle.

6 So, you know, the BMPs are in place. They're
7 increasingly being put in place. Every new development that
8 goes in has the controls. It's rolling on an ongoing basis.

9 Secondly, with the iterative process, are we
10 following it? Yes. Read our Report of Waste Discharge. We
11 follow the iterative process. We go forward with programs,
12 we reassess programs. We have CLRDS, Comprehensive Load
13 Reduction Programs, in the Aliso and San Juan Creek. We're
14 looking at the BMPs, we're continuing to fine tune them.
15 And I think if you look at the record, we've got a strong
16 history on that.

17 The State of the Environment Report. We've made
18 it available. We're certainly willing to take comments on
19 it. We prepared one for South Orange County. We also
20 prepared one for North Orange County. They're intended to
21 be the best interpretation of the data that's been
22 collected, and we collect voluminous amounts of data.

23 I mean, we're always welcome to other people to
24 provide comments and critiques of them, but we think it's a
25 robust start in the process and we think it's a step forward

1 in the program.

2 And then we've got sort of these big issues that
3 we talked about, compliance options, you know, local prior
4 approval, inclusion of the State of the Environment Report,
5 which we requested. We've got the Santa Ana Permit, which
6 is doing some stuff with respect to, you know, compliance
7 options as well. They're looking at it. We've got the L.A.
8 Regional Board Permit Appeal which is ongoing. There's an
9 awful lot in play at the present time.

10 And, you know, while the Regional Permit has some
11 benefits, and your Executive Officer has pointed to those, I
12 think there may be greater benefits by taking a step back
13 and slowing down the process, and allowing some of these
14 bigger issues to be worked through. And sort of the idea of
15 us working in tandem with the Riverside Permit makes a good
16 deal of sense. Thank you.

17 CLOSING REMARKS BY THE CITY OF SAN DIEGO

18 MS. KOLB: Since I think we have another minute or
19 two, I just wanted to conclude that, you know, certainly,
20 we're not asking for any kind of legal immunity against any
21 kind of lawsuits. We're not asking for any kind immunity
22 against enforcement actions. We want to be held accountable
23 for what we're supposed to do, what we need to do.

24 Our problem -- well, we don't have any problem
25 with that. The problem that we have is being held

1 accountable for things that are beyond our control, either
2 technologically or legally. You know, there are pesticides
3 we cannot control here, in Orange County, because that's
4 given to State and Federal government to do. It's not
5 within our control to do. We'd love to be able to take
6 pesticides off the market, change formulations in products,
7 as the brake pads are a good example of.

8 We worked long and hard statewide, with other
9 stormwater programs in California to try to change that law.
10 It's extremely difficult for a municipality to do.

11 And if I could just add a little footnote for the
12 road, one of the things that were said, but while Orange
13 County does have an extremely robust economy, and it has for
14 many years, the County of Orange receives the lowest share
15 of property tax revenues in the State. It gets six cents on
16 the dollar. Nobody else gets -- no other county is that
17 low in terms of what revenues County government does to meet
18 its various missions.

19 So, I just wanted to add that footnote as well. Thank you
20 very much.

21 CHAIRMAN ABARBANEL: Okay, thank you.

22 Let's move on to -- why don't we take three
23 minutes for everyone.

24 (Off the record at 5:19 p.m.)

25 (On the record at 5:30 p.m.)

1 CLOSING REMARKS BY

2 THE SAN DIEGO REGIONAL QUALITY WATER BOARD

3 MS. WALSH: Again, Laurie Walsh with the Water
4 Board. I'd like to wrap up some of our recommendations and
5 address some of the things we've heard today.

6 The Board Water Staff would like to recommend that
7 the Board adopt the Tentative Order today, with the
8 following Errata. The Errata that we provided to you, the
9 Staff Errata, it essentially addresses two items. It
10 updates the date for the Single Water Board Regulation
11 Agreement for Lake Forest, Laguna Woods and Laguna Hills.
12 And it strikes the prior lawful approval language at this
13 point.

14 Recognizing our commitment to work on this issue
15 as part of focused meetings or focus groups as we go
16 forward. Staff does support the need for some sort of
17 language in the permit, but not at this particular point.
18 We need to go back and do it right.

19 The County of Orange put forth this fact sheet,
20 Technical Report Errata, and talks about these environmental
21 considerations for our fact sheet. And this information
22 describes priority water quality conditions, conditions of
23 the watershed. It talks about causal factors for the water
24 quality issues in Orange County. And this particular
25 language fits perfectly into their Water Quality Improvement

1 Plan requirements, and that's where we suggest this
2 language show up, and not necessarily in the fact sheet of
3 the permit. It fits perfectly with that. So, we recommend
4 that Orange County put that forth when they submit their
5 Water Quality Improvement Plan, and we not make a change to
6 the fact sheet.

7 This fact sheet right here, it says "Fact Sheet,
8 Technical Report/Errata Environmental Considerations". That
9 was handed in by the Orange County Copermittees.

10 CHAIRMAN ABARBANEL: Right. I don't think we got
11 a copy of that, no.

12 MS. WALSH: Jimmy will hand it out to you. Coming
13 to you now. Yeah, we recommend we do not put that in our
14 fact sheet for the permit, but it should be part of the
15 County's Water Quality Improvement Plan that they submit to
16 us.

17 There was suggested language put forth by the
18 County of San Diego regarding the transitional receiving
19 water monitoring. We recommend that you have a copy of that
20 before you. It has D, Monitoring and Assessment Program
21 Requirements. We support that language, along with the
22 County supports it, and we do recommend that that be
23 included as part of the errata today.

24 The City of an Diego came up and spoke about
25 changes to the Los Penasquitos TMDL language. You have an

1 additional handout that has Attachment E, specific
2 provisions for total maximum daily load. And that covers
3 one of their requests. In particular, for Provision
4 7.c.2.d, having to deal with the interim TMDL compliance.
5 We've shared the language with the City. They are
6 acceptable to that language, so we recommend that that be
7 included as part of the errata for your consideration today.

8 We do not concur with City's suggested language
9 for the final TMDL compliance provisions. We have not given
10 you any language for that. It shows up in the City's
11 language that they read to you today. It deals with
12 Provision 7.b.3.b.i and 7.b.3.a. So, we will discuss that
13 further with the City as we go forward, but we do not have
14 any recommended changes for you regarding that.

15 The compliance pathway forward, for receiving
16 water limitations, we've heard a lot about that today. We
17 have made a commitment in the Tentative Order to consider
18 that in the future. And at this time, we don't -- you've
19 heard a lot of testimony about there's a lot in play, it's
20 complex, it's a statewide issue. And the State Board
21 proceedings have actually just gotten started on that.
22 We're not sure how long that will take to get a State Board
23 decision. And there's no mandate from the State at this
24 point regarding alternative compliance for receiving water
25 limitations. So, our suggested commitment will be a

1 commitment in the order going forward.

2 Okay, we do recommend that you add, as part of the
3 errata, adding the word "marine protected areas" to
4 Provision B.2.a.3. That was brought forth by the Orange
5 County Coastkeeper.

6 So at this point, staff recommends adoption of
7 Tentative Order R9-2015-001 with the errata, and with the
8 additional errata that I read to you right now.

9 CHAIRMAN ABARBANEL: And is that also the
10 recommendation of the Executive Officer?

11 EXECUTIVE OFFICER GIBSON: Yes, Mr. Chairman, I
12 believe Ms. Walsh and staff have summarized it very nicely.

13 CHAIRMAN ABARBANEL: Okay.

14 MS. HAGAN: Mr. Chair, I would recommend, if
15 you've heard from staff and the parties that you close the
16 public hearing before you have discussion.

17 CHAIRMAN ABARBANEL: Okay, I thought we closed the
18 public hearing at 9:00 this morning, but apparently not.

19 So, the public hearing is closed. Anybody still
20 here, hello.

21 Okay, it's my understanding from our Counsel that
22 is it on all matters, or some matters we have to have a roll
23 call vote. This one apparently fits in that category and
24 we'll figure out in a minute what fits in that category.

25 And I suggest that while we do that, we have

1 individual statements and then you can explain your position
2 and then vote. Of course, we have to have to have a motion
3 to do that.

4 MS. HAGAN: Well, you can proceed with discussion
5 before anyone makes a motion, if you want, or someone can
6 make a motion at any time. If you have a motion that's
7 pending --

8 CHAIRMAN ABARBANEL: Well, the vote has to be by
9 roll call.

10 MS. HAGAN: No, the roll call is just the final
11 vote. Instead of everyone -- once you have a motion and a
12 second, instead of everyone saying aye or nay, it should be
13 just clear who's voting in which way.

14 CHAIRMAN ABARBANEL: Good, then that's clear.
15 Let's open this up for discussion.

16 Betty, would you like to start.

17 BOARD MEMBER OLSON: Usually, my voice carries.
18 But I'd like to thank everyone who came here today to
19 testify, and for taking the time and you did take a lot of
20 time. But it's a very important matter.

21 Unfortunately, I do not have the benefit of the
22 earlier knowledge and exposure that the other Board
23 Members have had. But I do want to thank the staff for the
24 effort that they have put in because I know that the path to
25 anything that is done in the regulatory arena is, indeed,

1 onerous. So, I thank you very much for that.

2 I agree with the staff recommendations on the
3 whole, but I would like to make a comment. And that is that
4 I feel that alternative pathways are exceedingly important.

5 As much as it troubles me to hear that we're going back to
6 a permit that was put forward in 2007, I know from the water
7 regulatory side, at the Federal government, when they change
8 a standard they change it in stages. So, it applies after a
9 certain time period to larger agencies and then it works its
10 way down to smaller agencies.

11 So, perhaps that is the reason for that. I hope,
12 as we go forward, we can work within the confines to get it
13 to the most recent action taken.

14 I certainly understand the problems that Orange
15 County faces. And I think the alternative compliance
16 measures, as I mentioned, are very important. And we all
17 work today, unfortunately, in a litigious society. I'm
18 hopeful that the Regional Board and its staff can work with
19 both Riverside and Orange County to come up with an
20 alternative compliance limits -- or pathways, and to work
21 toward that.

22 On the other hand, I feel that the San Diego
23 County faced the same problems, although maybe not as acute
24 because of the 9th Circuit's recent decision. But I don't
25 think that Orange County is put under any greater burden

1 than San Diego County faced.

2 I would like though, also to say that I've had the
3 opportunity to work with Chris Crompton, and I do believe he
4 is very committed to improving water quality. I feel that
5 we can all say that things don't move quickly enough. I
6 know I feel that in my own elected position as a Water Board
7 Member. I would like to be able to move much, much faster
8 on issues that we're trying to address in recycled water to
9 meet the drought. That's not always possible.

10 And so, I realize that this is a difficult -- it
11 will be difficult for Orange County, but I hope that our
12 staff, and in a side conversation with our Executive
13 Officer, he seemed to think that this was possible.

14 And outside of that, I'd just like to say about
15 one of the issues facing the area that all stormwater
16 permits will deal with our bacteria. I've spent my life
17 working on bacteria. I actually love them. They are very
18 clever. They have one chromosome. Sometimes we contain
19 them and get them to do what we want. Other times, they sit
20 in bird poop, on tree leaves, and exist for a very long
21 time.

22 And so, as much as I love them, they can certainly
23 cause problems and constraints. So, we will be dealing with
24 them for a long time. Thank you.

25 VICE-CHAIRMAN STRAWN: You're a hard act to

1 follow, Betty. I'll be pretty brief, I think. After wading
2 through those hundred and some pages of comments and
3 responses to comments, the last few nights, I was pleased, I
4 think I understood today that the County of Orange's
5 complaints were really in three areas.

6 One was a desire to stand alone. I'm not sure I
7 understand the rationale for that, but I think I understand
8 the rationale for trying to include you in a Regional
9 Permit. So, I'm going to kind of skip over that one.

10 The other one, on the compliance alternative,
11 that's obviously a really strong concern and I can't argue
12 against anything you say about it. I think it's important.
13 I think it needs to be in there.

14 But I also understand our staffs' concern and our
15 Executive Officer's concern that if we jump out right now,
16 ahead of the State Board, we could have -- we could be
17 stepping into a pile of bird poop bacteria.

18 So, my inclination would be to go ahead, but try
19 to convince you that we are serious about not waiting
20 another two years and then having the same discussion. We
21 need to go forward, but we really are, I think, constrained
22 by some issues in Sacramento, and may be some of the other
23 Boards, liking getting together with Region 8, making sure
24 that we do it all and do it right.

25 So, that's like a trust-me, I think, that we're

1 going to push forward on that will all due haste.

2 The third item, on the prior legal approval, it
3 seems to me that that should be a much easier thing to solve
4 and we saw some really good recommendations today. And it
5 sounds like we could be pretty close to putting something
6 together on that and moving forward. I'm looking for little
7 positive nods from the staff that that should be something
8 that definitely does not have to wait until November. And
9 so, I look forward to moving ahead with that.

10 And the last thing I would say is basically
11 paraphrase what David said earlier, and that's that there's
12 a lot of good in this permit. I think there's things that
13 all of the Copermittees like and they want to have. At
14 least that's what I think I heard today.

15 And so, my inclination is to move forward with
16 this, with the promise that we won't let those two important
17 issues, that you bring up, languish. We'll get those tied
18 in. And I really don't think, in either case, this is a
19 step backwards at all. This is, unfortunately, not fixing
20 an existing problem as fast as you would like, but I don't
21 see it as a step backwards in any way.

22 So with that, and the errata that you presented,
23 and I'm not sure I followed them all, but I think I got them
24 all, I would be in favor with going on with the staff's
25 recommendation.

1 CHAIRMAN ABARBANEL: Tomas?

2 BOARD MEMBER MORALES: Yeah, a few points. On the
3 prior lawful approval, I would hope that, you know, at the
4 end of the day our Chair directs staff to set up a working
5 group, with interested parties, sooner rather than later.
6 And I will request that it be a day that I can attend,
7 because I would like to go, because I can read a statute as
8 well as a lot of people, but I want to hear what the
9 interpretations are so that I can make my own judgment, and
10 maybe like share it with folks. Okay. And then, we'll
11 figure out where people stand.

12 On the alternative path, I believe we'll get
13 direction from State Board as to, you know, what they think
14 should happen across the State. And, you know, we'll take
15 that direction and we won't have an alternative. Until
16 then, I believe it's important to give the folks that we
17 regulate something to aspire to, and that's what I believe
18 our MS4 Permit is.

19 I was heartened to hear Ms. Lin say that in
20 functions that she attends that she uses our MS4 as a model
21 that other people should aspire to. And I believe that's
22 what we got.

23 And Orange County, you guys are great. You do
24 good work. You know, I've met with you guys and, you know,
25 I believe you will, after your game, you will rise to the

1 challenge. Just as, you know, the San Diego Copermittees
2 have. I wouldn't worry so much about the threat of
3 litigation. That's always been there. It will always
4 continue to be there, no matter what the regulatory scheme
5 is, no matter what statutes say.

6 You should take some heart though, because
7 you're -- no offense, Mr. Rodriguez, but your biggest boogie
8 man stood up and said, look, I'm not going to come after
9 you.

10 (Laughter)

11 BOARD MEMBER MORALES: And that would make me a
12 little more comfortable. You know, and I will also say that
13 I do believe, unlike -- I hope you pick up your kids in
14 time, but I don't think so. I am a litigator. And I was
15 also taught in law school that, you know, anybody can get
16 sued. You know, the saying was you can sue the Bishop of
17 Boston for a bastard, but you have to prove it.

18 But in my practice I've learned that people
19 generally don't get sued if they're doing the right thing or
20 if they're making efforts in the right direction. It's not
21 a simple or easy thing for people to do and it's not as
22 common as most people think, actually.

23 So, you know, I'm not surprised at all that the
24 San Diego Copermittees haven't been sued, or haven't gotten
25 their NOIs, just like they were telling us that they

1 expected two years ago. And I won't be surprised, I think,
2 in a few years when we hear the same thing from Orange
3 County.

4 That said, the final point will be that on the
5 language for the Penasquitos TMDL, incorporating that, I
6 hope that what we have is enough. And if it isn't, I hope
7 that we can in the future do something to revisit it.
8 Because I really do not want people to shy away from that
9 type of process, where they're collaborative, they get
10 together, they come up with their TMDL that they buy into.
11 Because I also think that was a model for the State. And I
12 would like to see more of that. So, that's just something
13 that I'll be looking for in the future.

14 Thank you.

15 CHAIRMAN ABARBANEL: Eric?

16 BOARD MEMBER ANDERSON: Well, I'd like to
17 compliment the staff. This Regional Permit is a step
18 forward and something I really thought I would never
19 support. I support the staff recommendation and I do have
20 three comments.

21 One, about the prior legal or lawful approval.
22 You know, we don't issue building permits and say when you
23 can grade and when you can't. The local agencies do, that's
24 your responsibility. And, really, if we are able to come up
25 and clarify the language, that would be great. But I think

1 that's really the local jurisdiction's, really the bottom
2 line, they're responsibility. It always has been, always
3 will. That's why they are what they are. That's one of the
4 key things about having local jurisdictions.

5 The second thing is while I'm sympathetic to
6 Orange County in wanting a separate permit, especially
7 because of the on-the-ground differences of the Orange
8 County soils, and terrain, and culture with the other
9 counties, I believe that this permit is actually a better, a
10 far better approach than the previous permits that I've
11 voted for. And that I believe will be a vast improvement
12 and easier to go forward. And I really look forward to
13 getting more, better, stronger results in the next interim.

14 And, hopefully, I won't be around for the next permit
15 cycle.

16 (Laughter)

17 CHAIRMAN ABARBANEL: I hope you will.

18 BOARD MEMBER ANDERSON: And finally, I do look
19 forward to the -- moving forward to the alternative
20 compliance in November. I think that's soon enough. And
21 so, that's sort of my thinking, thank you.

22 Oh, I do have one last --

23 CHAIRMAN ABARBANEL: Oh, please.

24 BOARD MEMBER ANDERSON: Your sizing of the LID, in
25 Section E.3.c, of one and a half times, I do think that

1 makes sense. And maybe when we do the Riverside one if, you
2 know, maybe you could clarify why you came up with one and a
3 half, that would really be helpful. Thank you.

4 CHAIRMAN ABARBANEL: So, I'm very positive about
5 the MS4 Permit. I did not know that EPA goes around
6 representing us as a symbol of light in MS4 Permits, but I'm
7 glad to hear it.

8 I live in a very small, Copermitttee, and I can
9 tell you that the staff there is delighted with the
10 opportunities to meet water quality standards on their
11 terms, and they feel that with that kind of freedom they
12 have benefited enormously, not only the County of San Diego
13 as a whole, but the City itself. I think Orange County will
14 find that, as well.

15 I will make a motion and vote for the staff
16 recommendations, supported by the Executive Officer.

17 I would like to ask the Executive Officer to form
18 what I am going to call the Pronto Clarity Panel, which
19 means we don't have to wait to have serious, thoughtful
20 discussions about compliance pathways and prior lawful
21 approval.

22 I have learned, maybe even more in the last year,
23 that waiting for the State Board is like waiting for Gadeau
24 (phonetic) at times. I have not yet seen Gadeau. And maybe
25 they can use the inspiration from our thoughtful

1 considerations of these items in guiding their own
2 decisions. Which, of course, we will be responsible for
3 them following.

4 And I hope that Tomas will attend the meetings and
5 that they are structured around his being part of it,
6 because I really appreciate him volunteering.

7 BOARD MEMBER MORALES: I'm looking forward to it.

8 CHAIRMAN ABARBANEL: Okay. So, I'm going to move
9 that we adopt Tentative Order 2015-0001, plus the errata,
10 adding the item for Section D.1.a. I'm not going to be able
11 to fill in all the words that are there. Section
12 7.c.(2).(d), and adding the words "marine protected areas"
13 for clarity in Section B.2.8.3.

14 BOARD MEMBER MORALES: Second.

15 CHAIRMAN ABARBANEL: Okay, we have -- oh, of
16 course.

17 BOARD MEMBER OLSON: It takes me a while. So, the
18 Committee that's being formed will not only look at prior
19 legal processes -- prior legal permission -- prior legal
20 approval, but will also look at the alternative pathways.
21 Is that correct?

22 CHAIRMAN ABARBANEL: Yes. Those are the two major
23 issues that have been discussed this afternoon. And, as
24 everybody has pointed out, endlessly, into the infinite
25 past, and I think that we ought to discuss and focus on

1 them, and do our very best to come up with something that
2 meets the concerns that we have heard.

3 BOARD MEMBER OLSON: Then I also vote aye and I'd
4 like to be --

5 CHAIRMAN ABARBANEL: No, no, you're not allowed to
6 vote aye, there has to be a roll call.

7 BOARD MEMBER OLSON: Oh, sorry.

8 CHAIRMAN ABARBANEL: Sorry, this is the first time
9 we've ever --

10 BOARD MEMBER OLSON: Well, I thought you voted.

11 CHAIRMAN ABARBANEL: No, no, I just moved and Gary
12 seconded the motion or Tomas did.

13 MS. HAGAN: Mr. Chairman, may I just make -- I
14 hate to upset the optimistic attitude, but I don't think any
15 Board Members will be able to participate in the discussions
16 because that will be an ex parte communication with these
17 pending matters. But you will be able to consider all of
18 the recommendations that come out and the different
19 language alternatives that come out of those meetings.

20 CHAIRMAN ABARBANEL: If we send a non-lawyer,
21 who's unlikely to understand what's going on, does that
22 help?

23 (Laughter)

24 CHAIRMAN ABARBANEL: Sorry, Tomas, we'll take that
25 up in a higher court, as it were.

1 All right, so, Chris, are you calling the roll?
2 MS. ARIAS: Mr. Anderson?
3 BOARD MEMBER ANDERSON: Aye.
4 MS. ARIAS: Mr. Morales?
5 BOARD MEMBER MORALES: Aye.
6 MS. ARIAS: Dr. Olson?
7 BOARD MEMBER OLSON: Aye.
8 MS. ARIAS: Mr. Strawn?
9 VICE-CHAIRMAN STRAWN: Aye.
10 MS. ARIAS: Chairman Abarbanel?
11 CHAIRMAN ABARBANEL: Aye.
12 Well, I hope you don't have any more speaker
13 slips. Thank you all for a long, and intensive and very
14 productive day. See you next month. The meeting is
15 adjourned.
16 (Whereupon, the meeting was adjourned
17 at 5:57 p.m.)
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of March, 2016.



Jacqueline Denlinger
AAERT CERT # 747

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of March, 2016.



Barbara Little
Certified Transcriber
AAERT No. CET**D-520